



C.M.A.(MD)No.873 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.873 of 2017 &
C.M.P.(MD)No.9346 of 2017

The Branch Manager,
New India Assurance Company Limited,
2nd Floor, Ram Complex,
29, Paramathi Road,
Namakkal - 637 001.

...Appellant

vs.

1.M.Mariammal
2.Mariappan
3.M.Anitha
4.A.Geetha

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the award and decree dated 08.02.2017 in M.C.O.P.No.9 of 2013 on the file of the Motor Accidents Claims Tribunal (Sub Court), Sivakasi.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : Mr.C.M.Arumugam for R1 to R3

No appearance for R4



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JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The appellant is the New India Assurance Company Limited. The respondents 1 to 3 / claimants filed the claim petition before the Motor Accident Claims Tribunal, Subordinate Judge, Sivakasi seeking compensation of Rs.10,00,000/- for the death of one Kathirvel in a road accident that took place on 04.12.2012.

2. The brief case of the respondents 1 to 3 / claimants is as follows:

2.1. On 04.12.2012 at about 06.45 hours, the deceased Kathirvel, who is the son of the claimants 1 and 2 and brother of the third claimant, along with one Ajithi @ Hariharan was standing on the western side of the junction of National Highways and service road near Sathur Padanthal Road. At that time, a lorry bearing Registration No.TN 30 AC 8534 driven by its driver in a rash and negligent manner came from south to north direction and hit the deceased Kathirvel and Ajith @ Hariharan. The lorry also damaged the electric pole, traffic signal and cement slab near to the road. Due to the accident, the deceased Kathirvel sustained



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grievous injuries and died on the spot and Ajith @ Hariharan sustained injuries.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration No.TN 30 AC 8534 was the cause of the accident and it resulted in death of Kathirvel. Hence, the owner and insurer of the lorry are both jointly and severally liable to pay compensation to them.

4. The Tribunal after analysing the oral and documentary evidence on both the sides, awarded a compensation of Rs.22,55,000/- to the respondents 1 to 3 / claimants and directed the appellant Insurance Company to pay the same and thereafter, recover the same from the first respondent therein, who is the owner of the offending vehicle.

5. Now, the appellant Insurance Company has filed the present appeal questioning the quantum of compensation awarded by the Tribunal.



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6. The learned counsel appearing for the appellant would submit that since the deceased Kathirvel is only a student of Diploma and he was not employed at the time of the accident, the notional income fixed by the Tribunal at Rs.15,000/- per month is on the higher side, and the same may be fixed at Rs.12,000/- per month. Since the deceased was a bachelor at the time of the accident, 50% of his income has to be deducted towards the personal expenses of the deceased. However, the Tribunal deducted only 1/3rd towards his personal expenses, which is against the decision of the Apex Court. The Tribunal has also awarded a huge sum of Rs.3,00,000/- towards loss of love and affection and the same has to be reduced. He would further submit that instead of fixing interest at the rate of 7.5% per annum, the Tribunal has fixed the interest at the rate of 9% per annum and the same is also on the higher side. Therefore, he prayed for reducing the quantum of compensation awarded by the Tribunal.

7. The learned counsel appearing for the respondents 1 to 3 / claimants would submit that since the deceased was aged 19 years at the



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time of the accident, the proper multiplier to be adopted in the instant case is 18 as per the decision rendered in **Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121**. However, the Tribunal erroneously adopted multiplier of 16. Further, he would submit that the Tribunal failed to add 40% towards the future prospects of the deceased. Therefore, he prayed to enhance the compensation awarded by the Tribunal.

8. Admittedly, the accident took place in the year 2012. At the time of the accident, the deceased Kathivel was aged 19 years. The deceased was not employed at the relevant point of time and he was only a first year Polytechnic student. Hence, fixing of notional income at Rs. 15,000/- per months is on the higher side and the same is reduced to Rs. 12,000/- per month. Considering the age of the deceased, 40% future prospects has to be added in the income of the deceased. However, the Tribunal failed to do so. Hence, this Court is inclined to add 40% towards future prospects of the deceased. Further, the proper multiplier applicable in this case is 18 as per the decision rendered in **Sarlavarma**



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and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. However, the Tribunal erroneously adopted multiplier of 16. Therefore, the multiplier adopted by the Tribunal is modified and multiplier of 18 is hereby adopted. Since the deceased was a bachelor at the time of the accident, 50% of his income should be deducted towards his personal expenses. However, the Tribunal deducted 1/3rd, which is also erroneous. Hence, the modified calculation of loss of dependency is as follows.

Calculation:

Notional income = Rs.12,000/-

40% Future Prospects = Rs.4,800/-

Total = Rs.12,000/- + Rs.4,800 = Rs.16,800/-

Loss of dependency

= Rs.16,800/- x 18 x 12 x 1/2 deduction

= Rs.18,14,400/-



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9. There are three dependents to the deceased Kathirvel. The Tribunal excessively awarded a sum of Rs.3,00,000/- in toto under the head of loss of love and affection. Hence, the compensation awarded by the Tribunal under the head of love and affection is reduced to Rs. 1,20,000/- (Rs.40,000/- x 3). Fixing interest at the rate of 9% per annum is also on the higher side and hence the same is fixed at the rate of 7.5% per annum. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are kept unaltered. The modified compensation is as follows.

<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of dependency	Rs.18,14,400/-
2.	Loss of Love and affection	Rs.1,20,000/-
3.	Transportation	Rs.5,000/-
4.	Funeral Expenses	Rs.25,000/-
5.	Loss of estate	Rs.5,000/-
Total		Rs.19,69,400/-

Thus, the respondents 1 to 3 / claimants are entitled to a sum of Rs. 19,69,400/- together with interest at the rate of 7.5% per annum.



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10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.22,55,000/- to Rs.19,69,400/-, which would carry interest at the rate of 7.5% per annum.

(iii) The appellant Insurance Company is directed to deposit the compensation awarded by this Court i.e., Rs.19,69,400/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.9 of 2013 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Sivakasi within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1 to 3 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.



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(v) The appellant Insurance Company is entitled to withdraw the excess amount paid by them over and above the amount awarded by this Court, if any.

(P.V., J.) (K.K.R.K., J.)
29.08.2024

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Motor Accidents Claims Tribunal / Sub Court,
Sivakasi
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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