



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.04.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)No.941 of 2017

- 1.N.Vasanthakumari
- 2.Minor S.V.N.Sarankumar
- 3.S.Sampoornam
- 4.V.R.Balasubramanian

(Minor 2nd Appellant is represented by his Natural guardian and
mother 1st appellant) : Appellants/Petitioners

Vs.

- 1.Balraj
- 2.Royal Sundaram Alliance Insurance Company Limited,
Bus Plaza, 3rd Floor,
5-G, Lawsons Road,
Cantonment, Trichy-1.
Represented by its Manager,
- 3.Royal Sundaram Alliance Insurance Company Limited,
Registered Head Office, No.21, Patullos Road,
Chennai-2,
Represented by its Managing Director : 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 (Principal District Court), Karur, made in MCOP No.575 of 2011, dated 01.06.2015.

For Appellants : Mr.K.Hemakarathikeyan

For 1st Respondent : No appearance

For R2 and R3 : Mr.M.Jerin Mathew
for Mr.M.E.Elango

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Principal District Court), Karur, in MCOP No.575 of 2011, dated 01.06.2015.

2.The brief facts of the case is that on 09.07.2011 at about 11.00 pm, the deceased Nagaraj was walking in front of Aravind



Petrol Bunk on Thirumanilaiyur-Karur main road, at that time, the Lorry TN-47-P-5862 came in a rash and negligent manner and dashed on Nagaraj from behind. In that process, he died on the spot. The legal heirs of the deceased Nagaraj filed claim petition seeking compensation of Rs.35,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 40 years at the time of accident and he was working as Poultry Manager in Sri Venkateswara Poultry Farm, Namakkal, thereby he was earning Rs.13,000/- per month. It is alleged that the said Nagaraj died only due to the negligence of the driver of the offending vehicle.

4.In the counter filed by the 2nd and 3rd 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 11 documents. On the side of the 2nd and 3rd 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.8,60,000/- 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 mainly argued that the tribunal erred in awarding lessor 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 2 and 3 submitted that the monthly income fixed by the tribunal is not in consonance with the reliable documents and the award under the conventional heads are reasonable, which does not warrant any interference of this court.

10.It is not in dispute that the deceased was working as Poultry Manager in Sri Venkateswara Poultry Farm, Namakkal. It is not in dispute that the deceased died at the age of 40 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.6,000/-. By applying multiplier '15' and after deducting 1/3rd towards his personal and living expenses, the tribunal has awarded Rs.8,10,000/- towards loss of dependency.

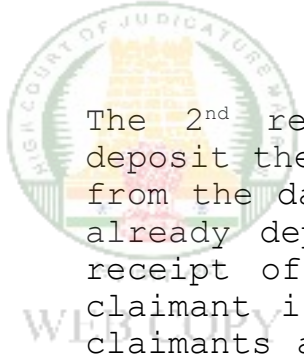


Further, the tribunal has awarded Rs.30,000/- towards loss of love and affection to the claimants 2 to 4; Rs.10,000/- towards loss of consortium to the 1st claimant; Rs.10,000/- towards funeral expenses. In total, the tribunal has awarded Rs.8,60,000/- to the claimants along with interest @ 7.5% p.a.

11. Perusal of the records would reveal that the deceased was working as Poultry Manager in Sri Venkateswara Poultry Farm, Namakkal. Even though, no proof was filed on the side of the claimants to prove the monthly income, the tribunal has fixed the monthly income of the deceased at Rs.6,000/-. PW1 deposed that her husband was working as Poultry Manager in Sri Venkateswara Poultry Farm, Namakkal and he was getting Rs.13,000/- per month as salary. On the side of the claimants, to prove the income of the deceased, PW3 the owner of the said Farm was examined. He deposed that the deceased was working as Farm Manager in his poultry farm and earned Rs.13,000/- per month and was also getting 8.33% bonus per year in addition to availing the benefit of boarding and lodging free of cost and marked Ex.P9 to P12. However, he has not filed any pay acquittance register of the poultry farm to prove the payment of salary of the deceased while he was in service. However, even though the tribunal fixed the monthly income of the deceased as Rs.4,000/-, to determine the notional income of the deceased, who was working as a Poultry Manager in the year 2011, considering the facts and circumstances of this case and also the cost of living at the relevant point of time, this court fixed the notional income of the deceased at Rs.8,500/- per month.

12. It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 25% of the established income should be the warrant where the deceased was between the age group 40 and 50. In the instant case, the tribunal has not added any amount towards future prospects. Hence, this court is of the considered view that 25% 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.10,625/- (Rs.8,500/- + Rs.2,125/-). After deducting 1/4th towards his personal and living expenses, the monthly income is arrived at Rs.7,969/- (Rs.10,625/- - Rs.2,656/-). By applying proper multiplier 15, this court awards **Rs.14,34,420/-** (Rs.7,969/- x 12 x 15) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi and Megma General Insurance case**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant; Rs.40,000/- each towards parental and filial consortium to the claimants 2 to 4; Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. In total, the claimants would be entitled for **Rs.16,24,420/-** together with interest @ 7.5% p.a.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.16,24,420/-** from Rs.8,60,000/-.



The 2nd respondent Insurance Company 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 1st claimant is entitled to withdraw Rs.7,24,420/- and the 3rd and 4th claimants are entitled to withdraw Rs.2,00,000/- each together with accrued interest and costs. The minor 2nd is entitled to Rs.5,00,000/-. Insofar as the share of the minor claimant is concerned, the Tribunal is directed to deposit his share in any one of the Nationalised Bank, in a fixed deposit scheme initially for a period of three years renewable thereafter, till they attain majority. The 1st claimant/being the mother and guardian of minors is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minor children. The claimants shall pay the additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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To

The Motor Accident Claims Tribunal/
Principal District Court,
Karur

Copy to:

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

+1 CC to M/s.K.HEMAKARTHIKEYAN, Advocate (SR-15395[F] dated 07/04/2021)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-15519[F] dated 08/04/2021)

Judgement made
in CMA(MD)No.941 of 2017