

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	15.03.2021
Date of Judgment	14.06.2021

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.910 of 2017
and
CMP(MD)No.9687 of 2017

The Branch Manager,
M/s.Reliance General Insurance Company,
Raja Tower,
Plot No.2054, 2nd Avenue, 2nd Floor,
Next to Senthil Nursing Home,
Annanagar, Chennai.

: Appellant/2nd Respondent

Vs.

1.A.Sivasubramanian
2.Muthumari
3.Nallaperumal
4.Gurumoorthy

(R4 Declared as major,
vide court order, dated
dated 19.02.2021 made
in CMP(MD)No.2335 of 2018
in CMA(MD)No.910 of 2017)

5.Minor Rajesh : R1 to R5/Petitioners 1 to 5
(Minor respondent5/Petitioner5 is represented by his father and
guardian 1st respondent.1st petitioner)

6.General Manager,
M/s.Sical Logistics Ltd.,
A Company incorporated under
Companies Act,
Having Register Office at
110, Anna Salai,
Guindy, Chennai.

: 6th Respondent/1st Respondent

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),
Kovilpatti, made in MCOP No.47 of 2012, dated 28.01.2016.

For Appellant
For R1 to R5
For 6th Respondent

: Mr.V.Sakthivel
: Mr.M.P.Senthil
: No appearance

**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 (Sub Court), Kovilpatti, in MCOP No.47 of 2012, dated 28.01.2016.

2.The short facts of the case is that on 14.08.2011 at about 4.30 pm, the deceased S.Arumugam and his brother S.Nallaperumal went to see one Karuppasamy employed in a weigh Bridge at Ettayapuram Road and after seeing him, both of them were returned back to their house, at that time, the Taurus Lorry TN-09-AS-0128 came in a rash and negligent manner and hit against the cyclist of S.Arumugam on his back, who was proceeding on the extreme left side of the road, fell on the right side of the road and the front wheel as well as the back wheel of the lorry ran over S.Arumugam and he died instantaneously at the place of accident itself due to the grievous injuries sustained by him. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.50,00,000/- on the ground that driver of the Lorry caused the accident.

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

4.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.18,75,000/- together with interest @ 7.5% p.a. Aggrieved over the same, the Insurance Company is before this court.

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

6.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.

7.The learned counsel appearing for the appellant Insurance Company submitted that there was no sufficient document filed to prove the income of the deceased and hence, the loss of income arrived at by the tribunal is on the higher side and reasonable compensation may be given. Further, the learned counsel appearing for the appellant Insurance company submitted that only the claimants 1 and 2 are entitled to claim compensation and the other claimants are brother and sister of the deceased and they are not entitled to claim compensation and prays for allowing this Civil Miscellaneous Appeal. In support of his contention, he relied up on the decision reported in 2020(2) TN MAC 374(SC) (New India Assurance

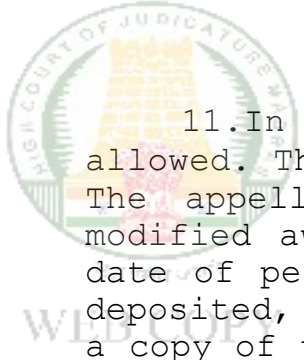


Company Limited Vs. Somwati and others).

8. In this case, the first petitioner/1st claimant was examined as PW1 and he stated that his son has completed Diploma in Mechanical Engineering and he was working in as Mechanical Engineer in T.L.C Universal Private Limited, Bangalore and lastly, he was working in EMCON, Chennai and earned a sum of Rs.20,000/- per month and due to the death of his son, they are entitled to get compensation as prayed for.

9. In this case, PW1 stated that at the time of accident, the deceased was working in EMCON, Chennai and earned Rs.20,000/-. To prove it, no document was filed on the side of the respondents 1 to 5/claimants. It was admitted by PW2 that he only filed ID card issued by the TLC Universal Private Limited, Bangalore. Further, on the side of the respondents 1 to 5/claimants to prove the educational qualification of the deceased, no document was filed. On perusal of Ex.P9 ID Card, it reveals that prior to the death, the deceased was working in TLC Universal Private Limited, Bangalore, but no educational certificate was submitted. In the absence of any documentary evidence to prove the income of the deceased, it is bounden duty of the claimants to prove that the deceased was working in EMCON, Chennai and earning Rs.20,000/-. But no document was filed to prove the income of the deceased. In the absence of avocation and income, 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.

10. 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. In the instant case, the tribunal has added 50% towards future prospects. 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/- + 2,600/-). After deducting 50% towards his personal and living expenses, the monthly income is arrived at Rs.4,550/- (Rs.9,100/- x 1/2). By applying proper multiplier 18, this court awards **Rs.9,82,800/-** (Rs.4,550/- x 12 x 18) towards loss of income. In addition to that, this Court awards Rs.80,000/- towards parental consortium to the claimants 1 and 2, who are parents of the deceased; 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.



11. In the result, this Civil Miscellaneous Appeal is partly allowed. The award is reduced to **Rs.10,92,800/-** from Rs.18,75,000/-. The appellant Insurance Corporation 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.5,08,900/- and the claimants 3 to 5 are each entitled to Rs.25,000/- with accrued interest and costs. Excess amount if any shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Judge, Kovilpatti.

2. The Record Keeper, (2C)
Madurai Bench of Madras High Court,

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-19295[F] dated 15/06/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-19296[F] dated 15/06/2021)

C.M.A(MD) No.910 of 2017
14.06.2021

SE(CO)
KB(06.09.2021) 4P 6C