



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CMA(MD)No.702 of 2020 &

CMP(MD)No.7102 of 2020

WEB COPY

Chola Ms General Insurance Company Limited,
Tab Complex, Cantonment,
Trichy-5

... Appellant/2nd Respondent

Vs

1.Santhi

2.Divya

...1&2 Respondents/Petitioners 1&2

3.Biju Thomas

... 3rd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 02.01.2020 in MCOP.No.1097 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Trichirapalli.

For Appellant :M/s.K.R.Shivashankari

For Respondents :Mr.N.Sudhagar Nagaraj for R1 & R2

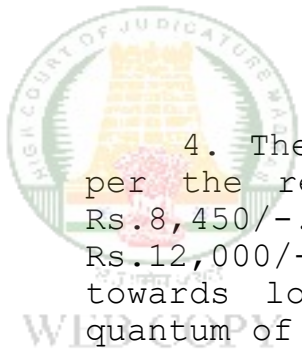
No appearance for R3

J U D G M E N T

The appellant filed this appeal against the Judgment and Decree dated 02.01.2020 in MCOP.No.1097 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Trichirapalli.

2. On 04.10.2015, the deceased Elangovan was riding a bicycle along Trichy - Thanjavur main road near Rahmath Hotel, Thuvakudi. At about 01.45 am, an Innova Car bearing bearing Registration No.KL 06 G 3168 came in a rash and negligent manner and dashed against the bicycle, as a result of which, the deceased Elangovan sustained multiple fatal injuries and died on the spot.

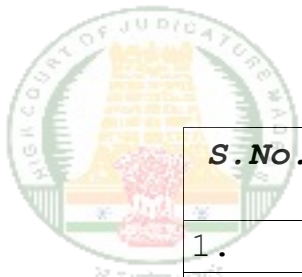
3. The respondents 1 and 2, who are the wife and daughter of the deceased Elangovan filed MCOP.No.1097/2016, claiming compensation for the demise of Elangovan. The Tribunal after analysing the oral and documentary evidences on record, awarded a sum of Rs.13,37,600/- together with interest at the rate of 7.5% per annum, as compensation and fixed the liability on the appellant herein. Questioning the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.



4. The learned counsel for the appellant would submit that as per the records, the salary of the deceased was only a sum of Rs.8,450/-. However, the Tribunal fixed an exorbitant sum of Rs.12,000/- as monthly income and awarded a sum of Rs.11,61,600/- towards loss of dependency. Hence, he prayed for reducing the quantum of compensation awarded by the Tribunal.

5. The learned counsel for the respondents 1 and 2 would submit that the Tribunal after analyzing the oral and documentary evidences on record, arrived at a just compensation and the same need not be reduced.

6. As per the Pay Slips Ex.X4 Series, the monthly salary of the deceased Elangovan was Rs.8,450/- for the period from April 2015 to September 2015. According to the evidence of PW3, the salary of the deceased was a sum of Rs.10,838/- per month. As per the Salary Certificate Ex.X3, the salary of the deceased was Rs.12,000/- per month. The Tribunal fixed the salary of the deceased at Rs.12,000/- per month based on the Salary Certificate Ex.X3. As mentioned above, the Pay Slips Ex.X4 Series shows that the salary of the deceased was Rs.8,450/- per month for the period from April 2015 to September 2015. Since, the accident had occurred in the month of October 2015, this Court is of the considered opinion that relying on Ex.X4 Series would be more justifiable, since, the Series includes the Pay Slip for the month of September 2015, which is the month before the accident. Hence, the monthly salary of the deceased is fixed as Rs.8,500/-. The age of the deceased was 52 years on the date of the accident. As per the decision of the Hon'ble Supreme Court in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 10% should be added towards the future prospects of the deceased. Therefore, Rs.8,500/- + Rs.850/- (10% of Rs.8,500/-) = Rs.9,350/-. The wife and daughter of the deceased were depending on the income of the deceased and hence, 1/3rd of the income deducted by the Tribunal towards the personal expenses of the deceased is confirmed. Hence, it would amount to Rs.9,350/- x 1/3 deduction = Rs.6,234/-. Further, the multiplier 11 adopted by the Tribunal is also hereby confirmed. Thus, the loss of dependency would come to Rs.6,234/- x 12 x 11 = Rs.8,22,888/-. The Tribunal awarded loss of consortium at Rs.40,000/- to each claimants and also awarded loss of love and affection at Rs.60,000/-. Both the aforesaid heads are same and hence a sum of Rs.60,000/- awarded towards loss of love and affection is hereby set aside. Rs.40,000/- awarded to the claimants towards loss of consortium and loss of parental consortium respectively is hereby confirmed. All the other heads awarded by the Tribunal are hereby confirmed. The award passed by this Court under various heads is extracted hereunder:



S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.8,22,888/-
2.	Consortium to the first respondent	Rs.40,000/-
3.	Parental consortium to the second respondent	Rs.40,000/-
4.	Transport Expenses	Rs.6,000/-
5.	Funeral Expenses	Rs.15,000/-
6.	Loss of Estate	Rs.15,000/-
Total		Rs.9,38,888/-

7. The learned counsel for the appellant would submit that the appellant/Insurance Company has already deposited the entire compensation amount to the credit of MCOP.No.1097/2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Trichirapalli.

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.13,37,600/- to Rs.9,38,888/-, with interest at the rate of 7.5% per annum.

(iii) Since the amount has already been deposited by the appellant/Insurance Company, the respondents 1 and 2 / claimants are at liberty to withdraw the same along with proportionate interest and costs after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

(iv) The appellant/Insurance Company is at liberty to withdraw the amount that is in excess of the amount awarded by this Court together with proportionate interests and costs after following due process of law.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Motor Accident Claims Tribunal,
Special District Court, Trichirapalli.

Copy to

The Section Officer, V.R.Section
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.K.R.SHIVASHANKARI, Advocate (SR-1749[F] dated
19/01/2022)

CMA (MD) No.702 of 2020
19.01.2022

KMV(CO)
KB(16.02.2022) 4P 5C