BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

C.M.A.(MD)No.373 of 2019
and
C.M.P.(MD)Nos.4552 of 2019 & 9296 of 2022

The Branch Manager,
Reliance General Insurance Company,
PLA Kanagu Towers,
2nd Floor, Thillai Nagar,
Trichy. ... Appellant/2nd Respondent

Vs.

1.Nedumaran
2.Shanthi
3.Arthi
4.Gayathri
5.R.Senthilkumar ...Respondents

[Minor 4th respondent is declared as Major and guardianship of her father/1st respondent is discharged vide court order dated 16.08.2022]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment of Motor Accident Claims Tribunal-Special District Judge of Tanjore, dated 25.01.2016 in M.C.O.P.No.155/2014 and allow the appeal.

For Petitioner : Ms.K.R.Shivashankari

For R2 & R3 : Mr.N.Tamilmani

JUDGMENT

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

The Insurance Company has filed this appeal against the award passed by the Motor Accident Claims Tribunal(MACT), Special District Judge, Thanjavur, in M.C.O.P.No.155 of 2014, dated 25.01.2016.

2.The respondents 1 to 4 filed a claim petition before the Court below on the ground that Hariprasath, who is the son of the first and second respondents and the brother of the third and fourth respondents, was travelling as a Pillion Rider in a two wheeler driven by one Kiran and a Tipper Lorry was driven in a rash and negligent manner by the fifth respondent and the lorry hit the backside of the two wheeler, as a result of the same, the above said Hariprasath was thrown out of the vehicle and the tyre of the tipper lorry ran over the head of the Hariprasath and he died on the spot.

3. The further case of the claimants is that the deceased was working as a Production Officer in a Private Pharmaceuticals Company and was earning monthly salary of Rs.13,900/-. Accordingly, the claimants sought for a compensation of a sum of Rs.30 Lakhs.

4.The Tribunal, on appreciation of evidence, came to a conclusion that the tipper lorry was driven in a rash and negligent manner and the accident took place, only due to the gross negligence on the part of the fifth respondent/driver of the tipper lorry. The Tribunal also took into consideration the monthly earnings of the deceased and fixed the compensation under various heads, totally amounting to a sum of Rs.21,92,620/- and directed the Insurance Company to pay this amount with interest at the rate of 9% p.a., from the date of petition to the date of actual payment.

5.The Insurance Company has filed this appeal questioning the quantum that was fixed by the Tribunal.

6.Heard M/s.K.R.Shivashankari, learned counsel appearing for the appellant and M/s.N.Tamilmani, learned counsel appearing on behalf of the second and third respondents.

7.The Tribunal had fixed the compensation under the following heads:

S.No.	Under the Head	Calculation
1.	Monthly Income	Rs. 13,900/-
2.	Future prospectus with 50% addition to income, since the deceased is 24 years old	Rs. 20,850/- (13,900+6,950)
3.	Personal expenses(after deducting 50%)	Rs. 10,425/- (20,850-10,425)
4.	Annual Income	Rs. 1,25,100/- (10,425x12)
5.	Loss of income by adopting Multiplier '18'	Rs.22,51,800/- (1,25,000x18)
6.	For income tax at 10%	Rs. 2,25,180/-
7.	Loss of income	Rs.20,26,620/-
6.	Funeral expenses	Rs. 25,000/-
7.	Loss of estate	Rs. 10,000/-
8.	Transport expenses	Rs. 10,000/-
9.	Loss of Love and Affection to the petitioners 1 and 2	Rs. 1,00,000/-
10.	Loss of Love and Affection to the petitioners 3 and 4	Rs. 20,000/-
	Total	Rs.21,91,620/-

8.The learned counsel for the appellant mainly questioned the fixation of compensation on the ground that the Tribunal had enhanced the monthly salary by 50% towards future prospects and whereas, the enhancement ought to have been done only to an extent of 40%. To substantiate the same, the learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of ***Sarala Varma (smt) and others vs. Delhi Transport Corporation and another [2009(6) SCC 121]*** and a specific reliance was placed upon paragraph No.24 of the judgment, which is extracted hereunder:

> *"24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words `actual salary' should be read as `actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary*

(without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

9.The next ground that was urged by the learned counsel for the appellant was that the Tribunal had fixed the interest at 9%, whereas the interest ought to have been fixed only at the rate of 7.5%. To substantiate the same, the learned counsel relied upon the judgment of the Hon'ble Apex Court in ***Puttamma-vs-K.L.Narayana Reddy***, reported in ***2014(1) MLJ 739***.

10.In the present case, the deceased was working in a private concern and hence, the same cannot be considered to be a permanent job. The Apex Court made it clear that 50% of the actual salary can be added towards future prospects only when the deceased had a permanent job and was below 40 years. In the present case, the deceased was aged about 23 years at the time of his demise and whereas he was working in a private concern. This Court has to necessarily take judicial notice of the fact that no job in a private concern is a permanent job and most of the private concerns are adopting the policy of hire and fire. In view of the same, we deem it fit to fix the future prospects by adding 40% of the actual salary.

11.Insofar as the interest portion is concerned, we have to necessarily take into consideration the current interest that is fixed by the Bank and in all the cases, consistently the interest is fixed at 7.5%.

12.In view of the above, this Court modifies the compensation awarded by the Tribunal in the following manner:

S.No.	Under the Head	Calculation
1.	Monthly Income	Rs. 13,900/-
2.	Future prospectus with 40% addition to income since the deceased is 24 years old	Rs. 19,460/- (13,900+5,560)
3.	Personal expenses (after deducting 50%)	Rs. 9,730/- (19,460-9,730)
4.	Annual Income	Rs. 1,16,760/- (9,730*12)
5.	Loss of income by adopting Multiplier '18'	Rs.21,01,680/- (1,16,760*18)
6.	Income tax at 10%	Rs. 2,10,168/-
7.	Loss of income	Rs.18,91,512/-
6.	Funeral expenses	Rs. 25,000/-
7.	Loss of estate	Rs. 10,000/-
8.	Transport expenses	Rs. 10,000/-
9.	Loss of Love and Affection to the claimants 1 and 2	Rs. 1,00,000/-
10.	Loss of Love and Affection to the claimants 3 and 4	Rs. 20,000/-
	Total	Rs.20,56,512/-

13.The appellant Insurance Company is liable to pay the total compensation of Rs.20,56,512/- with 7.5% interest from the date of petition till the date of actual payment to the claimants/respondents 1 to 4. When the appeal was entertained, this Court passed the interim order on 30.04.2019 directing the appellant Insurance Company to deposit the entire compensation amount with accrued interest and the amount has also been deposited. In view of the same, the claimants/respondents 1 to 4 are permitted to withdraw the modified compensation amount with 7.5% interest, in the manner provided by the Tribunal. The balance amount along with the accrued interest is directed to be withdrawn by the appellant Insurance Company.

14.In the result, this appeal is partly allowed to the extent indicated herein above. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B.,J.) (N.A.V.,J.)
20.10.2022

Index : Yes/No
Internet : Yes
Ns/ta

To:

1.The Motor Accident Claims Tribunal
Special District Judge,
Tanjore,

2.The Section Officer,
VR Section,
Madurai Bench of Madras
High Court,
Madurai.

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

Ns/ta

C.M.A.(MD)No.373 of 2019

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