

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2015

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

C.M.A. No. 1909 of 2011

1.Nagammal  
2.Thirupathi  
3.Venkatesan  
4.Madhu

.... Appellants/Claimants

Vs.

1.Perumal

2.The Divisional Manager

The New India Assurance Company Ltd.,  
No.1, Officer's lane,  
Vellore.

... Respondents/Respondents

(R1 remained Exparte before the Tribunal)

Prayer : Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and decree dated 11.04.2005 made in MCOP.No.697 of 2003 on the file of the Motor Accidents Claims Tribunal, District Judge, Tiruvannamalai.

For Appellant : Mr. F.Terry Chellaraja

For Respondents : Ex parte - for R1  
Mr.J.Chandran - for R2

सत्यमेव जयते  
J U D G M E N T

The claimants are the appellants. In respect of the death of one Mottaiyan in a road accident that took place on 25.01.2003, the respondents herein went before the Tribunal claiming compensation of Rs.5,00,000/-. The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.2,28,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit.

2. The learned counsel appearing for the appellants would contend that the deceased was doing the business of brick klin. Hence, a sum of Rs1,800/- fixed by the Tribunal as the monthly income of the deceased is very low. The learned counsel for the claimants also submitted that the Tribunal ought to have fixed a higher compensation, since the tribunal awarded under the head of loss of consortium, loss of love and affection and funeral expenses are very low. Accordingly, he would pray for enhancement of the same.

3. The learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company would contend that the Tribunal disbelieved the evidence of Ex.P7 that the deceased was doing the business brick klin.

4. Heard both sides and perused the records.

5. On a careful perusal of the judgment passed by the Court below, it is seen that the court below considered the deceased as daily wage labourer, in arriving the income of the deceased at the rate of Rs.60/- per day and adopted 15 multiplier and deducted 1/3<sup>rd</sup> towards his personal expenses and arrived at a sum of Rs.2,16,000/- as his contribution to the family, when especially the claimants have produced Ex.7 certificate stating that the deceased was earning Rs.5,000/- per month by doing the business of brick klin. Further, the Tribunal had awarded a total compensation of Rs.2,28,000/-under the following heads:

|                               |                 |
|-------------------------------|-----------------|
| 1. Loss of income             | - Rs.2,16,000/- |
| 2. Loss of consortium         | - Rs. 5,000/-   |
| 3. Loss of Love and affection | - Rs. 5,000/-   |
| 4.Funeral Expenses            | - Rs. 2,000/-   |

Total Rs..2,28,000/-

with interest at 9% per annum.

6. The short point for consideration in this appeal is whether the amount granted by the Court below is reasonable?

7. The accident is admitted. The liability is admitted. Only quantum is disputed.

8. Though Ex.P7 certificate is produced by the claimants to prove the income of the deceased, the Court below considered him as daily wage labourer and awarded only a sum of Rs.2,16,000/- by deducting 1/3<sup>rd</sup> for his personal expenses, which is not correct. Considering Ex.P7 certificate, I am inclined to increase the income of the deceased as Rs.3,000/- per month and deducting 1/3 for his personal expenses a sum of Rs.2,000/- is taken as monthly contribution to his family. Accordingly, total sum of Rs.3,60,000/- (Rs.2,000x12x15=Rs.3,60,000) is awarded under the head of loss of income. Further, the court below awarded under the head of loss of consortium, loss of love and affection and funeral expenses are very low. Hence, the judgment passed by the Court below is modified as follows:-

|                                                     |                 |
|-----------------------------------------------------|-----------------|
| 1. Loss of income                                   | - Rs.3,60,000/- |
| 2. Loss of consortium                               | - Rs. 30,000/-  |
| 3. Loss of Love and affection<br>(Rs.10,000/- x 4 ) | - Rs. 40,000/-  |
| 4.Funeral Expenses                                  | - Rs. 5,000/-   |
|                                                     | -----           |
| Total                                               | Rs.4,35,000/-   |
|                                                     | -----           |

9. In the condone delay petition filed before this court, it has been observed that the appellants-claimants are not entitled to the interest during the period of 1251 days. Therefore, interest will be calculated at the rate of 7.5% per annum beyond that period. Accordingly, the second respondent/Insurance Company is directed to deposit the entire compensation amount of Rs..4,35,000/- (Rupees four lakhs thirty five thousand only), less the amount already deposited, if any, to the credit of MCOP.No.697 of 2003 on the file of the Motor Accidents Claims Tribunal, District Judge, Tiruvannamalai within a period of four weeks from the date of receipt of a copy of this order, at the rate of 7.5% per annum and it is also made clear that the appellants-claimants are not entitled to the interest during the condoned period of 1251 days. It is needless to state that on such deposit being made, the appellants-claimants are entitled to withdraw the entire compensation amount along with interest, less the amount already withdrawn, if any, on making out a proper application before the court below.

10. With the above modification, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Rj

To

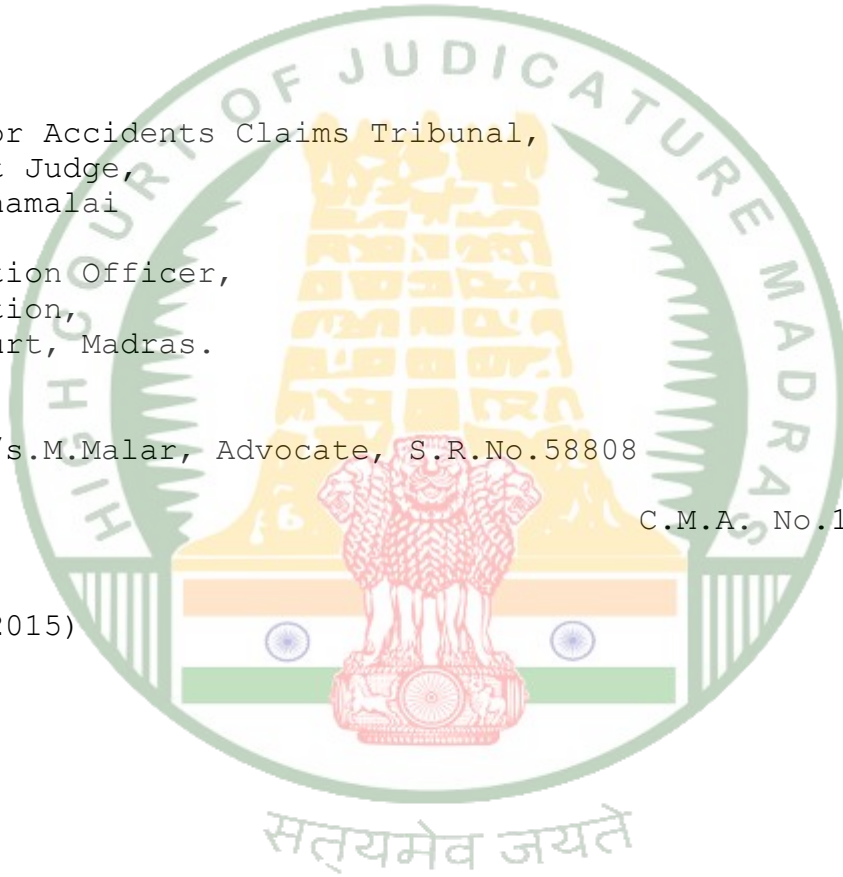
1.The Motor Accidents Claims Tribunal,  
District Judge,  
Tiruvannamalai

2.The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.58808

C.M.A. No.1909 of 2011

PUR(CO)  
CA(10/12/2015)



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