



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.67 of 2020

1.Chandrasekar
2.Sathya

...Appellants/Petitioners

Vs.

1.C.Pusshparaj
2.The New India Assurance Co.Ltd.,
Represented through its
Divisional Manager,
Having its Office at No.75E/3,
2nd Floor, Thillai Nagar,
Salai Road,
Trichy - 620 018.

...Respondents/Respondents

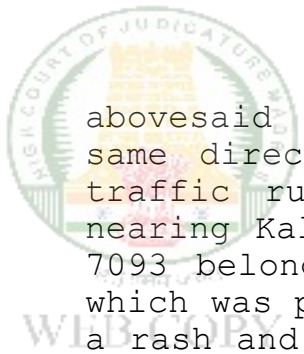
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to modify the award passed against the judgment and decree, dated 21.11.2019 in MCOP.No.63 of 2017 on the file of the Motor Accidents Claims Tribunal/Additional District Judge, Virudhunagar.

For Appellants	:Mr.P.Arun Jayatram
For R1	:No Appearance
For R2	:Mr.B.Rajesh Saravanan

JUDGMENT

The appellants filed this appeal to modify the award passed against the judgment and decree, dated 21.11.2019 in MCOP.No.63 of 2017 on the file of the Motor Accidents Claims Tribunal/Additional District Judge, Virudhunagar.

2.It is a case of fatal accident. On 30.10.2016 at about 3.00 p.m., the first petitioner was riding the two wheeler bearing Registration No.TN-58-V-7776 along with his son Sundaramahalingam and his cousin's daughter Saranya, from north to south on Madurai - Tuticorin main road in a normal speed observing the traffic rules. At the same time, one Vijayalakshmi was travelling as a pillion rider in an another two wheeler bearing Registration No.TN-67-AC-0932, which was ridden by her mother on the back side of the



abovesaid two wheeler bearing Registration No.TN-58-V-7776 on the same direction in the same road in a normal speed observing the traffic rules. While so, the abovesaid both two wheelers were nearing Kalkurichi junction, a car bearing Registration No.TN-48-L-7093 belonging to the first respondent, was driven by its driver, which was proceeding behind the abovesaid both two wheelers, came in a rash and negligent manner without observing the traffic rules and dashed against the two wheeler bearing Registration No.TN-58-V-7776. Due to heavy dashing, the said Chandrasekar and his son Sundaramaalingam were fell down from the two wheeler and the deceased Sundaramahalingam succumbed to injuries.

3.The claimants have filed MCOP.No.63 of 2017 before the Motor Accidents Claims Tribunal, Additional District Judge, Virudhunagar, claiming compensation of Rs.10,00,000/- for the death of the deceased.

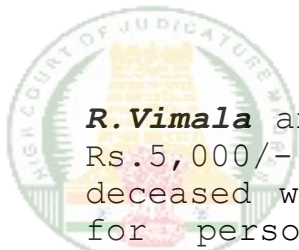
4.Before the Tribunal, on the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and twenty three documents were marked as Exs.P.1 to P.23. On the side of the second respondent, one witness was examined as R.W.1 and one document was marked as Ex.R1.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondents and also on appreciating the evidences on record, held that the accident occurred only due to the rash and negligent driving of the driver of the first respondent and directed the second respondent to pay a sum of Rs.3,15,000/- as compensation. Aggrieved over the order passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Heard Mr.P.Arun Jayatram, learned counsel appearing for the appellants and Mr.B.Rajesh Saravanan, learned counsel appearing for the second respondent. No representation on behalf of the first respondent.

7.The learned counsel appearing for the appellants contended that since the accident of the year 2016, the Tribunal ought to have fixed the notional income of Rs.6,000/- per month as per the judgment reported in 2015(2) TNMAC 490 (DB) in the case of National Insurance Company Vs. R.Vimala and others. He further contended that the Tribunal did not award any amount towards loss of consortium. Hence, he seeks modification.

8.A perusal of records would show that at the time of accident, the deceased child was aged about 9 years old and as per the decision of the Hon'ble Division Bench of this Court reported in **MANU/TN/2960/2015** in the case of **National Insurance Company Vs.**



R.Vimala and others, for 10 years old boy, notional income fixed at Rs.5,000/-. So in this case also the notional income of the deceased was fixed at Rs.5,000/- and 50% of income to be deducted for personal expenses. Hence, loss of income arrived at Rs.4,50,000/- (Rs.2,500 x 12 x 15). For loss of consortium, transportation and loss of estate, the Tribunal did not award any amount. Hence, this Court awarded Rs.40,000/- each towards loss of consortium and Rs.10,000/- towards Transportation and Rs.10,000/- towards loss of estate. All the other heads awarded by the Tribunal are hereby confirmed.

9. Accordingly, the claimants are entitled for compensation as follows:

Sl. No.	Compensation heads	Details of amount
1.	Loss of income	Rs. 4,50,000/-
2.	Transportation	Rs. 10,000/-
3.	Loss of Consortium (each Rs.40,000/- x 2)	Rs. 80,000/-
4.	Funeral Expenses	Rs. 15,000/-
5.	Loss of estate	Rs. 10,000/-
	Total	Rs. 5,65,000/-

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.3,15,000/- to Rs.5,65,000/- with interest at the rate of 7.5% per annum.

(iii) The second respondent/New India Assurance Co.Ltd., is directed to deposit the enhanced compensation amount i.e., Rs.5,65,000/- (Rupees Five lakhs sixty five thousand only) less the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.63 of 2017 on the file of the Motor Accident Claims Tribunal /Additional District Judge, Virudhunagar District, within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimants are permitted to withdraw the same after following due process of law. The



apportionment granted by the Tribunal shall be kept intact. No Costs.

Sd/-

Assistant Registrar (CS-II)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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 Additional District Judge,
The Motor Accidents Claims Tribunal,
Virudhunagar.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.D.SAKKARAVARTHI, Advocate (SR-4105[F] dated 03/02/2022)

Judgment made in

C.M.A. (MD)No.67 of 2020

03.02.2022

ss (CO)

GC(08.03.2022) 4P 5C