



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.756 of 2017

and

C.M.P(MD)No.8149 of 2017

Bajaj Allianz General Insurance Company Limited,
Door No.24, Spencer Compound,
Thiruvalluvar Salai,
Dindigul Town.

... Appellant/Second respondent

.vs.

1.Meenakshi
2.Renukadevi
3.Thamarai
4.Jothilakshmi
5.Muthu
6.Iyyappan

... Respondents 1 to 5/ Petitioners

...6th Respondent/ 1st Respondent

(R6 Ex-parte in Tribunal-Notice dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree passed in M.C.O.P.No.347 of 2015 dated 24.02.2017 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dindigul.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.N.Tamilmani for RR1 to 4
No-appearance for R5
R6-Ex-parte

JUDGMENT

The Insurance Company is the appellant herein. The respondent Nos.1 to 5 are the legal heirs of the deceased Sundarraj, who died in the road accident on 17.04.2015.

2. Before the Tribunal, P.W.1 and P.W.2 were examined and Exs.P1 to P4 were marked.

3. During the cross-examination of P.W.1, Ex.R1 - copy of Aadhar Card of the deceased Sundarraj, was marked. The Tribunal, on

<https://hcservices.ecourts.gov.in/hcservices/>



consideration of both oral and documentary evidence, fixed the rash and negligence on the part of the driver of the insured vehicle with the appellant/Insurance Company. Notional income of Rs.6,000/- is fixed and the multiplier of "13" is adopted taking into consideration the age mentioned in Ex.P2/Post-mortem certificate and Ex.P3/Death Certificate. Consortium for the first respondent is fixed at Rs.50,000/- and love and affection for the respondent Nos.2 to 5 is fixed as Rs.50,000/- each; Transportation is fixed as Rs.25,000/- and Funeral Expenses is fixed as Rs.25,000/-. Challenging the above quantum of compensation, the Insurance Company has filed the appeal.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

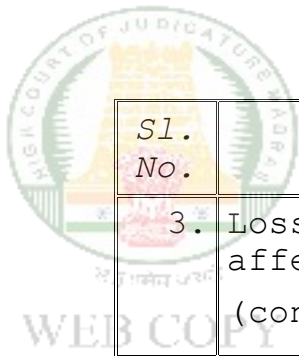
5. On perusal of Ex.R1/Aadhaar Card, which is marked during the cross-examination of P.W.1, it reveals that in Ex.R1/Aadhaar Card, the date of birth of the deceased is mentioned as 15.10.1950. Hence, at the time of accident on 17.04.2015, the deceased could have been aged about 64 years. Hence, as per the judgment of the Hon'ble Supreme Court of India in the case of **Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121**, the multiplier of "7" is to be adopted.

6. The learned counsel appearing for the respondent Nos.1 to 4 would contend that as per Exs.P2 and P3, the deceased is aged about 50 years.

7. When there is no positive evidence indicating the age of the deceased, Ex.P2/Post mortem certificate and Ex.P3/Death Certificate can be relied upon for determination of age. In the instant case, Post-Mortem Certificate was marked as Ex.P1 which was admitted by P.W.1 during cross-examination. It is needless to say that the particulars in the Aadhar Card were given under self-declaration by the concerned person itself. The age of the deceased mentioned in the Death certificate is given by a third party. In view of positive evidence of Ex.R1/Aadhar card of the deceased, I am inclined to follow the date of birth mentioned in the Aadhar Card as against the Post-mortem certificate and the death certificate. Accordingly, the multiplier of "7" is adopted and the loss of dependency is re-assessed as Rs.6,000/-x12x3/4x7= Rs.3,78,000/

8. Accordingly, the award of the Tribunal in M.C.O.P.No.347 of 2015 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of dependency	Rs.7,02,000/-	Rs.3,78,000/-
2.	Loss of consortium	Rs.50,000/-	Rs.40,000/-



<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount granted by the Tribunal</i>	<i>Amount granted by this Court</i>
3.	Loss of love and affection (consortium)	Rs.2,00,000/- (Rs.50,000X4)	Rs.1,60,000/- (Rs.40,000X4)
4.	Transportation	Rs.25,000/-	Rs.15,000/-
5.	Loss of estate	Nil	Rs.15,000/-
6.	Loss of Funeral Expenses	Rs.25,000/-	Rs.15,000/-
	Total	Rs.10,02,000/-	Rs.6,23,000/-

9. The compensation awarded by the Tribunal is reduced from Rs.10,02,000/- to Rs.6,23,000/- which shall carry interest at the rate of 7.5% per interest.

10. 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.10,02,000/- to Rs.6,23,000/-.

(iii) The appellant - Insurance Company is directed to deposit the compensation awarded by this court, i.e., Rs.6,23,000/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No.347 of 2015, dated 24.02.2017, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Dindigul within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the respondent Nos.1 to 5/claimants are permitted to withdraw the same, in the manner known to law.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal,
Principal District Court, Dindigul.



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

+1 CC to M/s.N.TAMILMANI, Advocate (SR-22313[F] dated 28/04/2022)

+1 CC to M/s.J.S.MURALI, Advocate (SR-22728[F] dated 29/04/2022)

C.M.A(MD)No.756 of 2017

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RD(03.06.2022) 4P 6C