



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15.03.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

C.M.A(MD)No.1026 of 2021

and

C.M.P(MD)No.9499 of 2021

and

C.M.P(MD)No.1823 of 2022

Legal Officer (TP Claims),
Reliance General Insurance
Company Ltd.,
3rd Floor, Urumbil Signature Towers,
Kajikozhy, Kottayam,
Kerela State-686 004. ... Appellant/2nd Respondent

-vs-

1.R.Amala
2.Minor.Thangapandi
3.Minor.Sri Hari Pandi
4.Minor.Rakshan Pandi

(Minor Respondents 2 to 4 represented
Through their mother & Guardian 1st
Respondent herein)

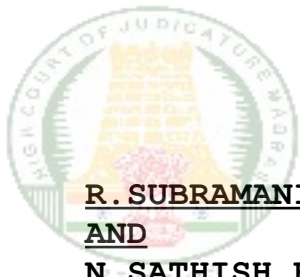
5.Kalavathy

6.Kaliraj ... Respondents 1 - 6/Petitioners

7.Sibi Joseph ... 2nd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No.255 of 2019, on the file of the Motor Accident Claims Tribunal, [(District & Sessions Judge), Mahila Fast Track Court], Theni, dated 30.03.2021.

For Appellant : Mrs.K.R.Shivashankari
For R1 to R6 : Mr.K.Sureshkumar
For R7 : No appearance



JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

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With the consent of parties, the Civil Miscellaneous Appeal itself is taken up for final disposal.

2. Challenge in this appeal is to the quantum of compensation awarded at Rs.24,97,136/- for the death of one Rajkumar, who died in the road accident that occurred on 16.09.2019.

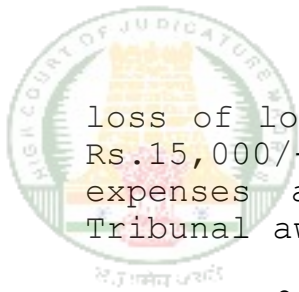
3. According to the claimants, the said Rajkumar was doing Centering Contractor work and earning Rs.25,000/- per month. Contending that the rash and negligent driving of the driver of the lorry bearing Registration No.KL-37-B-6632 was the cause of the accident and consequent death of the Rajkumar, claimants sought for compensation of Rs.48,09,000/- and the claim was restricted to Rs.35,00,000/-.

4. The appellant Insurance Company, which was the insurer of the lorry resisted the claim contending that the accident did not occur in the manner suggested by the claimants and the compensation claimed is excessive. It was contended by the Insurance Company that the said Rajkumar by his negligence contributed the accident.

5. At trial, the first petitioner/wife of Rajkumar was examined as P.W.1 and one Kaniselvam was examined as P.W.2. Ex.P1 to Ex.P18 were marked on the side of the claimants. Office Assistant of the Regional Transport Office one Sakthivel was examined as R.W.1 and Ex.R1 to Ex.R3 were marked.

6. The Tribunal concluded that the accident occurred due to rash and negligent driving of the driver of the lorry. In coming to the said conclusion, the Tribunal relied upon the FIR and sketch Exs.P1 and P5. The Tribunal also found that the second respondent/appellant herein as the insurer of the lorry is liable to pay compensation.

7. On the quantum, the Tribunal adopted the Inflation Index and fixed the income of the deceased at Rs.14,109/-. By adding 25% towards future prospects as per the judgment of the **National Insurance Co., Ltd., v. Pranay Sethi** reported in (2017) 16 SCC 680, the monthly income was assessed at Rs.17,636/-. The Tribunal deducted 1/4th for the personal expenses of the deceased and applying the multiplier of '15' since the age of the deceased was 45 years, the Tribunal arrived the total loss of dependency at Rs.24,97,136/-. The Tribunal awarded a sum of Rs.2,00,000/- towards



loss of love and affection, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.5,000/- towards transportation. Altogether, the Tribunal awarded the total compensation of Rs.24,97,136/-.

8. We have heard Mrs.K.R.Shivashankari, learned counsel for the appellant and Mr.K.Sureshkumar, learned counsel appearing for the respondents 1 to 6.

9. Mrs.K.R.Shivashankari, learned counsel for the appellant/Insurance Company would vehemently contend that the fixation of the monthly income at Rs.14,109/-, by the Tribunal, is on the higher side. She would submit that the Tribunal ought not to have followed the Inflation Index.

10. Contending contra, Mr.K.Sureshkumar, learned counsel for the respondents 1 to 6 would submit that fixation of Rs.14,109/- itself is low, considering the fact that even NMR employee employed in the Government Departments have been paid Rs.600/- per day in the year 2015.

11. We have considered the submissions of the counsel on either side.

12. We are unable to agree with the contention of the learned counsel for the appellant. Inasmuch as the accident occurred only in the year 2019 and fixation of Rs.14,109/- as monthly income for that period even for casual labourer is fair and reasonable.

13. We find that the Tribunal had adopted the future prospects, deductions and multiplier as per the judgments of the **National Insurance Co., Ltd., v. Pranay Sethi** reported in (2017) 16 SCC 680 and in **Smt.Sarla Verma Vs. Delhi Transport Corporation and another** reported in 2009(2) TNMAC (SC). We do not see any reason to interfere with the said calculation adopted by the Tribunal.

14. As regard the other non-conventional damages, namely, loss of love and affection, loss of consortium, funeral expenses and loss of estate, the Tribunal has awarded very reasonable sum. Therefore, we do not see any reason to interfere with the award of the Tribunal. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. The apportionment made by the Tribunal is confirmed. It is seen from the order of this Court, dated 24.11.2021 in C.M.P (MD)No.9499 of 2021 that the Insurance Company has deposited the entire award amount with accrued interest and costs. The major claimants are permitted to withdraw their share of the award amount. The share of the minor claimants is directed to be kept in deposit



in an interest earning fixed deposit with an auto renewal scheme till they attain majority.

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Sd/-

Assistant Registrar (CS-II)

/ /2022

Sub Assistant Registrar(CS)

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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:

The District & Sessions Judge
(Mahila Fast Track Court)/
The Motor Accident Claims Tribunal, Theni.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.R.SHIVA SHANKARI, Advocate (SR-12416[F]
dated 16/03/2022)

+1 CC to M/s.K.SURESH KUMAR, Advocate (SR-12469[F] dated 16/03/2022)

ORDER MADE IN

C.M.A(MD)No.1026 of 2021

15.03.2022

SVS(CO)
GC(29.03.2022) 4P 6C