



C.M.A(MD)Nos.36 and 37 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.09.2023

Pronounced On : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)Nos.36 and 37 of 2019
and
C.M.P(MD)Nos.470 and 471 of 2019

C.M.A(MD)No.36 of 2019 :

The Manager,
National Insurance Company Limited,
31/2E, Salem Main Road,
Mettur Dam R.S., P.B.No.19,
Mettur Dam, Salem.

: Appellant/2nd Respondent

Vs.

1.Chinnaiyan

2.Rukmani

: 1st & 2nd Respondents/1st & 2nd
Petitioners

3.Madeswaran

: 3rd Respondent/1st Respondent

4.Anbudurai

: 4th Respondent/3rd Respondent

5.The Manager,
New India Assurance Company Limited,
Thanjavur.

: 5th Respondent/4th Respondent



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C.M.A(MD)No.37 of 2019 :

The Manager,
National Insurance Company Limited,
31/2E, Salem Main Road,
Mettur Dam R.S., P.B.No.19,
Mettur Dam, Salem.

: Appellant/2nd Respondent

Vs.

1.Chinnaiyan

2.Rukmani

: 1st & 2nd Respondents/1st & 2nd
Petitioners

3.Madeswaran

: 3rd Respondent/1st Respondent

4.Anbudurai

: 4th Respondent/3rd Respondent

5.The Manager,

New India Assurance Company Limited,
Thanjavur.

: 5th Respondent/4th Respondent

6.Balathandayuthapani

7.Sathiyavathy

: 6 & 7th respondents/
5th & 6th Respondents

COMMON PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, dated 30.04.2012 made in M.C.O.P.Nos.269 and 270 of 2009 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Thanjavur.



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(in both appeals)

For Appellant : Mr.A.Ilango

(in CMA(MD)No.36/2019)

For Respondents : Mr.B.Rajesh Saravanan, for R5.

: No Appearance, for R3.

: R1, R2 and R5 Dispensed with

(in CMA(MD)No.36/2019)

For Respondents : Mr.B.Rajesh Saravanan, for R5.

: Mr.G.Karnan, for R4, R6 and R7.

: R1, R2 and R3 dispensed with.

COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the common order passed in M.C.O.P.Nos.269 and 270 of 2019, dated 30.04.2012 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Thanjavur.

2. The appellant/insurer, who was made liable to pay compensation of Rs.14,40,000/- and Rs.13,56,000/- with interest at 7.5% per annum to the claimants for the death of Manimaran and his wife Viji, consequent to



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an accident occurred on 16.11.2008, challenged the liability mulcted on it and also the quantum of compensation awarded by the Tribunal.

3. Though the appellant/insurer has challenged the liability mulcted on it, at the time of hearing, the learned counsel for the appellant submitted that they are only disputing the quantum of compensation awarded at by the Tribunal and not the liability and they have also filed a memo to that effect.

4. Admittedly, the claimants/petitioners in M.C.O.P.No.269 of 2019 are the parents of the deceased Manimaran and whereas, the claimants/petitioners in M.C.O.P.No.270 of 2019 are the father-in-law and mother-in-law of the deceased Viji. But the parents of the deceased Viji are shown as respondents 5 and 6.

5. The only point that arises for consideration is, as to whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law ?



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6. The case of the claimants in M.C.O.P.No.269 of 2009 is that the deceased Manimaran was working as Accountant in a Private Company at Tiruppur and getting monthly salary at Rs.15,000/-; that he was conducting Tuition Centre at Cooliepalayam and was earning Rs.10,000/- through the Tuition Centre and that he was aged 34 years at the time of accident.

7. The case of the claimants in M.C.O.P.No.270 of 2009 is that the deceased Viji was working as School Teacher in a private school at Tiruppur and she was receiving monthly salary at Rs.18,000/-; that the deceased was also conducting Tuition Centre at Cooliepalayam and she was earning Rs.10,000/- through the Tuition Centre and that she was aged 28 years at the time of accident.

8. In order to the prove the income of the deceased, the claimants have produced the salary certificates of the deceased Viji and Manimaran under Ex.P.6 and Ex.P.10. As rightly observed by the Tribunal, the claimants have not chosen to examine the employer of the deceased or any other staff attached with the private establishments, in which the deceased



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were working. The Tribunal has fixed the notional monthly income of the deceased Manimaran at Rs.10,000/- and the deceased Viji at Rs.9,000/-.

9. In the absence of any acceptable evidence to prove the income of the deceased, this Court taking note of the judgment of the Hon'ble Apex Court in *Syed Sadiq Etc vs Divisional Manager, United India Insurance Co.*, reported in **2014 1 TNMAC 459**, wherein the Hon'ble Apex Court has fixed the monthly income of the vegetable vendor at Rs.6,500/- per month and on considering the educational qualifications of the deceased couple, this Court fixes the monthly notional income of the deceased at **Rs.7,000/-** per month.

10. Admittedly, the Tribunal has not awarded any amount towards future prospects. The Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has concluded that the deceased was self employed or on a fixed salary, an addition at 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where deceased was between the age of 40 to 50 years and 10% where the



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deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. Applying the above decision of the Honourable Apex Court, 40 % of the income is only to be added towards future prospects and it comes to Rs.9,800/- per month. (Rs.7,000 x 40/100).

11. The Tribunal has rightly deducted 1/3 of the income towards personal and living expenses of the deceased and after such deductions, the monthly income would come to Rs.6,533/- (Rs.9,800 x 1/3).

12. The Tribunal, taking note of the postmortem certificates, has rightly fixed the age of the deceased Manimaran and Viji at 35 and 28 years respectively. But, as rightly contended by the learned counsel for the appellant, the Tribunal has applied the multiplier '17' for the deceased Manimaran and multiplier '18' for the deceased Viji. But as per the dictum laid down by the Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the appropriate multiplier would be '16' for the deceased Manimaran and '17' for the deceased Viji. Hence, the loss of dependency would be



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Rs.12,54,336/- (Rs.6,533 x 16 x 12) for the deceased Manimanran and the loss of dependency would be **Rs.13,32,732/-** (Rs.6,533 x 17 x 12) for the deceased Viji.

13. The claimants in M.C.O.P.No.269 of 2009 being the parents of the deceased Manimaran are entitled to get Rs.40,000/- each for loss of filial consortium and the respondents 5 and 6 in M.C.O.P.No.270 of 2009 being the parents of the deceased Viji are also entitled to get Rs.40,000/- towards filial consortium and they are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads.

14. Considering the above, this Court decides that the claimants in M.C.O.P.No.269 of 2009 are entitled to get compensation under the following heads:



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Head of compensation	Amount awarded by the tribunal	Amount confirmed/modified by this Court
Loss of dependency	Rs. 13,60,000/-	Rs. 12,54,336/-
Loss of love and affection	Rs. 70,000/-	-
Loss of Consortium	-	Rs. 80,000/-
Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
Loss of Estate	-	Rs. 15,000/-
Total	Rs. 14,40,000/-	Rs. 13,64,336/-

15.The claimants in M.C.O.P.No.270 of 2009 are entitled to get compensation under the following heads:

Head of compensation	Amount awarded by the tribunal	Amount confirmed/modified by this Court
Loss of dependency	Rs. 12,96,000/-	Rs. 13,32,732/-
Loss of love and affection	Rs. 50,000/-	-
Parental Consortium	-	Rs. 80,000/-
Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
Loss of Estate	-	Rs. 15,000/-
Total	Rs. 13,56,000/-	Rs. 14,42,732/-



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16. In view of the above, the claimants in M.C.O.P.No.269 of 2009 are entitled to get total compensation of **Rs.13,64,336/-** and the respondents 5 and 6 in M.C.O.P.No.270 of 2009 are entitled to get total compensation of **Rs.14,42,732/-**. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

17. In the result, the appeal in C.M.A(MD)No.36 of 2009 is partly allowed and the appeal in C.M.A(MD)No.37 of 2009 is dismissed. The compensation amount in M.C.O.P.No.269/2009, is reduced from **Rs. 14,40,000/- to Rs.13,64,336/-** with interest at 7.5% per annum. The compensation amount in M.C.O.P.No.270/2009, is enhanced from **Rs.13,56,000/- to Rs.14,42,732/-** with interest at 7.5% per annum. The appellant/Insurance Company is directed to deposit the modified award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the first claimant/father of the deceased Manimaran is entitled to get **Rs.5,14,336/-** lakhs and the second claimant/mother of the deceased is entitled to get **Rs.8,50,000/-**. In M.C.O.P.No.270 of 2009, the fifth



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respondent/father of the deceased Viji is entitled to get **Rs.5,42,732/-** and the sixth respondent/mother of the deceased Viji is entitled to get **Rs.9,00,000/-** with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

29.09.2023

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
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To

- 1.The Motor Accident Claims Tribunal/
Principal Subordinate Judge, Thanjavur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)Nos.36 and 37 of 2019
and
C.M.P(MD)Nos.470 and 471 of 2019

29.09.2023