



C.M.A(MD)No.685 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.11.2022

PRONOUNCED ON:23.01.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**C.M.A(MD)No.685 of 2021
and
C.M.P.(MD)No.6335 of 2021**

The Divisional Manager,
M/s National Insurance Company
Limited,
33, Prominent Road,
Cantonment,
Trichy-620001.

: Appellant/ 2nd Respondent

Vs.

1.Lakshmi
2.Ramachandran

: Respondents 1 and 2/
Petitioners 1 and 2

3.K.Tamilselvi

: Respondent No.3/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree, dated 16.09.2020, made in M.C.O.P.No.1124 of 2016, on the file of the Special District Court, Trichy.



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For Appellant : Mr.A.S.Mathiyalagan
For Respondents :Mr.N.Sudhagar Nagaraj
for R.1 and R.2
: No Appearance for R.3

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1124 of 2016, dated 16.09.2020, on the file of the Motor Accident Claims Tribunal/Special Court for M.C.O.P., cases, Trichy.

2. The appellant/Insurer, who was directed to pay compensation of Rs.7,13,000/- with interest at 7.5% p.a., to the respondents 1 and 2/claimants and then to recover the same from the third respondent/first respondent for the death of one child Saran, consequent to an accident occurred on 03.07.2016, challenged the liability mulcted on it and also the quantum of compensation arrived at by the Tribunal.

3. The case of the claimants is that on 03.07.2016 at about 16.15 hours, the deceased Saran was sitting in front of one Palanisamy's house situated on the Kalladai to Vadacherry main road and at that time, a Maxi



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Cab bearing Registration No.TN-20-C-0355, which came in a rash and negligent manner and at hectic speed without following any traffic rules and regulations, had suddenly dashed against the said Saran and due to the sudden impact, the said Saran had sustained multiple injuries all over his body and died on the spot itself, that the accident was occurred only due to the rash and negligent driving of the Maxi Cab driver and that therefore, a case in Cr.No.294 of 2016, came to be registered under Sections 304(A) I.P.C., on the file of theThogaimalai Police Station, Karur. It is the further case of the claimants that the deceased Saran was aged about 2 years at the time of accident, that he was hale, healthy and brilliant and that the claimants 1 and 2 are the parents of the deceased.

4. The defence of the appellant/Insurer is that the accident was occurred only due to the negligence of the deceased Minor Saran, that the deceased Saran had suddenly crossed the road and caused the accident, that there is no negligence on the part of the Maxi Cab driver and that since the Maxi Cab driver is not responsible for the accident, the Insurer is not liable for the claim. It is the further case of the Insurer that the first respondent's driver did not possess a valid and effective license at the time of accident, that there was no fitness for the first respondent's



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vehicle to ply on the road at the time of accident and that since there are violations of Motor Vehicles Act and Rules, the Insurer is not responsible for the claim. It is their further contention that the compensation claimed is very high, excessive and without any basis.

5. During enquiry, the claimants have examined the first claimant Lakshmi as P.W.1 and exhibited 8 documents as Exs.P.1 to P.8. The first respondent – owner of the vehicle remained exparte. The appellant-Insurer has examined 2 witnesses as R.W.1 and R.W.2 and exhibited four documents as Exs.R.1 to R.4 and two witness documents as Exs.X.1 and X.2. The learned trial Judge, upon considering the evidence both oral and documentary, has passed the impugned award dated 16.09.2020, holding that the first respondent's driver was responsible for the accident and that since there were policy violations, the Insurer was directed to pay the compensation of Rs.7,13,000/- with interest and costs to the claimants and then to recover the same from the third respondent/first respondent – owner of the vehicle. Aggrieved by the said award, the Insurer has come forward with the present Civil Miscellaneous Appeal.



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6. The points for determination are

(1) Whether the quantum of compensation awarded by the Tribunal is just and proper and in accordance with law?

(2) Whether the impugned award passed in M.C.O.P.No.1124 of 2016, on the file of the Special District Court dealing M.C.O.P., cases, Trichy is liable to be interfered with?

Points 1 and 2:

7. Admittedly, the claim petition was filed under Section 163(A) of Motor Vehicles Act. But the Tribunal, considering the evidence adduced has come to a decision that the Maxi Cab driver alone was responsible for the accident. Moreover, in the memorandum of grounds, the appellant has not specifically challenged the finding of the Tribunal with regard to the responsibility mulcted on the first respondent's driver. The main challenge is with respect to the quantum of compensation.

8. The learned Counsel for the appellant would contend that the Tribunal has wrongly fixed the monthly income as Rs.3,000/- for the two years minor child, that the Tribunal has wrongly awarded Rs.50,000/-



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towards filial consortium and that the Tribunal has wrongly awarded a huge sum of Rs.7,13,000/-, which is very much excessive.

9. The Tribunal, in the absence of any other evidence, taking note of the postmortem certificate, has fixed the age of the minor child as two years at the time of accident. The Tribunal, by relying on the decision of this Court in *National Insurance Company Ltd., Chennai Vs. K.Sugumar and two others* reported in **2017(2) TNMAC 805**, has adopted the multiplier of “18”, by taking note of the age of the mother of the deceased, which is very much against the legal position settled by the Hon'ble Supreme Court. The Hon'ble Apex Court, in *Reshma Kumari and Others Vs. Madan Mohan and another* reported in **(2013)9 Supreme Court Cases 65**, has specifically held that in cases where the age of the deceased is less than 15 years, irrespective of whether the claim is under Section 166 or Section 163(A), multiplier of “15” and assessment as indicated in Schedule II, subject to correction pointed out in Sarla Verma's case must be followed. Considering the above, this Court has no other option, but to adopt multiplier of '15'. The Tribunal, has then, taking note of the income of the deceased mother, has fixed the yearly income at Rs.36,000/-.



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10. At this juncture, it is necessary to refer a decision of the Hon'ble Supreme Court in ***Kuvan Ansari Alias Kurvan Ali Vs Shyam Kishore Murmu*** reported in ***(2022)1 SCC 317***, wherein the Hon'ble Apex Court held as follows:

“11. As the claim was made under [Section 163-A](#) of the Motor Vehicles Act 1988, since the deceased child was not an earning member, the Tribunal has considered notional income as per Schedule–II for the purpose of fixing compensation. The Tribunal has awarded compensation by taking notional income of the deceased at Rs.15,000/- per annum by applying multiplier ‘15’, awarded compensation of Rs.2,25,000/- towards loss of dependency with interest @ 6% per annum from the date of judgment. When the appeals are preferred by the Insurance Company as well as the appellants herein, by the impugned common judgment, the High Court has dismissed the appeal preferred by the Insurance Company, and in the appeal preferred by the claimants, while confirming the compensation awarded for loss of dependency at Rs.2,25,000/-, has awarded a further sum of Rs.15,000/- towards funeral expenses and accordingly granted a total compensation of Rs.2,40,000/- with interest @6% per



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annum payable by respondent No.2 - Insurance Company and by permitting it to recover the same from Respondent No.1 - owner of the motorcycle.

12. In the judgment in the case of Puttamma & Ors.1, this Court has observed that the Central Government was bestowed with the duties to amend Schedule-II in view of [Section 163-A\(3\)](#) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule-II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs.1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) for the non- earning persons of more than 5 (five) years old.

13. In the case of R.K. Malik & Anr.2 also, this Court has observed that the notional income fixed under [Section 163-A](#) of the Motor Vehicles Act, 1988 as Rs.15,000/- per annum should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In the case of Kishan Gopal & Anr.3 where the



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deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.

15. In view of the judgments in the cases in Puttamma & Ors.1, R.K. Malik & Anr.2 and Kishan Gopal & Anr.3, we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors.4 relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company.”

11. The above decision is squarely applicable to the case on hand.

In the above decision case, the accident was occurred on 06.09.2004. But in the case on hand, the accident was occurred on 03.07.2016 and hence, this Court decides to take notional income of the deceased at Rs.30,000/-p.a. Accordingly, when the multiplier of “15” is made applicable, it comes to Rs.4,50,000/- towards loss of dependency. The claimants are also entitled to Rs.40,000/- each towards filial consortium. The Tribunal has rightly awarded Rs.5,000/- for loss of estate, Rs.5,000/- towards funeral expenses and Rs.5,000/- for transporting expenses. Hence, the claimants are entitled to get Rs.5,45,000/- under the following heads:



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Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted or reduced
1	Loss of dependency	6,48,000/-	4,50,000/-	reduced
2	For Transport expenses	5,000/-	5,000/-	Confirmed
3	Loss of consortium	50,000/-	80,000/- (Rs.40,000x2)	Enhanced
4	Funeral expenses	5,000/-	5,000/-	Confirmed
5	Loss of Estate	5,000/-	5,000/-	Confirmed
	Total	Rs.7,13,000	Rs. 5,45,000/-	

12. In the result, the Civil Miscellaneous Appeal is partly allowed by reducing the compensation from Rs.7,13,000/- to Rs.5,45,000/- along with interest at 7.5%pa., and costs. The appellant/Insurer is directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said M.C.O.P.No.1124 of 2016, on the file of the Motor Accident Claims Tribunal / Special District Court, Trichy, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and then to recover the same from the third



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respondent-owner of the vehicle and on such deposit, the first respondent/claimant is entitled to get Rs.4,00,000/- along with proportionate interest and costs and the second respondent/claimant is entitled to get Rs.1,45,000/- along with proportionate interest and costs on due application before the Tribunal and they are permitted to withdraw their amount with interest and costs. The parties are directed to bear their own costs.

23.01.2023

Index : Yes : No
Internet : Yes : No

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To

- 1.The Special District Court, Trichy.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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