



C.M.A(MD)No.611 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.07.2024

DELIVERED ON : 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.611 of 2018

and

C.M.P(MD)Nos.7092 of 2018 & 4670 of 2019

The New India Assurance Company Limited,
Trivandrum D.O.II (761400),
IInd Floor,
Rema Plaza,
Near Ayyappan Coil,
S.S.Coil Road,
Thampanoor,
Thiruvananthapuram,
Kerala-695 001.

... Appellant/3rd Respondent

Vs.

1.John Prabu

2.G.Selvarani Esther (Died)

... 1st & 2nd Respondents/Petitioners

3.Susilkumar

... 3rd Respondent/1st Respondent



C.M.A(MD)No.611 of 2018

4.The Managing Director,
K.S.R.T.C.,
Fort, Thiruvananthapuram,
Kerala State.

... 4th Respondent/2nd Respondent

5.The United India Insurance Company Limited,
No.37/2, Mattappa Street, 2nd Floor,
Neel Complex,
Tenkasi.

... 5th Respondent/4th Respondent

6.Minor Ashley Pon Dinakaran,
Represented by his natural guardain
his father / 1st respondent.

... 6th respondent

*(Minor sixth respondent is brought on
record as LR of the deceased second
respondent vide Court order, dated
11.10.2023 made in C.M.P(MD)Nos.12023,
12025 and 12026 of 2023 in
C.M.A(MD)No.611 of 2018)*

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award and decree, dated 06.01.2018 in M.C.O.P.No.38 of 2013 on the file of the Motor Accident Claims Tribunal (Additional Sub-Court), Tenkasi.

For Appellant : Mr.B.Vijaykarthikeyan

For R-1 & R-6 : Mr.S.Ramesh @ Ramiah

For R-3 & R-4 : No appearance

For R-5 : Mr.C.Jawahar Ravindran

R-6 : Minor



C.M.A(MD)No.611 of 2018

WEB COPY

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.38 of 2013 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi, primarily on the ground of quantum.

2. The deceased was a 13 year old girl studying in 8th standard at the time of accident. The Tribunal has fixed the monthly notional income at Rs.6,000/- and has added 50% towards future prospects. The Tribunal has deducted 1/3rd towards personal expenses and finally arrived at the notional income at Rs.6,000/- per month. Applying multiplier of 18, the Tribunal has arrived at a sum of Rs.12,96,000/- towards loss of income. The Tribunal has awarded Rs.50,000/- towards loss of love and affection. A sum of Rs.15,000/- has been awarded towards funeral expenses. A sum of Rs.10,000/- has been awarded towards transportation charges and totally, a sum of Rs.13,71,000/- has been awarded by the Tribunal. Challenging the same, the present appeal has been filed by the Insurance Company.



C.M.A(MD)No.611 of 2018

3. According to the learned Counsel appearing for the appellant, the Tribunal was not right in fixing the monthly income of a 13 year old girl as Rs.6,000/- per month. He further contended that for a 13 year old girl, a correct multiplier is 15 and not 18. He further pointed out that the future prospects could be added only at the rate of 40% and not as 50%. Hence, he prayed for allowing the appeal.

4. Per contra, the learned Counsel appearing for the respondent relying upon the decision of the Hon'ble Supreme Court reported in **2013 (2) TN MAC 358 [Kishan Gopal & Another Vs. Lala & Others]** has contended that, the Hon'ble Supreme Court has fixed the monthly notional income at Rs.2,500/- per month for an accident that has taken place in the year 1992 for a 10 year old boy. Therefore, the monthly notional income should have been fixed at least at Rs.10,000/- for an accident that has taken place in the year 2012. Relying upon the same judgment, he further contended that the Hon'ble Supreme Court has not deducted any amount towards personal expenses. Hence, he prayed for modification of the award in accordance with the judgment of the Hon'ble Supreme Court.

5. I have carefully considered the submissions made on either side and perused the materials available on record.



C.M.A(MD)No.611 of 2018

6. The Tribunal has fixed the notional monthly income of a 13 year old girl for an accident that has taken place in the year 2012 as Rs.6,000/-. Considering the fact that the deceased was 13 year old girl, at the time of accident in the year 2012, this Court is of the opinion that the fixation of notional monthly income at Rs.6,000/- per month is correct. However, future prospects should not have been increased at the rate of 50%. It could have been added only at the rate of 40%. The Tribunal was also erred in applying the multiplier of 18 but the correct multiplier is 15.

7.The learned counsel appearing for the respondents had contended that since the deceased is a minor girl, there cannot be any deduction towards personal expenses. When a consolidated amount of compensation is awarded for a minor, the question of deducting personal expenses would not arise. On the other hand, if the notional income is taken and the multiplier method is applied, 50% of the notional income has to be deducted towards personal expenses.

8.In view of the above said deliberations, the award is reassessed as follows:

5/9



C.M.A(MD)No.611 of 2018

Monthly notional income	Rs. 6,000.00	
Add: 40% towards future prospects	Rs. 2,400.00	

	Rs. 8,400.00	
Less: 50% towards personal expenses	Rs. 4,200.00	

	Rs. 4,200.00	

Loss of income (Rs.4200/-x12x15)		Rs. 7,56,000.00
Loss of love and affection (Rs.40,000/-x2)		Rs. 80,000.00
Funeral expenses		Rs. 15,000.00
Loss of estate		Rs. 15,000.00
Transport charges		Rs. 10,000.00
Total		Rs. 8,76,000.00

9. Accordingly, the award of the Tribunal is reduced from Rs.13,71,000/- to Rs.8,76,000/-. The said award amount shall carry interest at the rate of 7.5% p.a from the date of claim petition excluding the period of default, if any. The appellant/Insurance Company is directed to deposit the reduced award amount with proportionate interest and costs, less the amount already deposited, if any, to the credit of the claim petition, within a period of eight weeks from the date of receipt of a copy of this judgment.



C.M.A(MD)No.611 of 2018

WEB COPY

10.On such deposit, the first respondent herein/ first claimant shall be entitled to withdraw Rs.5,00,000/- with interest. The balance amount along with interest shall be deposited in the name of the minor 6th respondent in this appeal in a Nationalised Bank in Fixed Deposit till he attains majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st respondent/father of minor, once in three months directly from the bank. After attaining majority, it is for the 6th respondent herein to withdraw his share by making necessary application before the Tribunal discharging guardianship. The excess amount, if any, deposited by the appellant/Insurance Company shall be refunded along with accrued interest.

11.In the result, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

30 .07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR/msa



C.M.A(MD)No.611 of 2018

WEB COPY

To

- 1.The Motor Accident Claims Tribunal
(Additional Sub-Court),
Tenkasi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.611 of 2018

R.VIJAYAKUMAR, J.

BTR/msa

Pre-delivery Judgment made in
C.M.A(MD)No.611 of 2018
and
C.M.P(MD)Nos.7092 of 2018 & 4670 of 2019

30.07.2024