

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.1342 of 2015

1.A. Magesh
2.Pachaimmal
3.A.Kalaiarasan (Minor)
4.A.Anandha Priya (Minor) Appellants/Petitioners
(3rd & 4th minor appellants are represented by their mother Mageshwari as natural guardian and next friend 1st appellant)

vs.

1.R.Muralidharan
2.National Insurance Company Limited,
No.62A, J.N. Street,
Pondicherry - 1. ... Respondents / Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 07.11.2012 made in MACTOP No.2457 of 2008 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellant : Mr.V.Velu

For Respondents : Mr.S.Arunkumar for R2

JUDGMENT

The appeal has been preferred by the claimants against the amount of Rs.8,25,000/- awarded by the tribunal as compensation for the death of one Anandan aged about 23 years alleged to be working in Salt Manufacturing Unit at Marakkanam and earning about Rs.7500/- per month who died in the accident occurred on 04.05.2008.

2. Heard Mr.V.Velu, learned counsel appearing for the appellants/claimants and Mr.S.Arunkumar, learned counsel appearing for the second respondent/insurance company.

3. The only question to be decided in this appeal is with regard to the quantum of compensation awarded by the tribunal.

4. Even though PW3, employee of the deceased was examined as witness who spoke about drawing of Rs.5000/- per month from him and Rs.6,000/- independently from the business of the deceased, the tribunal did not believe the said evidence and determined the income at Rs.5,000/- per month. After deducting 1/4th towards personal expenses and adopting multiplier 17, awarded a sum of Rs.7,65,000/- towards loss of income and including other amounts, awarded a sum of Rs.8,25,000/- as compensation to the appellants/claimants.

5. The accident occurred in the year 2008. There is no proof regarding the income of Rs.7500/- per month by the deceased even though PW3 spoke about that. In those circumstances, the Hon'ble Supreme Court, in Syed Sadiq Etc vs Divisional Manager, United India Ins. Co. reported in 2014 (1) TN MAC 459 (SC) determined the monthly income at Rs.6,500/- for a vegetable vendor who sustained injury in the accident occurred in the year 2008. After adding future prospects at 50%, the Hon'ble Supreme Court in the above cited case determined the monthly income at Rs.9,750/-. In this case also, the accident occurred in the year 2008. Hence, following the above said judgment, this Court re-determines the monthly income of the deceased. Since the deceased was aged 23 years at the time of accident, 50% is added towards future prospects. Thus, the monthly income is determined as Rs.9,750/- [Rs.6500 + 50%].

6. The size of the family is four. Following the judgment of the Hon'ble Supreme Court in Sarla Verma & Ors vs Delhi Transport Corpn. reported in 2009 (2) TANMAC 1, 1/4th is deducted towards personal expenses and multiplier 18 is applied following the very same judgment instead of 17 as adopted by the tribunal. Thus, the loss of income is determined as follows -

$$\text{Rs.6500} + 50\% + \text{Rs.9750} \times \frac{3}{4} \times 12 \times 18 = \text{Rs.15,79,500/-}$$

7. The age of the first appellant/claimant at the time of accident is 20 years. Losing husband itself is very painful, that too at the age of 20 years alongwith minor children would definitely cause psychological pain and such pain cannot be compensated in terms of money. In any event, in an endeavour to compensate towards loss of consortium, this court awards a sum of Rs.1,00,000/- following the judgment of the Hon'ble Supreme Court in Rajesh & Ors. vs. Rajbir Singh & ors. reported in 2013 (3) CTC 883. Similarly, the appellants 3 and 4, minor children were aged 4 and 2 years respectively at the time of accident and they lost their father's love, care and affection at the tender age and therefore, they should be sufficiently compensated. The amount awarded at Rs.10,000/- each towards loss of love & affection is very meagre and negligible and therefore a sum of Rs.1 lakh in toto is awarded to

them. Similarly, the 2nd appellant, mother of the deceased, lost her son and therefore a sum of Rs.25,000/- is awarded to her. Rs.5,000/- awarded towards funeral expenses is too low and no amount was awarded towards transportation and therefore a sum of Rs.20,000/- is awarded together under this head. Thus, the amount of Rs.8,25,000/- awarded by the tribunal is hereby enhanced to Rs.18,24,500/-, rounded off to Rs.18,25,000/-, break-up as follows -

(1) Loss of income	...	Rs.15,79,500/-
(2) Loss of consortium	...	Rs. 1,00,000/-
(3) Loss of love & affection to the 2 nd respondent	...	Rs. 25,000/-
(4) Loss of love & affection to the 3 rd & 4 th respondents...		Rs. 1,00,000/-
(5) Funeral expenses and Transportation	...	Rs. 20,000/-

Total	...	Rs.18,24,500/-
		=====

Rounded off to Rs.18,25,000/-.

The rate of interest awarded by the tribunal at 7.5% per annum is very reasonable and hence the same is confirmed.

8. In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.8,25,000/- to Rs.18,25,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs.

9. The 2nd respondent/insurance company is directed to deposit the entire amount awarded by this court, alongwith interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st appellant/claimant is permitted to withdraw Rs.6,25,000/- and the 2nd appellant/claimant is permitted to withdraw Rs.2,00,000/- alongwith proportionate interest and costs. The 3rd and 4th appellants/claimants are entitled to a sum of Rs.5,00,000/- each alongwith proportionate interest and costs. The tribunal is directed to deposit the share of the minor claimants in Indian Bank, High Court Branch, Chennai in an interest bearing Fixed Deposit, till the minors attain majority.

10. The learned counsel for the appellants/claimants is directed to pay the requisite court fee for the enhanced compensation, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgr

To

1. The IV Judge,
Small Causes Court,
Chennai.

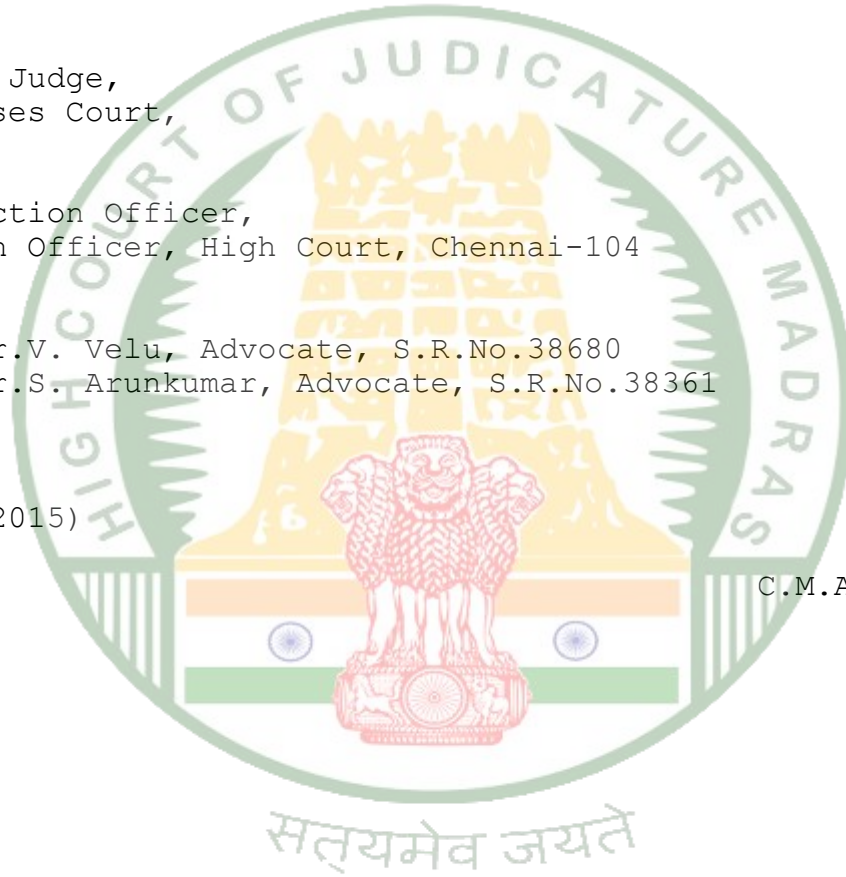
2. The Section Officer,
VR Section Officer, High Court, Chennai-104

+1cc to Mr.V. Velu, Advocate, S.R.No.38680

+1cc to Mr.S. Arunkumar, Advocate, S.R.No.38361

CTK(CO)
EU(04/09/2015)

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