



WEB COPY



C.M.A.No.1955 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1955 of 2018

Palaniammal

...Appellant

Vs.

1. Chinnannan
2. Vijayaraghavan

3. National Insurance Co. Ltd.,
74-a, Paramathi Road,
Namakkal Post & Taluk,
Namakkal District.

4. Irusayee

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 26.04.2016 in M.C.O.P.No.882 of 2010 passed by the learned Motor Accident Claims Tribunal, Subordinate Judge, Sangagiri.

For Appellant : Mr.A.R.Suresh

For Respondents : Mrs.R.Sreevidhya for R3
No appearance for RR1 and 2
R4-died



C.M.A.No.1955 of 2018

WEB COPY

JUDGMENT

This appeal is filed by the claimant challenging the fair and decretal order dated 26.04.2016 passed in M.C.O.P.No.882 of 2010 by the learned Motor Accident Claims Tribunal, Subordinate Judge, Sangagiri.

2 The appellant is claimant and wife of the deceased, first respondent is Driver and second respondent is owner of the offending vehicle, third respondent is Insurance Company and fourth respondent is dependent viz. father of the deceased.

3 According to the claimant on 26.05.2010, when her husband the deceased Mariappan driving his two viz. TVS XL wheeler bearing Reg.No.TN 27 R 3759 from Konganapuram to Omalaur Main Road and when the vehicle was reaching Wine shop situated at Konganapuram Murambu Forest, a Tanker Lorry bearing Reg.No.TN 28 M 9826 driven by its Driver in a rash and negligent manner dashed against the deceased, in which the deceased sustained grievous injuries and succumbed to the injuries. Hence the appellant/claimant, who is wife of the deceased filed a claim petition in M.C.O.P.No.882 of 2010 before the Tribunal claiming compensation of Rs.25,00,000/- for the death of



C.M.A.No.1955 of 2018

her husband viz.Mariappan in the accident that occurred on 26.05.2010.

WEB COPY

4 The claim petition was contested by the third respondent/Insurance Company and they filed detailed counter denying all the allegations apart from disputing the liability. The respondents 1 and 2 are Driver and owner of the offending vehicle and they remained ex-parte before the Tribunal. Fourth respondent is father of the deceased, who filed his objections claiming Rs.3,00,000/- as compensation for the death of his son.

5 Before the Tribunal, on the side of the appellant/claimant P.W.1 and P.W.2 were examined and Exs.P1 to P19 were marked. On the side of the Insurance Company, no oral and documentary evidence was produced.

6 The Tribunal, on an assessment of entire evidence on record, fixed liability on the Insurance Company and awarded a sum of Rs.10,98,600/- in which Rs.8,98,600/- to the appellant/claimant and Rs.2,00,000/- to the fourth respondent the father of the deceased was ordered as compensation along with 7.5% interest and directed the appellant/Insurance Company to pay the award amount. Challenging the quantum of compensation, the claimant has filed the



C.M.A.No.1955 of 2018

present appeal.

WEB COPY

7 Learned counsel appearing for the appellant/claimant mainly contended that in spite of production of salary certificate of the deceased/Ex.P15 and even though employer of the deceased was also examined, the Tribunal without any assigning any valid reason, fixed notional income of the deceased at Rs.6,000/-. Further P.W.2 the employer of the deceased in his has clearly stated that the deceased was an employer under him and was getting Rs.2,000-2,500/- per week and Ex.P15 has also not been disputed. Under such circumstances, the Tribunal ought not to have fixed the monthly salary at Rs.6000/-, which is very meagre.

8 Learned counsel appearing for the third respondent/Insurance Company submitted that as per the decision of the Hon'ble Supreme Court in the case of *National Insurance Company Limited vs. Pranay Sethi and Others reported in (2017) 16 SCC 680*, Loss of consortium would be Rs.40,000/-, and the future prospects for the self employee or fixed salaried person in age group of 40 to 50 years would be 25%. In the present case on hand, the deceased was working under P.W.2 and age of the deceased fixed by



C.M.A.No.1955 of 2018

the Tribunal is 44, but the Tribunal awarded Rs.1.00 lakh towards loss of consortium and added 30% towards future prospects, which are not correct and the same should be reduced as per the decision of the Hon'ble Supreme Court.

9 Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent/Insurance Company and perused the materials available on record.

10 It is seen that as contended by the learned counsel appearing for the appellant/claimant, the Tribunal has not assigned any reason for fixing the monthly salary of the deceased at Rs.6,000/-. Hence this Court is inclined to fix the monthly salary at Rs.8,000/- p.m. Further it is contended by the learned counsel appearing for the third respondent/Insurance Company that the future prospect, as per the decision of the Hon'ble Supreme Court in the case stated supra, would be only 25% not 30% and Loss of consortium also would be Rs.40,000/- and the Tribunal awarded Rs.1.00 lakh, which are not correct.

11 In view of the above, this Court fixes the salary of the deceased at Rs.8,000/- p.m. and accordingly future prospects is calculated as follows:



C.M.A.No.1955 of 2018

WEB COPY

Rs.8,000/- x 12 = Rs.96,000/-

Adding 25% towards
future prospects

Rs.96,000/- x 25% = Rs.24,000/-

Rs.96,000 + Rs.24,000/- = Rs.1,20,000/-

Deduct 1/3rd towards
personal expenses

Rs.1,20,000 – Rs.40,000/- (1/3rd) = Rs.80,000/-

Applying Multiplier 14 Rs.80,000/- x 14 = Rs.11,20,000/-

12 Accordingly the the award of the Tribunal is modified as follows:

<i>Sl. No</i>	<i>Various Heads</i>	<i>Award of the Tribunal Rs.</i>	<i>Award of this Court Rs.</i>
1.	Future Prospects	8,73,600.00	11,20,000.00
2.	Loss of consortium	1,00,000.00	40,000.00
3.	Loss of love and affection	1,00,000.00	1,00,000.00
4.	Funeral expenses	25,000.00	25,000.00
	Total	10,98,600.00	12,85,000.00

13 Hence there shall be a direction to the third respondent/Insurance Company to deposit the award modified by this Court as above 0i.e. Rs.12,85,000/- along with 7.5% interest within a period of four weeks from the date of receipt of a copy of this order. The claimant is not entitled to get interest for the delay period, if any. The fourth respondent father of the deceased is entitled to Rs.2.00 lakhs as ordered by Tribunal. On such deposit being made, Tribunal is directed to verify as to whether the fourth respondent is alive or not



C.M.A.No.1955 of 2018

if, alive credit the award amount directly to the accounts of the appellant/claimant and the fourth respondent, if the fourth respondent is not alive, credit the total award amount to the account of the appellant/claimant without any formal application as per the decision of the Division Bench of this Court reported in 2016 (2) LW 561 (*The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others*). The appeal is accordingly partly allowed. There shall be no order as to costs.

26.09.2023

cgi

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Motor Accident Claims Tribunal,
Subordinate Judge, Sangagiri.
2. The Section Officer, V.R.Section, High Court,
Madras.



WEB COPY



C.M.A.No.1955 of 2018

P.VELMURUGAN. J.,

cgi

C.M.A.No.1955 of 2018

26.09.2023