BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.03.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.230 of 2017

1.K.Somu
2.S.Karpagam
3.S.Muniasamy
4.S.Parameswari : Appellants/Petitioners

Vs.

1.P.Muthukumar

2.ICICI Lombard General Insurance Company Limited,
through its Manager,
Having its Corporate Office at
ICICI Lombard House,
414, Savarkar Marg,
Near Siddhivinayak Temple,
Prabhadevi, Mumbai-400 025.

3.M.Karthick
(3rd respondent set ex-parte before Tribunal. Hence, the 3rd respondent may be dispensed with) : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (I Additional District Judge), Thoothukudi, in MCOP No.464 of 2014, dated 20.04.2016.

For Appellants	:	Mr.N.Sudhagar Nagaraj
For 1st Respondent	:	Mr.T.A.Ebenezar
For 2nd Respondent	:	Mr.K.K.Ramakrishnan
For 3rd Respondent	:	Ex-Parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (I Additional District Judge), Thoothukudi, in MCOP No.464 of 2014, dated 20.04.2016.

2.The short facts of the case is that on 15.07.2014 at 21.30 hours, the deceased S.Siva was going in the motor cycle TN-69-AW-9337 on Thoothukudi to Tiruchendur main road and when he was proceeding near Agaram Vilakku on the same road, at that time, the TATA Venture Van TN-72-TMP-57577 came in a rash and negligent manner and hit against the motor cycle. In the accident, the deceased sustained facture of bones in both legs and forehead and right clavicle bone and immediately, he was taken to Thoothukudi Government Medical College Hospital for treatment, however, he died. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.40,00,000/- on the ground that the driver of the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 24 years at the time of accident and he was doing Mason work, thereby he was earning Rs.12,000/- per month. It is alleged that the said S.Siva died only due to the negligence of the driver of the offending vehicle.

4.In the counter filed by the 2nd respondent Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 3 witnesses were examined and marked 10 documents. On the side of the 2nd Respondent Insurance Company, no witness was examined and no document was marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.7,50,000/- together with interest @ 7.5% p.a.

7.Heard both sides and perused the materials available on record.

8.The learned counsel for the appellants/claimants mainly argued that the tribunal erred in awarding lesser quantum of compensation to the claimants and failed to award a fair compensation and the tribunal ought to have adopted correct multiplier and erred in arriving at the lesser monthly income for the deceased and the award of the tribunal under the conventional heads are also on the lower side, hence, the award of the tribunal has to be enhanced.

9.On the other hand, the learned counsel for the respondents 1 and 2 submitted that the award is reasonable, which does not warrant any interference of this court.

10.It is not in dispute that the deceased was doing Mason work. It is not in dispute that the deceased died at the age of 24 years. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased at Rs.5,000/-. By applying multiplier '14' and adding 50% towards future prospects and after deducting 50% from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.6,30,000/- (Rs.3,750/- x 14 x 12) towards loss of income. Further, the tribunal has awarded each Rs.25,000/- towards loss of love and affection to the claimants; Rs.10,000/- towards transport expenses and Rs.10,000/- for funeral expenses. In total, the tribunal has awarded Rs.7,50,000/- to the claimants along with interest @ 7.5% p.a.

11.Perusal of the records would reveal that the deceased was doing Mason work. Since, no reliable document has been produced on the side of the claimants, the tribunal has taken the monthly income of the deceased at Rs.5,000/-. However, considering the above facts and keeping in view of the decision of the Hon'ble Apex Court in the case of **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., (2014(1) TN MAC 459 (SC)**, this court fixed the notional income of the deceased at Rs.6,500/- per month.

12.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Hence, this court is of the considered view that 40% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 *(National Insurance Company Limited vs. Pranay Sethi and others)*.** By doing so, the monthly loss of income of the deceased is calculated at Rs.9,100/- (Rs.6,500/- + Rs.2,600/-). Since the deceased is a batcholer, 50% has to be deducted towards his personal and living expenses. By doing so, the monthly income is arrived at Rs.4,550/- (Rs.9,100/- x 1/2). By applying proper multipler 18, this court awards **Rs.9,82,800/-** (Rs.4,550/- x 12 x 18) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards each Rs.40,000/- towards filial consortium to the parents of the deceased namely claimants 1 and 2; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.10,92,800/**- together with interest @ 7.5% p.a.

13.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.10,92,800/-** from Rs.7,50,000/-. The 2nd respondent Insurance Company is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the claimants 1 and 2 are each entitled to withdraw Rs.3,96,400/- and the claimants 3 and 4 are entitled to withdraw each Rs.1,50,000/- with accrued interest and costs without filing any formal petition before the tribunal. The claimants shall pay the additional court fee for the enhanced amount **(*)if any**. No costs.

Sd/-

Assistant Registrar(P & A)

(*)Amended as per order of this Hon'ble Court dated 14.09.2021

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

To,

(*)To be Substituted the order already despatched on 12.07.2021

1.The Motor Accident Claims Tribunal/
I Additional District Judge, Thoothukudi.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-13233[F] dated 24/03/2021)

Judgement made
in CMA(MD)No.230 of 2017
23.03.2021

SGS(CO)
TR(08.07.2021) 4P 5C
GC(16.09.2021) 4P 5C