

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. No.1144 of 2015

1.Selvi

2.Seethammal

...Appellant/Claimants

Vs.

1.Rameshkannan

2.M/s Gugan Transport (P) Ltd.,
Perundurai PSG Mill Premises,
No.191, Kovai Main Road,
Perundurai Taluk, Erode District.

3.The Branch Manager,
United India Insurance Company Ltd.,
No.96-B. K.T. Complex,
New Scheme Road, Pollachi,
Coimbatore District.

...Respondents/Respondents

Appeal under 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 30.01.2015 passed in M.C.O.P.No.64 of 2014 on the file of the Motor Accidents Claims Tribunal (Sub Court), Perundurai.

For Appellants : Mr.S.Kaithamalai Kumaran

For respondents : Mr.J.Chandran for R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants against the award of Rs.7,03,600/- for the death of one Avinasiappan, aged about 50 years, a Mechanic, alleged to be earning a sum of Rs.20,000/- per month at the time of accident, which occurred on 12.03.2014.

2. Heard Mr.S.Kaithamalai Kumaran, learned counsel appearing for the appellants and Mr.J.Chandran, learned counsel appearing for the third respondent-Insurance Company.

3. The Insurance company has not filed any appeal before this Court pursuant to the finding regarding negligence. Though the claimants/appellants filed Ex.X2 - pay certificate of the deceased Avinasiappan to show that the monthly salary of the deceased was Rs.8,734/- and on the strength of Ex.X4, they claimed that the deceased was earning about Rs.5,000/- as part-time Mechanic in Dharshini Textiles and Rs.7,500/- as bonus per year, the trial Court did not believe the evidence of P.Ws.3 and 4 as they did not produce any salary receipt. Therefore, based on Ex.X2, the Tribunal instead of fixing Rs.8,734/-, determined the monthly income of the deceased at Rs.8,000/-. The said amount is very reasonable even in the absence of any proof with regard to the monthly income, which is inconsonance with the Judgment of Honourable Supreme Court in SYED SADIQ AND OTHERS V. DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LIMITED ((2014) ACJ 627), the Tribunal rightly deducted 1/3 towards personal expenses as the family consists of two members. The Tribunal, while calculating the loss of earning, erroneously deducted 10% towards Income Tax. The said amount is unwarranted and would not come within the limit of taxable income. Therefore, the said 10% deduction towards income tax should be deleted. As the deceased was aged about 50 years at the time of his death, the proper multiplier as per the decision of the Honourable Supreme Court in SMT. SARLA VERMA AND OTHERS V. DELHI TRANSPORT CORPORATION AND ANOTHER ((2009) ACJ 1298 SC.) is 11, which was rightly applied by the Tribunal. The loss of income is calculated as follows:
 $8,000 - 1/3 \times 12 \times 11 = \text{Rs.}7,03,956/-$ rounded off to Rs.7,04,000/-

4. The Tribunal awarded Rs.20,000/- towards loss of love and affection, Rs.10,000/- towards funeral expenses, Rs.10,000/- towards mental agony and Rs.5,000/- towards transport charges, which are very reasonable and the same are confirmed. However, Rs.25,000/- awarded towards loss of consortium to the first appellant is too low and the same is enhanced to Rs.1,00,000/-. Totally, the award amount comes to Rs.8,49,000/-, which is rounded off to Rs.8,50,000/-.

5. The Civil Miscellaneous Appeal is allowed in part and the compensation of Rs.7,03,600/- awarded by the Tribunal is enhanced to Rs.8,50,000/- with interest at 7.5% per annum. The third respondent is directed to deposit the entire award amount along with interest and costs, less the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to

withdraw their respective shares as per the ratio fixed by the Tribunal, within a period of one week thereafter. The appellants are directed to deposit additional Court fee within a period of two weeks. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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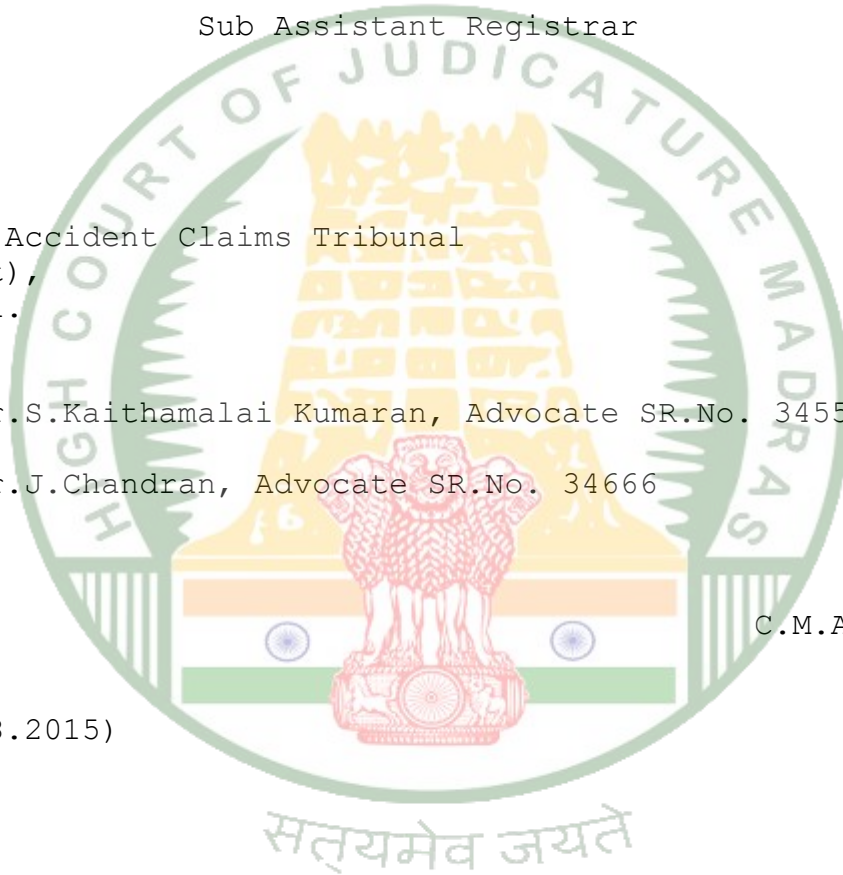
The Motor Accident Claims Tribunal
(Sub Court),
Perundurai.

1 CC to Mr.S.Kaithamalai Kumaran, Advocate SR.No. 34553

1 CC to Mr.J.Chandran, Advocate SR.No. 34666

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UG (CO)
PSI (10.08.2015)



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