

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

C.M.A.No.2813 of 2007

1. Selvi
2. Minor Saravanakumar
3. Minor Manikandhan
(Minors/appellants 2 and 3 rep.
by her mother 1st appellant)
4. Sampoorname

... Appellants

Vs

1. K.Annapoorani
2. The Oriental Insurance Company Limited
No.11, EVN Road,
Parimalam Complex,
2nd Floor, Erode - 1.

... Respondents

Prayer : Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and decree dated 12.01.2005 and made in MCOP.No.633 of 2002 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Salem and praying to set aside the same.

For Appellant : Mr. S.Sivakumar

For R1 : ex parte

For R2 : Mr. M.Rajasekhar

J U D G M E N T

Appellants who were claimants before the Court below have preferred this appeal seeking enhancement of compensation in a sum of Rs.20,00,000/- for the fatal accident taken place on 24.02.2002. The Tribunal awarded a sum of Rs.6,73,400/-, which is under challenge in this appeal.

2. Appellants are the dependents of the deceased. At the time of accident the deceased was working as a Chemplast and he was aged about 41 years. It is the case of the appellants that the deceased is the sole bread winner of the family and due to his sudden death the family members, wife, mother and two minor children are suffering and the amount awarded is very meagre and hence, filed this appeal.

3. Learned counsel appearing for the appellants would submit that though the salary certificate was duly produced, unfortunately, the Court below has not taken into consideration loss of income, loss of future prospectus and the amount awarded under the head loss of love and affection to the two minor children is also very low. According to the learned counsel the Court below has not awarded any amount for loss of future prospectus as per Sarala Varma's case. Since the deceased was aged only 41 years at the time of accident, he has got bright future and definitely the same has to be taken into consideration.

4. Per contra, learned counsel for the second respondent/Insurance Company would contend that the gross salary has not been properly calculated and according to Sarala Varma's case the 10% has to be deducted towards Income Tax purposes which has not been done in this case. Hence, prays for modification of compensation.

5. Heard both sides and perused the records.

6. On a careful perusal of the judgment passed by the Court below, it is seen that the court below had awarded a total compensation of Rs.6,73,400/- under the following heads:

1. Loss of Income	- Rs. 6,56,400/-
2. Transport Charges	- Rs. 2,000/-
3. Funeral Expenses	- Rs. 5,000/-
4. Loss of Love and Affection	- Rs. 10,000/-

Total	Rs. 6,73,400/-

Though the deceased was drawing a sum of Rs.14,082.12 which is evident from the salary certificate filed by the claimants/appellants, the Court below has taken only a sum of Rs.5,470/- as his salary. However, taking into account the future prospectus, and the fact that if the deceased would have been alive, he would have earned more and hence, I am inclined to fix the salary in a sum of Rs.14,000/-per month. If we deduct 10% towards Income Tax purposes and 1/4th towards his personal expenses, the loss of income would be Rs.17,01,000/-. Since no amount had been awarded under the head loss of Consortium, I am inclined to award a sum of Rs.50,000/- and towards loss of love and affection a sum of Rs.20,000/- is awarded to the two minor children and a sum of Rs.20,000/- is also awarded to the mother of the deceased for loss of love and affection. However, a meager amount had been awarded towards transport expenses and the same is increased to

Rs.5,000/- and the amount of Rs.5,000/-awarded towards funeral expenses is also confirmed.

7. In the result, the judgment passed by the Court below is modified and the compensation of Rs.18,01,000/- is awarded as follows:-

1. Loss of Income	- Rs.17,01,000/-
2. Loss of Consortium	- Rs. 50,000/-
3. Loss of Love and affection to the minor children	- Rs. 20,000/-
4. Loss of love and affection	- Rs. 20,000/-
5. Transport charges	- Rs. 5,000/-
6. Funeral Expenses	- Rs. 5,000/-
Total	- Rs.18,01,000/-

8. Accordingly, the second respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.18,01,000/- [Rupees Eighteen Lakhs One thousand only], less the amount already deposited, if any, to the credit of MCOP No.633 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem, within a period of six weeks from the date of receipt of a copy of this order along with an interest at the rate of 7.5% from the date of petition. 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.

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

Smi

Sd/-
Assistant Registrar (CS-V)

/True Copy/

Sub-Assistant Registrar

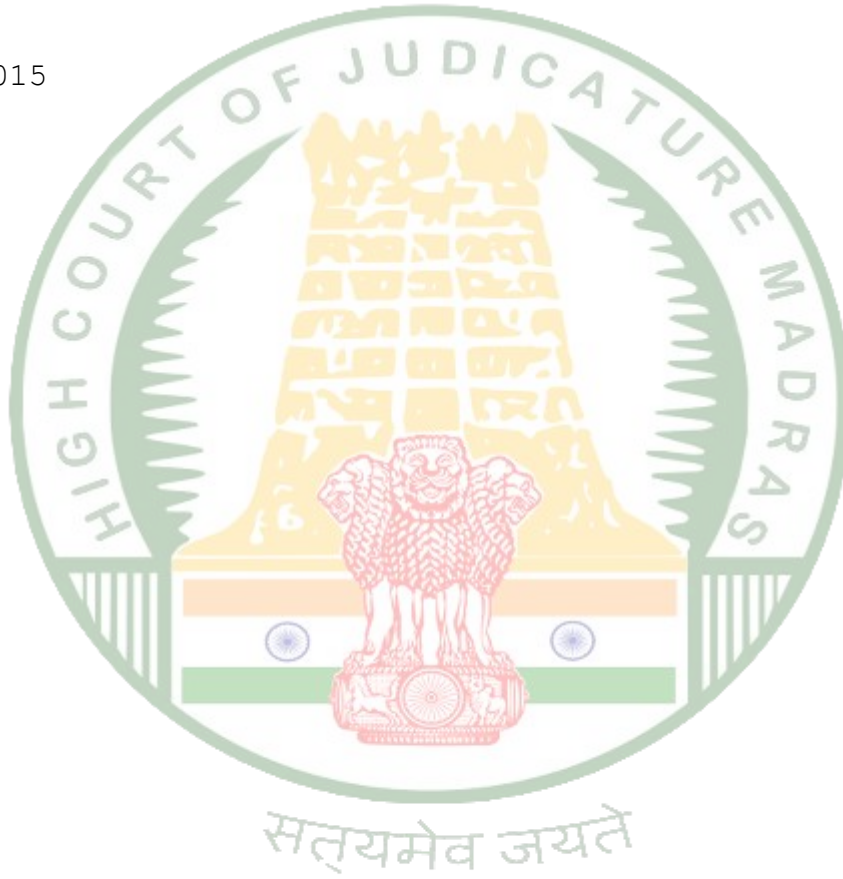
To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Salem.

+1 C.C. To MR.M.Rajasekhar, Advocate in SR.NO.57005

C.M.A. No.2813 of 2007

VSN(CO)
sd : 29/12/2015



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