

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.1.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.2664 of 2009

1)C.Murugan
2)Minor Nithya
3)Minor Pavithra
4)Minor Vinitha
5)Minor Gopika Appellants /Petitioners
(Minor appellants 2 to 5 are represented by
next friend and father C.Murugan Ist appellant herein)

-Versus-

1)P.Saravanakumar
2)The Branch Manager,
The New India Assurance Company Limited,
Branch Office,
11-19,20, Government Arts College Road,
Coimbatore-18. Respondents/Respondents

(The Ist respondent is not necessary party to
this appeal. Hence the Ist respondent is given up)

This civil Miscellaneous appeal is filed under Section 173 of
the Motor Vehicles Act 1988 against the judgement and decree dated
18.04.2009 in M.C.O.P.No.154 of 2007 passed by the Motor Accident
Claims Tribunal (2nd Additional District and Sessions Judge and Fast
Track Court No.I) Erode.

For Appellant : Mr.T.Meganathan
for Mr.R.Nalliyappan
For Respondents :Mr.R.Neethi Perumal for R2
R1 given up

J U D G E M E N T

The appeal has been preferred by the claimant aggrieved over the
quantum of Rs.4,90,000/- awarded by the Tribunal for the death of one

Renuka wife of the first appellant herein in the accident occurred on 29.3.2008 when she was crossing the road and was hit by the motor cycle belonging to the first respondent insured with the second respondent.

2. Heard Mr.T.Meganathan, representing Mr.R.Nalliappan, learned counsel appearing for the appellants and Mr.R.Neethiperumal, learned counsel appearing for the second respondent-Insurance Company. The only issue, the quantum of compensation awarded by the Tribunal is adequate or not. The deceased was aged about 30 years and she was said to have worked as a tailor and earned Rs.6000/- per month. However, the Tribunal, in the absence of any proof, determined Rs.3000/- as monthly income.

3. Though the learned counsel appearing for the respondents opposed for enhancement of the award, this court taking into consideration of the facts of the case enhances the award amount. It was impossible for anybody to do any profession even in 2006 for a sum of Rs.3000/- per month. The Hon'ble Supreme Court in New India Assurance Company Limited Vs. Smt. Kalpana and Ors reported in (2007) 3 SCC 538 held that in the absence of any material evidence to prove the income, Rs.3000/- per month could be taken as loss of income after deduction of 1/3 towards personal expenses. However, considering the facts and circumstances of the case, this court determines Rs.4,500/- as monthly income of the deceased. As per the judgement of the Hon'ble Supreme Court in Sarla Verma v. DTC, reported in 2009 (2) TN MAC 1 (SC), for the person aged about 40 years, 50% has to be added as future prospects. After adding 50%, the loss of income comes to $\text{Rs.4500} + 50\% = \text{Rs.6750/-}$. The size of the family of the deceased is five and therefore, as per Sarla Verma case, $\frac{1}{4}$ has to be deducted towards personal expenses. After deducting $\frac{1}{4}$ th towards personal expenses, the annual contribution to the family is Rs.60756/-.

4. The age of the deceased at the time of accident is 30 and the appropriate multiplier is 16 and the loss of income would be calculated as follows:

$\text{Rs.4500/-} + 50\% - \frac{1}{4} \times 16 \times 12 = \text{Rs.9,72,096/-}$.

5. The Tribunal did not award any amount towards loss of consortium and therefore, following the judgement of the Hon'ble Supreme in Rajesh & others vs. Rajbir Singh & others reported in 2013 (3) CTC 883, a sum of Rs.1,00,000/- is awarded towards loss of consortium to the first appellant.

6. The deceased left behind four daughters who were aged about 14,12,10 and 5 years. The help of the mother to groom children, especially, to the girl children is very essential. The protection of

the mother is also very much needed especially to the girl children, in this day of electronic era. The mother's care and guidance are also required for getting marriage and during pregnancy. The service rendered by the mother to the family cannot be compensated, especially to her daughters. It is very unfortunate, daughters lost their love and affection and care and guidance of their mother and no amount would compensate their loss. Therefore, they are entitled to compensation for the said loss. This court awards Rs.50,000/- each making it to Rs.2,00,000/- towards loss of love and affection.

7. Rs.3,000/- awarded towards funeral expenses is low and the same is enhanced to Rs.25,000/-. Rs.5000/- awarded towards transportation is enhanced to Rs.10,000/-. The compensation amount of Rs.4,90,000/- is enhanced to Rs.13,07,096/- rounded off to Rs.13,10,000/-. 7.5% interest awarded by the Tribunal is confirmed. The appeal is allowed. For the enhanced compensation, the claimants have to pay additional Court fee with Registry of this Court within two weeks from the date of receipt of a copy of the order. No costs.

8. The second respondent is directed to deposit the entire award amount along with interest and costs as per the order of this court and the modified award amount has to be shared as per the ratio fixed by the Tribunal. The minor shares are directed to be deposited in the interest bearing fixed deposit in any one of the nationalized banks. The award amount has to be paid in the presence of Legal Aid Secretary concerned on verification of the claimants.

9. The minor shares on attaining their majority should be paid as per the ratio fixed by the Tribunal. Office is directed to send the copy of the order to the appellants at free of costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accident Claims Tribunal (2nd Additional District and Sessions Judge and Fast Track Court No.I) Erode.

2)C.Murugan

3)Minor Nithya

4)Minor Pavithra

- 5)Minor Vinitha
6)Minor Gopika

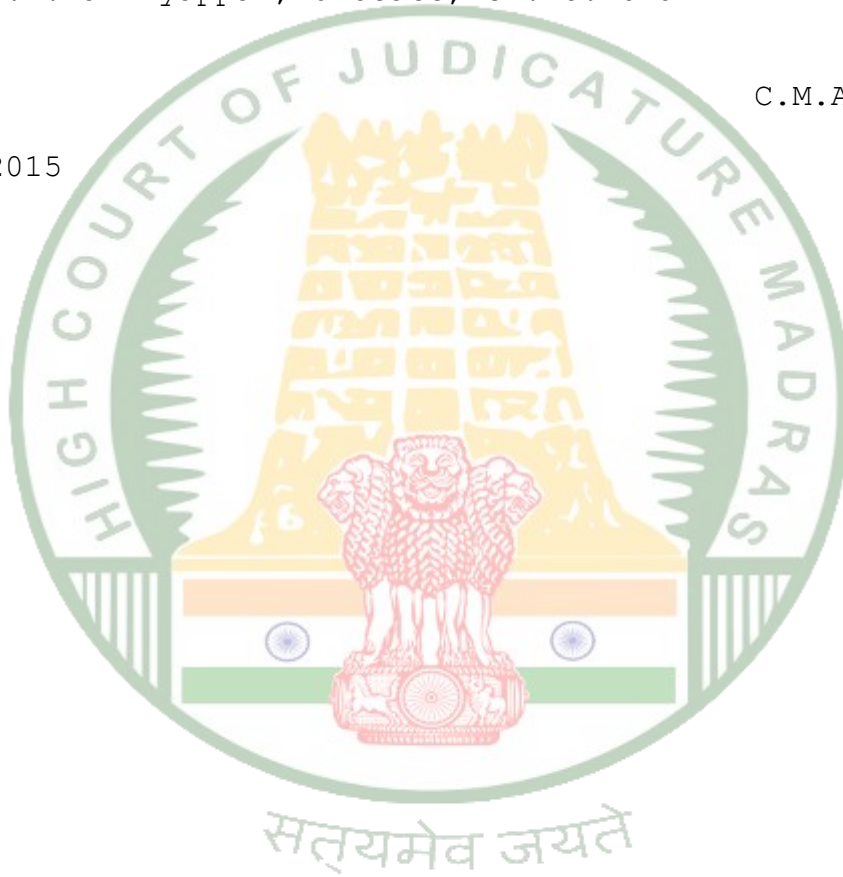
all are residing at 27/A Gnanpuram, Kuniyamuthur,
Coimbatore Taluk, Coimbatore District.

now at Sasthiri Road,
Soorampattivalasu,
Kasipalayam Post, Erode -9.

- 1 cc to Mr.R.Neethi Perumal ,Advocate, SR.No.1886
1 cc to Mr.R.Nalliyappan,Advocate, SR.No.1849

C.M.A.No.2664 of 2009

pmk.13.4.2015



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