



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.09.2021

Delivered On : 28.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.652 of 2017

and

C.M.P. (MD)No.6805 of 2017

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M/S.United India Insurance Co. Ltd.,
represented by its Divisional Manager,
No.4, Promenade Road, Cantonment,
Trichirappalli - 62001.
Trichirappalli District.

.. Appellant/2nd Respondent

Vs.

1.Arulanandham @ Arulandhu

2.Sahaya Rani

.. Respondents/Claimants

3.Dinesh

.. Respondent/1st Respondent

(Notice to 3rd Respondent is given up as he did not appear at the time of trial)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 22.03.2017 made in M.C.O.P.No.5658 of 2013, on the file of the Motor Accident Claims Tribunal (Special District Court), Tiruchirappalli.

For Appellant	: Mr.B.Rajesh Saravanan
For Respondents 1 and 2	: Mr.N.Sudhagar Nagaraj
For 3 rd Respondent	: Given Up

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.5658 of 2013 dated 22.03.2017, on the file of the Motor Accident Claims Tribunal (Special District Court), Tiruchirappalli.

2.The appellant herein is the second respondent, the respondents 1 and 2 herein are the claimants and the fourth respondent herein is the first respondent in the claim petition. The respondents 1 and 2 herein have filed a claim petition in M.C.O.P.No.5658 of 2013, claiming compensation for the death of one Prista Jospine, in an accident that took place on 09.05.2011.

<https://hcservices.eCourts.gov.in/hcservices/> The Tribunal has awarded a sum of Rs.7,81,316/- (Rupees Seven



Lakhs Eighty One Thousand Three Hundred and Sixteen only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.5658 of 2013 is as follows:

On 09.05.2011 at about 03.35 p.m., the deceased was travelling as a pillion rider in a two wheeler bearing registration No.TN-48-P-4667 keeping the left side of the road. At the time, another motorcycle bearing registration No.TN-48-Q-1948 that belong to the first respondent came from the opposite direction in a rash and negligent manner dashed against the deceased vehicle. Both the deceased and her father sustained grievous injury in the accident. The deceased was admitted in K.M.C. Hospital, Trichy. Then she died. The deceased was aged about eight months. The deceased was the only child of the parents and the claimants claimed a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) as compensation.

4.The brief substance of the counter filed by the second respondent therein is as follows:

The deceased's father rode the two wheeler in a rash and negligent manner and he suddenly crossed the road and invited the accident. The father of the deceased did not possess a valid driving licence at the time of accident. The two wheeler, in which the deceased travelled was not having any insurance coverage. The first respondent's vehicle driver was not responsible for the accident. The age and income are all denied. The second respondent is not responsible to pay the compensation. The claim is excessive.

5.On the side of the claimants, one witness was examined and eight documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.7,81,316/- (Rupees Seven Lakhs Eighty One Thousand Three Hundred and Sixteen only) as compensation to be paid by the respondents therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the Tribunal has wrongly fixed the liability on the rider of the vehicle bearing registration No.TN-48-Q-1948. The deceased and the claimants travelled in the vehicle as triples and this is the cause for the accident. In a case of head on collision, both the drivers of the vehicle had to share the negligence. The deceased was a eight months old baby. There is no possibility of fixing the loss of income. The income fixed by the Tribunal is excessive. Applying multiplier method is not proper. Awarding compensation for future prospects is also not fair. The appellant has to be



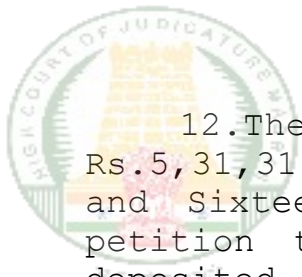
7.On the side of the appellant, it is further stated that two number of two wheelers were involved in the accident. There was a head on collision. A baby of eight months old died due to the accident. The father of the baby, who rode the vehicle also sustained injuries. On the basis of judgment of the Hon'ble Supreme Court in the case of **Syed Sadiq v. United India Insurance Co. Ltd.**, reported in **2014 2 SCC 735**, the Tribunal has fixed the annual income as Rs.30,000/- (Rupees Thirty Thousand only) and applied multiplier method. The deceased in the cited case was minor girl of five years attending primary school. But in the present case, the deceased was only eight months old baby and hence, applying the same yardstick is not reasonable.

8.On the side of the respondents 1 and 2, it is stated that fixation of loss of income for the baby is reasonable. In support of this contention, a judgment of the Hon'ble Supreme Court in the case of **R.K.Malik and another v. Kiran Pal and others** reported in **2009 1 TNMAC 593** is cited.

9.The learned counsel for the respondents 1 and 2 would rely upon a judgment of this Court in the case of **New India Assurance Co. Ltd., v. Palaniyandi @ Saravanan and another** in **C.M.A.No.397 of 2018**, wherein this Court has considered future prospects in calculating the loss of income.

10.The child in the cited case is aged about 5 to 6 years but in the present case and the age of the baby is about 8 months. But considering the fact that the baby is the only child to the parents at the time of accident, the loss of income as calculated by the Tribunal is reasonable. But considering that the deceased is only an eight months old baby, awarding future prospects is not reasonable. The Tribunal has awarded a sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss of love and affection, which is not reasonable. As per the dictum of the Supreme Court in **Praney Sethi** case, a sum of Rs.70,000/- (Rupees Seventy Thousand only) is awarded towards conventional charges. The medical expenses awarded by the Tribunal is reasonable. In total, a sum of Rs.5,31,316/- (Rupees Five Lakhs Thirty One Thousand Three Hundred and Sixteen only) is awarded as compensation.

11.In the result, this Civil Miscellenaous Appeal is partly allowed. The claimants are entitled to a sum of Rs.5,31,316/- (Rupees Five Lakhs Thirty One Thousand Three Hundred and Sixteen only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.



12.The respondents therein is directed to deposit Rs.5,31,316/- (Rupees Five Lakhs Thirty One Thousand Three Hundred and Sixteen only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to the respondents therein. The claimants are not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal,
Special District Judge,
Tiruchirappalli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.RAJESH SARAIVANAN, Advocate (SR-33324[F] dated 29/10/2021)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-33064[F] dated 28/10/2021)

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RK/PM(23/11/2021) 4P 6C

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