

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2008

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.4116 of 2008

and

M.P.No.1 of 2008

The National Insurance Company Limited,
No.78, T.V.S. Street,
Erode-638 001.

.... Appellant/3rd Respondent

vs.

1.Muthuswamy,
2.Chandra Prabha, ... 1 & 2 Respondents/Petitioners 1 & 2
3.P.Easwaran, ... 3rd Respondent/1st Respondent
4.S.Revathi. ... 4th Respondent/2nd Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 3.7.2007 passed in M.C.O.P.No.31 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.4), Bhavani.

For appellant : Mrs.N.B.Sureka

For respondents 1 and 2 : Mr.Ma.P.Thangavel

JUDGMENT

The National Insurance Company is on appeal challenging the award dated 3.7.2007 passed in M.C.O.P.No.31 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.4), Bhavani.

2. The only contention raised by the counsel for the appellant is on the quantum of compensation awarded by the Tribunal.

3. It is a case of fatal accident. The brief facts of the case are as follows:- The accident in this case happened on 21.10.2003. The deceased Divya, 6 years old student, was standing near mori bus stop on the Ennamangalam to Varattupallam road. When the mini door auto driven by its driver in a rash and negligent manner hit the said Divya. In that accident Divya sustained grievous injuries. She was taken to Sankar Hospital, Anthiyur and then referred to Apollo Hospital, Erode. In spite of treatment she died. The father aged 36 years and the mother aged 29 years filed a claim for compensation in a sum of Rs.5 lakhs.

4. In support of the claim, the father of the deceased was examined as P.W.1. One Subramani and Palanichamy, the eye witnesses to the accident, were examined as P.Ws.2 and 3. Exs.A-1 to A-7 were marked, the details of which are as follows:-

Ex.A-1 is the photocopy of F.I.R., dated 31.10.2003,

Ex.A-2 is the photocopy of rough sketch dated 31.10.2003,

Ex.A-3 is the photocopy of observation mahazar, dated 31.10.2003,

Es.A-4 is the photocopy of Motor Vehicle Inspector's Inspection Report dated 5.11.2003,

Ex.A-5 is the photocopy of post-mortem certificate dated 1.11.2003,

Ex.A-6 is the photocopy of charge-sheet dated 8.12.2003 and

Ex.A-7 series are the medical bills.

No oral or documentary evidence was let on behalf of the appellant insurance company, the third respondent before the Tribunal.

5. The finding of negligence on the part of the driver of the mini door auto, who is responsible for the accident and the death of the deceased Divya and the liability fixed on the appellant insurance company to compensate the claimants is not in dispute and the same is confirmed.

6. As far as the compensation is concerned, the Tribunal following the Apex Court decision in Manju Devi and another - Musafir Paswan and another reported in 2005 ACJ 99 = 2005(1) TAC 609(SC) = 2004 (2) TNMAC 262(SC) fixed the notional income of the deceased at Rs.15,000/- per annum and by adopting 15 multiplier granted Rs.2,25,000/- (Rs.15,000/- x 15 = Rs.2,25,000/-) as pecuniary loss to the parents of the deceased. In addition, the Tribunal granted compensation under conventional heads. In all, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the parents	Rs.2,25,000/-
2	Loss of love and affection and mental agony on the death of their minor daughter	Rs. 30,000/-
3	Funeral expenses	Rs. 6,000/-
4	Transport expenses	Rs. 2,000/-
5	Medical expenses as per Ex.A-7 medical bills	Rs. 10,900/-
	Total	Rs.2,73,900/-

7. The only contention raised by the counsel for the appellant is on the quantum of compensation stating that the multiplier of 15 adopted by the Tribunal in a case of 6 years old girl is on the higher side and therefore, the compensation has to be reduced. She relied upon the Apex Court's decision in *The Municipal Corporation of Greater Bombay vs. Shri Laxman Iyer* and another reported in 2004 ACJ 53 = 2004(1) TNMAC (SC) 16 = 2004(2) LW 15 = (2004)1 M.L.J. 82(S.C.) stating that 10 multiplier will be appropriate.

8. On the other hand, the counsel for the respondents 1 and 2/claimants stated that the compensation granted by the Tribunal is just and reasonable and does not warrant any reduction by this Court. He prays for dismissal of this appeal.

9. The Tribunal in this case followed the decision of the Apex Court in *Manju Devi and another - Musafir Paswan and another* reported in 2005 ACJ 99 = 2005(1) TAC 609(SC) = 2004(2) TNMAC 262(SC). In the said case, for the death of 13 years old boy in the accident which happened in the year 1998, the Apex Court confirmed the award of Rs.2,25,000/-. The deceased in this case was a student in a matriculation school and that is not in dispute.

10. The parents losing their child at a tender age is a permanent scar in their life and the grief will linger till their life time. Thus, in a claim for compensation in the case of death, the claimants are granted compensation under conventional heads, like loss of love and affection, funeral expenses and miscellaneous expenses. The entitlement of the claimants/parents for compensation on conventional heads cannot be disputed. The Tribunal is justified in granting the same.

11. The claimants in this case are father and mother claiming compensation on the death of their daughter. Having brought up their child and given her good education in a matriculation school, they will expect her to do well in life and their expectation of the bright prospects for their daughter has been shattered due to the untimely death and hence they have to be compensated for the loss consequent to the death of their child. This will be in addition to compensation on other heads.

12. Therefore, the compensation granted on pecuniary and non-pecuniary loss including the medical expenses incurred by the claimants after the accident and before the death of their child is justified and does not require any reduction whatsoever as also the interest at 7.5% as the accident in this case happened in the year 2003 and the award was passed in the year 2007.

13. Finding no merit, this Civil Miscellaneous Appeal is dismissed at the admission stage. Counsel for the appellant seeks for eight weeks' time to deposit the award amount and is granted and on

such deposit, the respondents/claimants are entitled to withdraw the same as per the order of the Tribunal. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ts

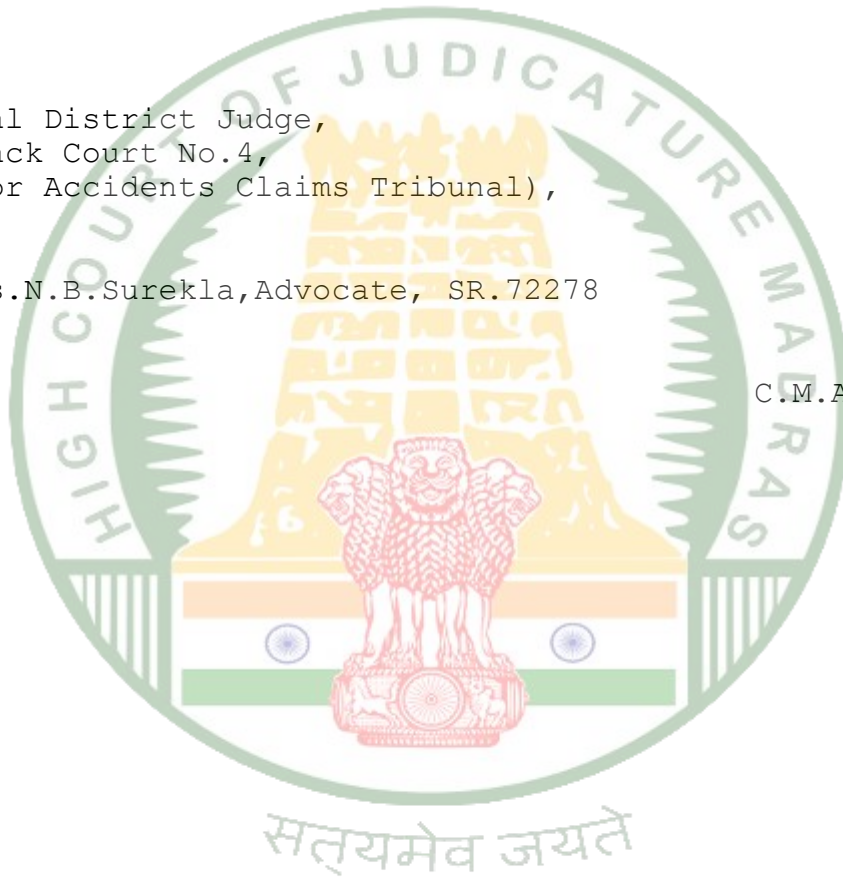
To

1. Additional District Judge,
Fast Track Court No.4,
(The Motor Accidents Claims Tribunal),
Bhavani.

+ 1 cc to M/s.N.B.Surekla,Advocate, SR.72278

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EM/21.1.09

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