BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20/11/2025

CORAM

THE HONOURABLE MR JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MRS JUSTICE **L.VICTORIA GOWRI**

CMA(MD)No.842 of 2021
and
CMP(MD)No.7781 of 2021

The Divisional Manager,
National Insurance Company Limited,
Tuticorin,
Tuticorin District. : Appellant/2nd Respondent

Vs.

1.S.Felcie Ponmathy
2.J.Donie Moses
3.J.Benny Moses
4.S.Joy : Respondents 1 to 4/Petitioners
5.T.Krishnakumari : 5th Respondent/R1

Prayer:-This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed in MCOP No.1259 of 2018, dated 08/01/2021 passed by the Motor Accident Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai.

For Appellant : Mr.J.S.Murali

For 1st Respondent : Mr.J.Sankarapandian

For R2 to R4 : No appearance

For 5th Respondent : No appearance

JUDGMENT

(Judgment of the Court was made by the Hon'ble **P.VELMURUGAN. J.**)

This Civil Miscellaneous Appeal is directed against the judgment and decree, dated 08/01/2021 passed in MCOP No.1259 of 2018 by the Motor Accident Claim Tribunal/District and Sessions Judge Communal Clash cases Court, Madurai.

2.**The facts of the case are as follows**:-

On 21/08/2018 at about 01.30 hours, the deceased John Moses Raj was travelling as a passenger in the Car bearing No.TN-69-BD-9119 belonged to the first respondent, who also drove the same from Neyvelli to Tuticorin in a rash and negligent manner from north to south in Madurai-Trichy Fourway Track, near Narasingampatty EB Office, the Car dashed against the centre portion of the divider and also dashed against the Lorry No.TN-63-Z-9679 which was coming in the opposite direction. In the accident, the deceased John Moses Raj died on the spot.

3.At the time of the accident, the deceased was aged about 56 years and was working as Deputy General Manager of NLC Tamilnadu Power Limited, Harbour Estate, Tuticorin and earning Rs.3,00,000/- per month. Claiming compensation of Rs.2,50,00,000/- for the death of the deceased, his legal heirs filed a claim petition before the Tribunal.

4.The Insurance Company opposed the said claim petition, denying the manner of the accident and their liability to pay the compensation.

5.To substantiate the case, on the side of the claimants, 4 witnesses were examined as PW1 to PW4 and marked 7 documents as Exs.P1 to P7. On the side of the Insurance Company, no witness was examined and 4 documents were marked as Exs.R1 to R4. Through witnesses, Exs.X1 to X6 were marked.

6.After considering the oral and documentary evidence, the Tribunal held that the accident was happened only due to the rash and negligence driving of the driver of the Car belonging to the 1st respondent and awarded Rs.1,37,87,000/- and directed the 2nd respondent Insurance Company to pay the award amount, since on the date of the accident, the said Car was insured with the 2nd respondent.

7.Challenging the said award as excessive, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

8.The learned counsel for the appellant/Insurance Company would submit that the Tribunal has not deducted any amount towards income tax and; the calculation memo filed on the side of the respondents is over and above the award amount. He would further submit that the claimants have not filed any appeal or cross objection and only the appellant has filed this appeal, in which the claimants cannot seek any enhancement, unless they challenged the quantum of award. He would also submit that the calculation memo submitted by the claimants making deduction towards income tax is not correct, which does not reflect in the actual income of the deceased and therefore, he prayed for allowing the appeal.

9.The learned counsel appearing for the 1st respondent/claimant would submit that the Tribunal while appreciating the evidence both oral and documentary, has rightly fixed the liability upon the Insurance Company and the appellant has not denied that at the time of accident, the policy was in force and accident is also not denied. However, the Insurance Company has challenged the quantum of compensation amount alone. Further, he would submit that the age of the deceased was 56 years at the time of the accident and he is the sole breadwinner of the family and the Salary Certificate (Ex.P4) shows that at the time of the accident, the deceased was getting Rs.1,84,073/- per month; As per the Sarla Verma's case, proper multiplier has been adopted, however, since the claimants are 4 persons, 1/4th has to be deducted towards personal and living expenses of the deceased and that no amount was awarded to the sons and mother of the deceased towards consortium; At the time of the accident, the deceased was 56 years old and his remaining service is only 3 years and 11 months, even after retirement, he can earn some money and therefore, he is totally entitled to get Rs.1,39,19,900/- as compensation.

10.Heard the counsel appearing on either side and perused the materials available on record.

11.The liability is not in dispute and the policy is also not in dispute. However, the learned counsel for the appellant Insurance Company vehemently opposed the calculation of compensation filed by the claimants. Even as per the Salary Certificate, which was marked as Ex.P2, the deceased was working as Deputy General Manger (Civil), NLC Tamilnadu Power Limited, Harbour, Tuticorin. Through him, documents Exs.X1 to X5 have been marked. Ex.X2 is the Service Register of the deceased. Ex.X3 is the last pay drawn certificate of the deceased. Ex.X6 is the Income Tax return. Ex.P4 is the salary certificate. Based on the above documents, the Tribunal fixed the notional income of the deceased at Rs.1,84,073/- per month. The deceased was aged 56 years at the time of the accident. So, he is entitled to 15% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others (2017(2)TNMAC 609(SC)***. The multiplier applicable is '9' as per the judgment of the Hon'ble Apex Court reported in ***2009(2) TNMAC 1 SC (Sarla Verma and others Vs. Delhi***

Transport Corporation and another). Thus, by fixing the monthly income as Rs.1,84,073/-, granting 15% enhancement towards future prospects and after deducting 1/4th towards personal and living expenses of the deceased and after deducting income tax as per the Income Tax slab, the annual income of the deceased is calculated at Rs.15,21,110/-. By applying multiplier 9, the compensation towards loss of pecuniary benefits is arrived at **Rs.1,36,89,990/-** (R.15,21,110/- x 9). The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. As per the decision of the Hon'ble Apex Court in the case of ***Magma General Insurance Company Ltd., Vs. Nanu Ram and others reported in 2018(1) TN MAC 452(SC),*** the claimants 2 and 3 being the sons of the deceased are entitled to get **Rs.40,000/-** each towards parental consortium. Similarly, the 4th claimant being the mother of the deceased is also entitled to **Rs.40,000/-** towards filial consortium. Thus, the compensation awarded by the Tribunal is modified as follows:-

Head	Amount awarded by the Tribunal	Amount awarded by this Court	Status
Loss of pecuniary benefits	1,37,17,000/-	1,36,89,990/-	Reduced
Loss of estate	15,000/-	15,000/-	Confirmed
Funeral expenses	15,000/-	15,000/-	Confirmed
Consortium (spouse)	40,000/-	40,000/-	Confirmed
Consortium (Parental)	--	80,000/-	Granted
Consortium (Filial)	--	40,000/-	Granted
Total	1,37,87,000/-	**1,38,79,990/-**	

12.Though the learned counsel for the appellant Insurance Company vehemently contended that the compensation awarded by this Court is more than the award passed by the Tribunal, in the absence of filing any appeal or cross objection by the claimants, they are not entitled for enhancement. However, the Hon'ble Apex Court in the case of **Ningamma and Others Vs. United India Insurance Company Limited [(2009) 13 SCC 710]** as well as the Hon'ble Division Bench of this Court by relying upon the discussions and observations made by the Hon'ble Supreme Court, has concluded that under Section 173 of the Motor Vehicles Act, the Court can re-appreciate the whole evidence to decide the matter and accordingly, enhanced the compensation based on the evidence in the said case. It is also observed by the Hon'ble Division Bench that even in the absence of any Appeal/Cross Appeal by the claimants, the Court can enhance the compensation. By following the decision cited supra and considering the facts and circumstances of the present case on hand, it would be just and proper to enhance the compensation, even though the claimants have not filed any appeal/cross appeal for enhancement of compensation. So, the contention of the learned counsel for the appellant is not legally tenable.

13.This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding and accordingly, this Court finds no merit in this appeal and the same is liable to be dismissed.

14.In the result, this Civil Miscellaneous Appeal is **dismissed with the above modification**. The compensation awarded by the Tribunal at Rs.1,37,87,000/- is hereby enhanced to **Rs.1,38,79,990/-** together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount, now determined by this Court along with interest and costs, less the amount already deposit, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of MCOP No.1259 of 2018 on the file of the Motor Accident Claims Tribunal, District and Sessions Judge, Communal Clash Cases Court, Madurai. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw the modified amount, along with interest and costs, as per the apportionment of the Tribunal, after adjusting the amount, if any already withdrawn by filing necessary applications before the Tribunal. The claimants are directed to pay the necessary court fee on the enhanced award amount. No costs. Consequently, connected Miscellaneous Petition is closed.

(P.VELMURUGAN, J.) (L.VICTORIA GOWRI, J.)
20-11-2025

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
District and Sessions Court,
Communal Clash Cases Court,
Madurai.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

P.VELMURUGAN,J
and

L.VICTORIA GOWRI,J

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