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C.M.A.No.1971 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 11.08.2023**

**CORAM :**

**THE HON'BLE MR. JUSTICE P.VELMURUGAN**

**C.M.A.No.1971 of 2018**

**and**

**C.M.P.No.15308 of 2018**

National Insurance Company Ltd.,  
No.593, Cuddalore Main Road,  
Attur Taluk, Salem District.

... Appellant

Vs.

1.D.Rajendiran  
2.Girija  
3.C.Poomalai

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed in M.A.C.T.O.P.No.146 of 2015 on the file of the Motor Accident Claims Tribunal, 3<sup>rd</sup> Additional District Court, Kallakurichi, dated 12.10.2017.

For Appellant : Ms.N.B.Surekha  
For Respondents : Ms.P.T.Saleem Fathima  
for R1 and R2  
R3 – Notice Dispensed with



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## **J U D G M E N T**

This appeal is directed against the Award dated 12.10.2017 passed in M.A.C.T.O.P.No.146 of 2015 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

2. For the purpose of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The brief facts of the case are as follows:

(i) On 04.06.1992 at 5.30 hours, when the deceased, who was aged about 2 ½ years, was standing on the side of the road, the first respondent's driver who had driven the lorry bearing Registration No.MDB 6802 in a rash and negligent manner, dashed against the deceased and as a result of which, the deceased had sustained grievous injuries and died on the spot.

(ii) Seeking compensation against the owner of the lorry and its insurer M/s.National Insurance Company Ltd., the parents of the deceased have filed M.C.O.P.No.146 of 2015 claiming compensation of Rs.7,00,000/-.



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4. The first respondent, who is the owner of the lorry bearing Registration No. MDB 6802, remained *ex-parte* before the Tribunal.

5. The said claim petition was resisted by the Insurance Company by filing a counter statement denying the manner of accident as projected by the claimants in the claim petition. Thus, they sought for dismissal of the claim petition.

6. To substantiate the case on the side of the claimants, the first claimant examined himself as P.W.1 and marked documents Ex.P1 to Ex.P9. On the side of the respondents, no oral or documentary evidence was adduced.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the Lorry bearing Registration No.MDB 6802 and thus, passed an Award for a sum of Rs.5,80,200/- (Rupees five lakhs eighty thousand and two hundred only) along with interest at 7.5% per annum from the date



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of claim petition till the date of deposit to the claimants and directed the

second respondent/Insurance Company to pay the above amount.

Challenging the same, the present appeal is preferred by the Insurance Company.

8. The learned counsel for the appellant/Insurance Company submitted that the alleged accident took place in the year 1992, whereas the claim petition was filed in the year 2015. At the time of accident, the deceased was 2 ½ years child. The Tribunal erroneously fixed notional income of the deceased at Rs.3,300/- per month for non-earning member and by deducting 1/3<sup>rd</sup> towards personal expenses, arrived at a sum of Rs.2,200/-. Resultantly, the annual income was arrived at Rs.26,400/- [2,200x12]. Further, by applying multiplier "18" the Loss of Income was arrived at Rs.4,75,200/-. Thereafter, the Tribunal by awarding amounts under various heads, granted a total compensation of Rs.5,80,200/-.

9. Such compensation awarded by the Tribunal is against the principles of law and the same does not reflect "just and fair" compensation



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during the relevant period. The learned counsel for the appellant further submitted that during the relevant period of time, for school going children Rs.50,000/- may be fixed as compensation, however, the Tribunal failed to consider the date of accident and prevailing prospects, and awarded compensation of Rs.5,80,200/- and directed the Insurance Company to pay the same to the claimants, which needs interference of this Court.

10. The learned counsel for the respondents 1 and 2 (claimants) submitted that in respect of the accident that took place in the year 1992, as per the Apex Court Ruling in ***Kishan Gopal and another Vs. Lala and others*** reported in ***2013 (2) TN MAC 358 (SC)***, the notional income of the deceased can be fixed at Rs.30,000/- per annum. Hence, the learned counsel pleads to fix the notional income of the deceased at Rs.30,000/- per annum.

11. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 2 and perused the records.

12. On a perusal of the records, it is seen that the deceased was



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2-½ years old child at the time accident, which took place in the year 1992.

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During the relevant period, children are not entitled for notional income.

The deceased was only 2-½ years old at the time of accident and notional income cannot be fixed and the object of ordering compensation is to compensate the life of a person in terms of money, and it is only a solatium and therefore, the notional income cannot be fixed in respect of the child, who was only aged about 2-½ years at the time of accident. Under these circumstances, the citations referred to by the learned counsel for both sides, i.e. by the respondent in 2018 (2) TN MAC 238 (G.Sumathy Vs. K.Anbazhagan), and of the appellants in CDJ 2001 SC 471 (Lata Wadhwa Vs. State of Bihar) and also of the appellant in R.K.Malik and another Vs. Kiran Pal and others, in Civil Appeal No.3608 of 2009 (arising out of SLP (C).No.17525 of 2006, dated 15.05.2009, are not applicable to the facts of the present case on hand.

13. Considering the plight of the claimants, this Court feels that Rs.2,50,000/- shall be awarded as 'just' compensation being consolidated



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amount for the deceased aged about 2-1/2 years, considering the parents of the deceased who have lost their child.

14. This Civil Miscellaneous Appeal is partly allowed in the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.2,50,000/- along with 9% interest from the date of claim petition till the date of realisation and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). On such deposit, the claimants are permitted to withdraw their respective shares, less the amount already withdrawn, if any, together with accrued



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interest and costs. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. The Insurance Company is permitted to withdraw the excess amount, if any already deposited by them before the Tribunal.

**11.08.2023**

Index: Yes/No  
Speaking Order/Non-Speaking Order  
Neutral Citation Case : Yes/No  
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To

1. The Motor Accidents Claims Tribunal,  
III Additional District Court,  
Kallakurichi.
  
2. The Section Officer,  
V.R. Section,  
High Court, Madras.



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**P.VELMURUGAN, J.**

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