



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	03.02.2021
Date of Judgment	27.04.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.876 of 2017
and
CMP(MD)No.9361 of 2017

The United India Insurance Company Limited,
Nagercoil, Represented by its Branch Manager,
Office at Second Floor,
P.W.D Road, Post Box No.50,
Nagercoil,
Kanyakumari District.

: Appellant/3rd Respondent

Vs.

1.C.Raguveeradhas
2.R.Jegathesh
3.R.Sudha
4.R.Subash
5.R.Narender Singh
6.R.Jiji Shankar
7.A.Jagadheesh
8.N.Aathilingam

: R1 to R6/Petitioners
: 7th Respondent/R1
: 8th Respondent/R2

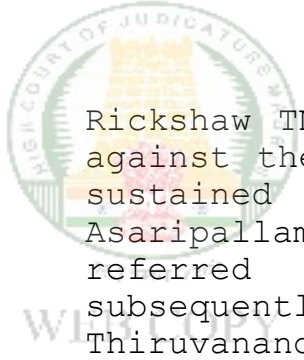
PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Sub Court), Kuzhithurai, made in MCOP No.89 of 2012, dated 14.02.2017.

For Appellant	: Mr.S.Royce Immanuel
For R1 to R6	: Mr.T.Selvakumaran
For 7 th Respondent	: No appearance
For 8 th Respondent	: Given up

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Sub Court), Kuzhithurai, made in MCOP No.89 of 2012, dated 14.02.2017.

2.The brief facts of the case is that on 06.01.2011 at about 12.00 hours, the deceased Saraswathi was walking along the left side of N.H Road in mud portion from Pulipanam to Swamiyarmadam in front Vasantha Maligai Auditorium at Swamiyarmadam, at that that, the Auto



Rickshaw TN-75-C-1812 came in rash and negligent manner and dashed against the deceased. Due to the accident, the deceased Saraswathi sustained serious injuries and immediately, she was taken to Asaripallam Medical College Hospital and thereafter, she was referred to Trivandrum Hospital, for better treatment and subsequently, she was admitted in Ananthapuri Hospital, Thiruvananthapuram, however, she died in the hospital on 11.01.2021 in spite of better treatment. The legal heirs of the deceased Saraswathi filed a claim petition seeking compensation of Rs.5,00,000/- on the ground that the offending vehicle was caused the accident.

3.The claimants have stated that the deceased was 53 years at the time of accident and she was Vegetable Merchant, thereby he was earning Rs.4,000/- per month. It is alleged that the said Saraswathi died only due to the negligence on the part of the driver of the Auto Rickshaw.

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

5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 10 documents. On the side of the Appellant Insurance Company, 2 witnesses were examined and 3 documents were 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.10,86,870/- together with interest @ 7.5% p.a.

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

8.The manner of the accident and the finding on negligence are not in dispute and the appeal is confined only to quantum of compensation awarded by the Tribunal.

9.Even though so many grounds were raised in the grounds of appeal, it is mainly contended by the learned counsel for the appellant Insurance Company that the tribunal erred in awarding higher quantum of compensation to the claimants and failed to award a fair compensation and the multiplier adopted by the tribunal is not correct and the monthly income arrived at by the tribunal is on the higher side and the award of the tribunal under the conventional heads are also on the higher side, hence, the award of the tribunal has to be reduced.

10.On the other hand, the learned counsel for the respondents 1 to 6/claimants submitted that the award is reasonable, which does not warrant any interference of this court.



11. It is not in dispute that the deceased was doing Vegetable Merchant and at the time of accident, her age was 55 years, as seen from Ex.P4. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal has rightly fixed the monthly income of the deceased at Rs.6,500/-. By applying multiplier '11' and after deducting $1/4^{\text{th}}$ from the salary of the deceased for her personal expenses, the tribunal has awarded Rs.6,43,500/- towards loss of income. Further, the tribunal has awarded Rs.58,368/- towards medical expenses; Rs.1,00,000/- towards loss of love and affection to the 1st claimant; Rs.50,000/- towards loss of love and affection to the claimants 2 to 6; Rs.25,000/- towards funeral and Rs.10,000/- for transportation expenses. In total, the tribunal has awarded Rs.10,86,868/- to the claimants along with interest @ 7.5% p.a.

12. Perusal of the records would reveal that the deceased was doing Vegetable Merchant. Since no proof was filed to prove the income of the deceased, the tribunal has rightly fixed Rs.6,500/- as monthly income of the deceased.

13. It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 10% of the established income should be the warrant where the deceased was between the age of 50 to 60 years. In the instant case, the tribunal has not added any amount towards future prospects. Hence, this court is of the considered view that 10% 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.7,150/- (Rs.6,500/- + Rs.650/-). After deducting $1/4^{\text{th}}$ towards his personal and living expenses, the monthly income is arrived at Rs.5,363/- (Rs.7,150/- x $1/4$). By applying proper multiplier 11, this court awards **Rs.7,07,916/-** (Rs.5,363/- x 12 x 11) towards loss of income. In addition to that, under the conventional heads, as per the decisions in **Pranay Sethi's case** and **Magma General Insurance's case**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant; Rs.2,00,000/- towards loss of consortium to the claimants 2 to 6; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.9,77,916/-** together with interest @ 7.5% p.a.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. The award is reduced to **Rs.9,77,916/-** from Rs.10,86,870/-. The appellant 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 1st claimant is entitled to withdraw Rs.5,77,916/- and the claimants 2 to 6 are each entitled to withdraw Rs.80,000/- together with accrued interest and



costs without filing any formal petition before the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar ()

/ /2021

Sub Assistant Registrar(CS)

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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 Accident Claims Tribunal/
Sub Court, Kuzhithurai.

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

+1 CC to M/s.S.ROYCE IMMANUEL, Advocate (SR-17695[F] dated 27/04/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-17992[F] dated 29/04/2021)

CMA(MD)No.876 of 2017
27.04.2021

KK(01.06.2021) 4P 6C