



C.M.A.(MD)No.1106 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:13.12.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)No.1106 of 2015

and

M.P(MD)No.3 of 2015

The National Insurance Company Limited,
Through its Branch Manager,
No.58, Rajaji Street,
Kangeyam,
Periyar District.

.. Appellant/2nd Respondent

Vs.

1.Sudalaikan (died)

2.Thangam

.. 1st & 2nd Respondents/Petitioners

3.Ponnaiah

.. 3rd Respondent/1st Respondent

[R1 died and 2nd respondent, who is
already on record is recorded as LR of
the deceased R1 vide order dated
31.03.2022]

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 02.04.2014 made in M.C.O.P.No.264 of 2013, on the file of the Motor Accidents Claims Tribunal/I-Additional District Court, Tirunelveli.

For Appellant : Mr.J.S.Murali
For Respondent No.2 : Mr.S.Siva Ilayaraja
For Respondent No.3 : No appearance
Respondent No.1 : died

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

This appeal has been filed by the Insurance Company being aggrieved by the award dated 02.04.2014 in M.C.O.P.No.264 of 2013 passed by the Motor Accident Claims Tribunal, Tirunelveli, in favour of the respondents 1 & 2, who are the parents of the deceased. The third respondent is the owner of the offending vehicle.



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2. The brief facts of the case is that the son of the respondents 1 & 2 was hit down by a medium goods vehicle owned by the third respondent on 06.11.2012 while the son of the respondents 1 & 2 was on patrol duty near Nanguneri TVS Mill Toll Gate. The Tribunal, taking note of the fact that the deceased was a bachelor, aged 29 years and was gainfully employed as a police constable, after deducting 50% of the salary towards personal expenses, fixed annual income as Rs.1,45,141/- and taking 18 as the multiplier, has awarded Rs.26,12,538/- [Rs. 1,45,141/-x18 = 26,12,538/-] towards loss of income and for other non conventional heads, awarded Rs.65,000/-. As against the total award of Rs.26,77,540/-, with 7.5% interest, the present appeal is filed by the Insurance Company on the short point of liability that the offending vehicle is 11900 CC and therefore, the driver of the offending vehicle ought to have possessed Heavy Motor Vehicle licence whereas admittedly, the driver of the offending vehicle had only Light Motor Vehicle licence and therefore, the owner of the vehicle is liable to pay the compensation whatever fixed by the Court and not the Insurance



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Company in view of the violation of policy condition.

3. Further the learned counsel for the appellant/Insurance Company would submit that even regarding the quantum, the Tribunal, taking note of the age of the victim, ought to have fixed the multiplier 17 instead of 18 as per the guidelines laid by Sarala Verma's case and followed by Pranay Sethi's case.

4. The owner of the vehicle, who is arrayed as third respondent is not represented through counsel though notice served to him. This Court, on perusing the records finds that the notice served on the third respondent returned since his residence is not known and the learned counsel appeared on behalf of the third respondent before the Tribunal is also not traceable. The respondents 1 & 2 have lost their son. They are yet to see the compensation amount. Meanwhile, the father of the deceased, first respondent herein also died pending appeal and the second respondent is recorded as legal heir of the deceased first respondent. In



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such circumstances, this Court is of the view that there is no purpose in keeping the matter pending any further for want of service to the owner of the offending vehicle/third respondent.

5. As far as the grounds of appeal is concerned, this Court finds that there is some error in fixing the multiplier in this case. Instead of multiplier 17, the Tribunal has fixed multiplier 18 based on the schedule-II of the Rules whereas the factors to be applied in cases of fatal accident been reconciled by catena of judgments of the Hon'ble Supreme Court and as per the settled principle of law, the claimant is entitled for multiplier 17 if the deceased is between the age of 26 to 30 at the time of accident.

6. At the time of death, the deceased was serving as constable in the Tamil Nadu Police and his gross income is mentioned as Rs.17,334/- as per the pay slip for the month of October, 2012, which is marked as Ex.D6. In the said salary Rs.100 towards medical claim, Rs.250/- towards



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uniform and Rs.300/- towards risk allowance, which is payable only when he is in service has to be deducted and accordingly, his monthly salary is fixed at Rs.16,684/- after the deduction being a salaried person below the age of 40, 50% of his pay to be added towards future prospects. Thus, when 50% of the pay is added to his last drawn salary, the amount towards loss of income to be derived as $\text{Rs.}25,026/- \times 12 = \text{Rs.}3,00,312/-$. Thus, his annual salary arrives at Rs.3,00,312/-. Income tax at the rate of 10% for the taxable income of Rs.3,00,312/- is Rs.10,031/- and after deducting the tax, probably the annual income of the deceased shall be Rs.2,90,281/-. Being a bachelor, after deducting 50% of the salary towards his personal expenses, balance arrives to Rs.1,45,141/-. If multiplier 17 is applied, it comes to $\text{Rs.}1,45,141 \times 17 = 24,67,397/-$.

7. Apart from the above amount, the claimants are entitled to a sum of Rs.15,000/- towards 'funeral expenses' and a sum of Rs.5,000/- towards 'Transport Expenses' and a sum of Rs.40,000/- towards 'loss of consortium'.



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8. Accordingly, the award of the Tribunal in M.C.O.P.No.264 of 2013 is modified as follows:-

Sl. No.	Particulars	Amount granted
1	Loss of dependency	Rs.24,67,397/-
2.	Funeral Expenses	Rs.15,000/-
3.	Transport Expenses	Rs.5,000 /-
4.	Loss of Consortium	Rs.40,000/-
	Total	Rs.25,27,397/-

The compensation awarded by the Tribunal is modified from Rs.26,77,538/- to Rs.25,27,397 /- which shall carry interest at the rate of 7.5% per annum. Since there is a breach of policy condition, the award amount is directed to be paid by the Insurance Company with liberty to recover it from the insured, the third respondent herein.

9. In the result,

(i) this Civil Miscellaneous Appeal stands allowed in part by reducing the compensation from Rs.26,77,538/- to Rs.25,27,397/- with interest at the rate of 7.5% per annum, from the date of petition till the



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date of realisation. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) the appellant/insurance company is directed to deposit the modified award amount to the credit of M.C.O.P.No.264 of 2013 on the file of the learned I-Additional District Court, Tirunelveli, within a period of eight weeks from today, less the amount, if any already deposited.

(iii) On such deposit being made, the claimant is permitted to withdraw the modified award amount with proportionate accrued interest and costs, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal.

(iv) The Tribunal is directed to refund the excess award amount, if any, with accrued interest to the appellant/insurance company.

[G.J., J.] & [S.M., J.]
13.12.2022

Index : Yes/No
Internet : Yes
PJJ



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To
The I-Additional District Judge/
Motor Accidents Claims Tribunal,
Tirunelveli.

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**Judgment made in
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