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**(2010) 03 MAD CK 0251**

**Madras High Court**

**Case No:** C.M.A. No. 1482 of 2005

Branch Manager,  
Oriental Insurance Co.  
Ltd.

APPELLANT

Vs

Padmavathi and Others

RESPONDENT

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**Date of Decision:** March 18, 2010

**Citation:** (2012) ACJ 850

**Hon'ble Judges:** R. Banumathi, J; M. Venugopal, J

**Bench:** Division Bench

**Advocate:** R. Sivakumar, for the Appellant; S. Parthasarathy for Mr. N. Murali, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

M. Venugopal, J.

The appellant/respondent No. 2, insurance company, has preferred this appeal as against the award dated 5.3.2004 passed in M.A.C.T.O.P. No. 1078 of 2002 by the Motor Accidents Claims Tribunal (Principal Sub-Judge), Tindivanam in awarding the compensation of Rs. 15,72,500 together with interest at 9 per cent per annum from the date of filing of the petition till the date of deposit, etc. The Tribunal on an appreciation of oral and documentary evidence had accepted the evidence of PW 2 (who was pillion rider on Hero Honda motor cycle driven by the deceased Sureshbabu) to the effect that the driver of the lorry No. PY 01-E 0469 drove the lorry in a fast speed and was responsible for the happening of the accident. Therefore, we are in complete agreement with the view taken by the Tribunal in holding that the driver of the lorry was responsible for the accident.

2. Respondent Nos. 1 to 5-claimants being the wife, daughter, son and parents of the deceased had preferred a claim application seeking total compensation of Rs. 30,00,000 for the death of Sureshbabu being the husband of the respondent No. 1, father of respondent Nos. 2 and 3 and son of respondent Nos. 4 and 5.

3. Before the Tribunal, on the side of the respondents-claimants, PWs 1 to 5 were examined and Exhs. P1 to P24 were marked. On the side of appellant insurance company and the owner of the lorry, no one was examined and no documents were marked.

4. The main contention advanced on behalf of the appellant insurance company before us is that the award of the Tribunal dated 5.3.2004 is on the higher side, contrary to law, weight of evidence and probabilities of the case and that the Tribunal had committed an error in awarding Rs. 15,72,500 to the respondent Nos. 1 to 5-claimants as compensation without any basis.

5. Added further, it is the contention projected on the side of the appellant insurance company that the deceased Sureshbabu at the time of the accident was about 32 years of age as per Exh. P23, transfer certificate, but this aspect of the matter was not taken into account by the Tribunal and moreover, the Tribunal had committed a mistake in determining the income of the deceased Sureshbabu at Rs. 10,000 per month without any documentary evidence.

6. Learned counsel for the appellant contends that the Tribunal was not right in taking the view that the annual income of the deceased Sureshbabu was Rs. 1,20,000 because as per Exhs. P14 and P15, the annual income of the deceased was only Rs. 55,642 and Rs. 57,664 respectively. The deceased Sureshbabu was a partner of the firm, after his death, his son, viz., the respondent No. 3-claimant, had become the partner and, therefore, there was no loss of income to the family of the deceased but this aspect of the matter was not appreciated by the Tribunal in proper perspective.

7. Added further, various amounts like Rs. 20,000 awarded towards loss of consortium. Rs. 20,000 towards loss of love and affection were without any rhyme or reason and also that Claims Tribunal had granted a sum of Rs. 2,500 towards funeral expenses without any reason and in any event, the award of the Tribunal was an excessive one and, therefore, liable to be set aside.

8. It is the manifest duty of a court of law or Tribunal to award as perfect a sum as was within its power. Undoubtedly, the determination of damages for loss of human life is a Herculean task.

9. It is not in dispute that the deceased Sureshbabu was a partner during his lifetime in Vasavi Packaging Industries in which he had 20 per cent share. He was also doing cement business in the name and style of Uma Traders. Also, he was running a rice mill and flour mill. Apart from the above, he was also having family business of a provision store. According to PW 5, auditor, Sureshbabu's share in Vasavi Packaging Industries was about Rs. 31,500 and in the balance sheet for the year 2002-2003, though there was a profit of Rs. 3,50,000, there was no proof of it. In fact, Sureshbabu had received a sum of Rs. 20,634.70 towards his share in Vasavi Packaging Industries and also he had

received a sum of Rs. 11,000 as interest for his share. The auditor, PW 5, in his deposition had also admitted that after the death of Sureshbabu, his son had become the partner of the said packaging firm.

10. In the income tax returns, Exhs. P14 and P15, the annual income of the deceased Sureshbabu was shown as Rs. 55,642 and Rs. 57,664 respectively. It cannot be disputed that the deceased Sureshbabu was doing multifarious businesses like cement business, rice mill business, flour mill business and also was looking after the provision store and, therefore, he was a sound enterprising entrepreneur, having bright prospect of future development in his pursuit of attending to various businesses of his family. Exh. P10 is the licence obtained by the deceased for dealing in cement in the name and style of Uma Traders. Exh. P16 is the series of invoices showing that the deceased was also doing business in cement.

11. Even though a contention is projected on the side of the appellant/respondent No. 2, insurance company, that after the death of the deceased, his son, who is one of the claimants, had become the partner of Vasavi Packaging Industries, we cannot forget an important fact that the son who had been inducted as a partner could not take the role of a father, his experience, his expertise, his acumen, his knowledge and contribution to the family and, therefore, the contention that the family had not sustained any loss soon after the death of Sureshbabu and after the induction of his son as a partner in the said packaging firm was not tenable and a correct one.

12. The Tribunal in its award had determined the annual income of the deceased Sureshbabu at Rs. 10,000 per month and for a year, it had calculated his earning to an extent of Rs. 1,20,000. It had deducted a sum of Rs. 30,000 as 1/4th amount for his personal expenses and fixed dependency at Rs. 90,000 per annum. The deceased at the time of the accident was 32 years of age. Therefore, the proper multiplier to be applied in the present case was 17 and accordingly, the Tribunal had calculated the same as (Rs. 90,000 x 17 = Rs. 15,30,000). At this stage, the learned counsel for the appellant though had strenuously contended that the Tribunal had committed an error in deducting 1/4th amount towards personal expenses of the deceased and calculated income of the deceased at Rs. 1,20,000, etc., including the adoption of multiplier 17 towards loss of pecuniary benefits, we are of the considered view that in a given case where the dependants of the deceased in a family are more in number then instead of adopting usual 1/3rd deduction for personal expenses, the adoption of 1/4th would be found to be proper and reasonable one. The Tribunal had considered the fact that the wife of the deceased was aged 27 years at the time of accident and, therefore, it had rightly awarded a sum of Rs. 20,000 towards loss of marital happiness. Towards loss of love and affection, it had awarded a sum of Rs. 10,000 each to the respondent Nos. 2 and 3. Towards funeral expenses, it had awarded a sum of Rs. 2,500. Thus in all, the Tribunal has awarded a sum of Rs. 15,72,500. On this sum, it had also awarded interest at the rate of 9 per cent per annum from the date of filing of the petition till the date of realization.

13. Inasmuch as the deceased Sureshbabu was engaged in various trades like cement business, provision store business and was the partner in Vasavi Packaging Industries, etc., and since the annual income of Rs. 55,642 and Rs. 57,664, as seen from Exhs. P14 and P15, we are of the considered view that he was a sound entrepreneur having bright, golden prospects in the future to develop and to increase his business and, therefore, the Tribunal upon appreciation of oral and documentary evidence in an integral fashion had come to the right and just conclusion in determining the compensation amount at Rs. 15,72,500 in all to be paid by the appellant to respondent Nos. 1 to 5-claimants and the same appears to be just, fair and reasonable one which does not require any interference at the stage of the appeal.

14. Though an endeavour has been made on the side of the appellant insurance company that the normal rate of interest to be awarded was only 7.5 per cent per annum, in the present case, on considering the overall assessment and facts of the case, we are of the considered view that the quantum of interest at 9 per cent per annum determined by the Tribunal was also a reasonable one, on the facts and circumstances of the case, we decline to interfere in this regard also. Suffice it to point out that appellant insurance company had not made out a case to allow the appeal and per contra, the award passed by Tribunal is a just, fair and an equitable one. Viewed in that perspective, the civil miscellaneous appeal fails.

15. It has been brought to the notice of this court that the entire award amount has been deposited by the appellant insurance company, out of which the respondents-claimants were also permitted to withdraw 50 per cent of the amount along with accrued interest by order dated 22.8.2005 in C.M.P. No. 13638 of 2005 in C.M.A. No. 1482 of 2005. Claimant Nos. 1, 4 and 5 are permitted to withdraw the balance compensation amount payable to them along with accrued interest, by filing necessary payment out application as per Civil Rules of Practice. In so far as the share of minor claimant Nos. 2 and 3, the order of the Tribunal is maintained. In the result, the civil miscellaneous appeal fails and is dismissed. Having regard to the facts and circumstances of the case, there shall be no order as to costs.