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C.M.A.No.2011 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

CORAM

THE HON'BLE **MR.JUSTICE J.NISHA BANU**

**C.M.A.No.2011 of 2013**

1.Muhulakshmi

2.K.Gnanavel

... Appellants

VS

1.Sivaani Transport

50, Om Ganesh Nagar,  
Vadavalli, Coimbatore.

2.National Insurance Company Ltd.,

No.930, Sathy Road,  
Gandhipuram, Coimbatore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.09.2012 made in M.C.O.P.No.197 of 2009, on the file of the Motor Accidents Claims Tribunal, ( Principal District Judge ) Namakkal.

For Appellant : M/s.P.Paramasivadoss

For 1<sup>st</sup> Respondent : No Appearance



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For 2<sup>nd</sup> Respondent : M/s.K.Padmanabhan

**J U D G M E N T**

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Aggrieved by the quantum of compensation fixed by the Tribunal, the claimants/appellants have come up with this Civil Miscellaneous Appeal, seeking enhancement of compensation.

2. The appellants/claimants are the mother and brother of the deceased Sakthivel, who died in a motor accident. On 30.05.2008, at about 9.15 p.m. while the deceased was riding his Splendor Motorcycle bearing Registration No.TN 28 AF 2635 from Salem to Namakal, near Thathaiyangarpettai Bus Stop, a lorry bearing Registration No.TN 38 AC 0407 parked on the left side of the main road, without any indication and signal light, so the vehicle was not visible due to deep dark and the deceased not being aware about the same, had driven his motor cycle and dashed on the rear side of the lorry. As a result of which, the deceased was thrown out of his vehicle and sustained grievous injuries all over his body and died on the way to hospital. Therefore, the claimants claimed a sum of Rs.20,00,000/- as compensation.



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3. Before the Tribunal, on the side of the Claimant, P.W.1 to P.W.3 were examined and Ex.P1 to P20 were marked. On the side of the Respondents, no witness was examined and no document was marked.

4. The 2<sup>nd</sup> respondent- Insurance Company filed counter affidavit and stated that the deceased was not having valid driving licence at the time of accident. The accident occurred due to negligent act of the rider of the motorcycle, but the driver of the lorry was not at all responsible for the alleged accident.

5. The Tribunal after considering the pleadings, oral and documentary evidence, fixed 25% negligence on the part of the Eicher van (stationed vehicle) and 75% contributory negligence on the part of the deceased who rode the two wheeler. The compensation awarded to the claimants is as under:- Monthly salary : 12,000/-

Less 50% towards personal expenses



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|                                    |                         |
|------------------------------------|-------------------------|
| Loss of annual income (6,000 x 12) | : 72,000/-              |
| Multiplier 11 (72,000 x 11)        | : 7,92,000/-            |
| Add : Future prospects at 30%      |                         |
| (Rs.7,92,000/- x 30%)              | : 2,37,600/-            |
| Rs.7,92,000/- + Rs.2,37,600/-      | : 10,29,600             |
| Loss of love and affection         | : 20,000                |
| Funeral expenses                   | : 10,000                |
| Total                              | : <b>Rs.10,59,600/-</b> |

6. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

7. The learned counsel appearing for the appellants submitted that the Tribunal has committed error by brushing aside the evidence of P.W.2 eye witness who categorically deposed that the vehicle was parked without signal indicator and parking light and as such, without following the law laid down by the Hon'ble Apex Court, fixed the contributory negligence on the part of the deceased. The learned counsel for the



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appellants further would further submit that the deceased was working as a Railway Police Constable and was aged about 30 years at the time of accident. The claimants are the mother and brother of the deceased. The Tribunal has erred in adopting multiplier of 11 by taking the age of the mother of the deceased as 53. The Tribunal ought to have taken multiplier of 17 while calculating the loss of dependency.

8. Per contra, the learned counsel for the 2<sup>nd</sup> respondent-Insurance Company submitted that the award passed is just and reasonable and requires no interference by this court.

9. Heard both sides and also perused the evidence available on record.

10. It is transpired from the Award that the Tribunal fixed 25% negligence on the part of the stationed vehicle and 75% negligence on the part of the deceased who rode the two wheeler who dashed on the



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stationed vehicle. Since no contra evidence is placed before this court to take a different view, this court is not inclined to interfere on the aspects of negligence and liability.

11. As far as compensation fixed by the Tribunal is concerned, the factors taken into consideration by the Tribunal are that, the deceased Sakthivel was working as Railway Police Constable and as per Ex.P.11-Salary Certificate, the deceased was drawing salary at Rs.11,856/-. Hence, the Tribunal fixed the monthly income as Rs.12,000/- p.m. and added 30% towards future prospects.

12. As per the Apex Court Judgment reported in 2009(2) TNMAC 1 (SC) in **Smt.Sarla Varma Vs. Delhi Transport Corporation and another**, the correct multiplier to be applied is multiplier 17 taking the age of the deceased. Further, following the decision of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680**, future prospects is to be taken as



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40% for the deceased who served in the Permanent Establishment.

Therefore the amount awarded towards loss of dependency is to be modified. The amounts awarded by the tribunal under other heads are confirmed. Therefore, the total compensation is arrived as follows:

| Head and Calculation<br>(Rs.)                                     | Re-quantified<br>amount of<br>Compensation<br>awarded by this<br>Court |
|-------------------------------------------------------------------|------------------------------------------------------------------------|
| <b><u>Loss of dependency</u></b>                                  |                                                                        |
| i) Loss of income :<br>12,000/-                                   |                                                                        |
| ii) Add 40% future prospects :<br>(6,500 x 40/100)<br>4,800/-     |                                                                        |
| — :<br>16,800/-                                                   |                                                                        |
| iii) less 50% personal expenses :<br>(16,800 x 50/100)<br>8,400/- | 17,13,600/-                                                            |
| iv) Loss of annual income (8,400 x 12) :<br>1,00,800              |                                                                        |
| v) Multiplier 17 (1,00,800 x 17) :<br>17,13,600/-                 |                                                                        |
| Loss of love and affection to the 1 <sup>st</sup> appellant       | 20,000/-                                                               |
| Funeral Expenses                                                  | 10,000/-                                                               |
| <b>Total</b>                                                      | <b>Rs.17,43,600/-</b>                                                  |



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|                                                    |                              |
|----------------------------------------------------|------------------------------|
| * Total award amount                               | : Rs.17,43,600/-             |
| Less 75% negligence on the<br>part of the deceased | : Rs.13,07,700/-             |
|                                                    | -----                        |
| Net Amount                                         | : Rs. 4,35,900/-             |
|                                                    | -----                        |
|                                                    | Rounded off to Rs.4,36,000/- |

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The compensation to the claimants/appellants is enhanced from 2,65,000/- to Rs.4,36,000/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of such deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation.

(ii) The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the appellants are permitted to withdraw



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50%:50% share on the award together with interest accrued thereon, less the amount already withdrawn if any, by filing suitable application before the Tribunal. No costs.

30.03.2022

Index : Yes / No  
kkd/nvsri

**J.NISHA BANU, J.**

nvsri

To

1.The Motor Accident Claims Tribunal  
( Principal District Judge ) Namakkal.

2.The Record Keeper, V.R.Section, High Court, Madras

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