BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.02.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.687 of 2020

S.Kanagavalli ... Appellant/claimant

Vs.

1.V.Ramalingam

2.M/s United India Insurance Company
Limited represented by
it Branch Manager
Having Office at
No.235, Gandhi Market Road,
Arni and Tiruvannamalai – 632 301.

3.P.Perumal

4.P.Kannammal ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the order and Decree dated 24.10.2019 made in MACOP No.260 of 2017 on the file of the Principal District Judge/Motor Vehicle Accidents Claims Judge, Thoothukudi, Thoothukudi District.

For Appellant	:	Mr.N.Kamesh
For Respondents	:	Mr.S.Royce Immanuel for R2
	:	No appearance for R1

JUDGMENT

[Judgment of the Court was delivered by K.K.RAMAKRISHNAN, J.]

The claimant in MACOP No.260 of 2017 has filed this Civil Miscellaneous Appeal seeking enhancement of compensation awarded by the Tribunal and to challenge the negligence fixed at 75:25 on the first respondent's driver and the deceased, who is her husband.

2. The appellant's husband died in the accident occurred on 12.02.2016 at 18 hours at Tuticorin – Madurai NH road. The wife of the deceased filed claim petition impleading the parent of the deceased as respondents 3 and 4, claiming compensation of Rs.50,00,000/-.

3.The second respondent/Insurance Company has filed their counter denying the accident and disputing the income of the deceased.

4.To prove the claim, on the side of the appellant/claimant P.W.1 and P.W.2 were examined and Exs.1 to 14 were marked. On the side of the respondents, the third respondent examined himself as R.W.1 and Exs.R1 to R6 were marked.

5.The Tribunal upon considering the evidence of all the independent witnesses and also documents, fixed the negligence upon the driver of the first respondent and the deceased as 75% : 25%. The Tribunal has fixed the monthly income of the deceased as Rs.6,500/-. After deducting 1/3rd for the personal expenses of the deceased, by applying multiplier 17, the Tribunal has awarded

Rs.8.84,136/- for the loss of earning. The Tribunal has awarded Rs.40,000/- towards consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the Tribunal has awarded Rs.9,54,136/-. The Tribunal has fixed the negligence upon the deceased at 25%. Further, the Tribunal has observed that the respondents 3 and 4 are not entitled any share. Challenging the same, the present appeal has been filed by the claimant/wife of the deceased.

6. The learned counsel for the appellant/claimant would submit that the Tribunal has not properly appreciated the evidence adduced by the claimant and fixed 25% negligence upon the deceased, which is incorrect. Hence, he seeks interference of this Court on the aspect of negligence fixed by the Tribunal upon the deceased. He further submitted that though the claimant has not produced any document to prove the income of the deceased, the Tribunal ought to have taken Rs.15,000/- as monthly salary, however, the Tribunal has wrongly fixed the monthly income as Rs.6,500/- which is very meager. Hence, the learned counsel seeks for adequate compensation.

7. The learned counsel for the second respondent/Insurance Company submitted that the Tribunal correctly appreciated the evidence of independent witnesses and also documents and fixed the negligence of 25% on the part of the deceased. Hence, there is no reason to interfere with the said award. He further submitted that without any evidence, the Tribunal has fixed the monthly income of the deceased at Rs.6,500/-.

8. We have considered the rival submissions of both the learned counsels and perused the materials available on record.

9. The following points arise for consideration in this appeal:

9.1.Whether the negligence is correctly fixed on the offending vehicle?

9.2.Whether the compensation granted is in accordance with law?

10. It is seen that the Tribunal by considering Ex.P.1-First Information Report, Ex.P7-Observation Mahazar, Ex.P6-Rough Sketch, Ex.P8-Charge Sheet and Ex.P4-Motor Vehicle Inspector's Report, came to the conclusion that the deceased was also responsible for the accident. More particularly, the deceased, who drove the two wheeler, has contributed 25% negligence. We are of the view that the Tribunal has rightly fixed the negligence at the ratio of 75:25. In respect of the above finding, we are of the view that no interference is necessary.

11. Insofar as the quantum is concerned, the deceased was 27 years on the date of occurrence. According to the claimant, the deceased was a lorry driver, however, in this regard, no proof has been filed. The accident took place in the year 2016 and the Tribunal has fixed the monthly income of the deceased as Rs.6,500/-. We are of the view that the monthly income fixed by the Tribunal is not in accordance with law. Hence, this Court fixes the monthly income of the deceased as Rs.10,000/-. As per the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609 (SC)***, the claimant is entitled to 40% addition as future prospects. In this case, the Tribunal has observed that the respondents 3 and 4, who are the parents of the deceased, are not entitled any compensation. Since the dependent is only one number, as per the Judgment of the Hon'ble Supreme Court in the case of ***Sarala Verma and others vs. Delhi Transport Corporation and another*** reported in ***2009 TN MAC 1***, 1/2 amount has to be deduced from the salary for the personal expenses of the deceased. In this case, the Tribunal has

correctly adopted multiplier '17'. Hence, after adding 40% of the income and after deducting 1/2, and by applying multiplier '17', this Court here awards Rs.14,28,000/-(10000+4000*(40%)*=14000x12x17x1/2) towards loss of earning capacity. We are of the considered opinion that the amount awarded under other heads are fair and reasonable and the same are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is also confirmed. The negligence fixed by the Tribunal at the ratio of 75:25 is also confirmed.

12.Accordingly, the compensation awarded by the Tribunal to the claimant is enhanced as follows:-

Heads	Amount awarded by the Tribunal (Rs.)	Re-quantified Amount by this Court (Rs.)	Status
Loss of earning	8,84,136/-	14,28,000/-	enhanced
Loss of Consortium	40,000/-	40,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Funeral Expenses	15,000/-	15,000/-	confirmed
Total	**9,54,136/-**	**14,98,000/-**	**enhanced**
after deducting 25% negligence	**2,38,534/-**	**3,74,500/-**	
	7,15,602/-	**11,23,500/-**	**enhanced**

13. In such view of the matter, this Civil Miscellaneous Appeal is party allowed. The award amount of Rs.7,15,602/- is enhanced to Rs.11,23,500/-. The second respondent/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant/claimant is permitted to withdraw the modified award amount along with proportionate interest and costs, less the amount, if already withdrawn. As ordered by the Tribunal, the respondents 3 and 4 are not entitled to any share amount. No costs.

[V.B.S.,J.] [K.K.R.K.,J.]
29.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
skn/sbn

To
1.The Motor Accident Claims Tribunal-cum-
Additional District Judge, Virudhunagar.

2.The Section Officer,
V.R.Section,

Madurai Bench of Madras High Court, Madurai.

V.BHAVANI SUBBAROYAN, J.

and

K.K.RAMAKRISHNAN, J.

skn/sbn

JUDGMENT MADE IN
C.M.A(MD)No.687 of 2020

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