

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1264 of 2016 and
C.M.P. No.9609 of 2016

The Divisional Manager,
The New India Assurance Company Ltd.,
No.F-6, Visitors Road, Block-2,
Neyveli - 607 801.

.. Appellant

Versus

1.Shankar
2.Minor Kavina
(represented by her father and next
guardian Mr.Shankar)
3.Amrithavali

.. Respondents

(Third respondent herein called absent and
remained exparte before the learned Tribunal)
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicle Act, 1988 against the judgment and decree dated
19.11.2015 made in M.C.O.P.No.28/2014 on the file of the Motor
Accidents Claims Tribunal, (Subordinate Judge), Neyveli.

For Appellant : Mr.G.Udayasankar

For Respondents : Mr.M.Selvam for R1 and R2

J U D G M E N T

The Civil Miscellaneous Appeal, filed by the
appellant/Insurance Company, is directed against the correctness
of the impugned award dated 19.11.2015 made in
M.C.O.P.No.28/2014 on the file of the Motor Accidents Claims
Tribunal, (Subordinate Judge), Neyveli.

2.According to the claimants, on 02.07.2014 at about 08.15
hours, while the wife of the first claimant/mother of the second
claimant was riding her bicycle along with her daughter, who is
the first claimant's daughter and second claimant's sister, on
Vridhachalam to Cuddalore Road, when they nearing T.N.S.T.C.
Depot at Vadalur, the appellant's Mahindra Tractor bearing
Registration No.TN 31 P 3373, which was driven by its driver in
a rash and negligent manner, hit against the motor cycle and
caused fatal injuries to both the mother and daughter namely

Vimala and Keerthika. According to the claimants, the accident had occurred due to the rash and negligent driving made by the driver of the Tractor.

3.Learned counsel appearing for the appellant-Insurance Company would submit that the learned Tribunal went wrong and arrived at a wrong calculation of Rs.13,78,000/- instead of Rs.12,61,000/- towards total compensation. Learned counsel appearing for the appellant/Insurance Company contends that the award of the Tribunal is completely contrary to law and weight of evidence for the reason that it has grossly erred in awarding a huge compensation, which is not in consonance with the facts and circumstances of the case. Moreover, when there was no proof of income of the deceased produced before the Tribunal, the learned Tribunal has committed serious error in fixing excessive income of the deceased.

4.Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the claimants/respondents 1 and 2.

5.When there was a claim of Rs.10,000/- as monthly salary of the deceased was made, learned Tribunal, taking support from the evidence of P.W.2, who deposed that the deceased was working in his company as Supervisor and earning a sum of Rs.8,000/- and considering Ex.P6/Income Certificate, has fixed Rs.6,500/- as notional monthly income of the deceased, without there being any evidence to support Ex.P6. Learned Tribunal, keeping in mind the age of the deceased at the time of accident and that there was no dispute with regard to the age of the deceased as 25 years, has adopted the right multiplier '18'.

6.While computing the head 'future prospects', the learned Tribunal has wrongly held that as the age of the deceased was 60 years, the claimants are not entitled to get any addition towards future prospects. Since the age of the deceased was only 25 years at the time of accident, as per the ratio laid down by the Hon'ble Apex Court in the case of Santhosh Devi vs. National Insurance Company Limited and others reported in 2012 (2) TN MAC 1 (SC), 50% of actual income of the deceased has to be added towards the said head. As no appeal has been filed by the claimants seeking enhancement, this Court is not inclined to award any such compensation under the said head 'future prospects'.

7.Again the learned Tribunal, while making deduction 1/3rd towards personal expenses, has wrongly arrived at a sum of Rs.10,53,000/- instead of Rs.9,36,000/- towards loss of future income and therefore, the same is arrived at as under:

6500 x 12 x 18	=	Rs.14,04,000/-
1/3 rd deduction towards personal expenses=		Rs. 4,68,000/-

Loss of future income	=	Rs.9,36,000/-

However, with regard to the head 'loss of consortium', following the ratio laid down by the Hon'ble Apex Court in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC), the learned Tribunal has correctly fixed Rs.1,00,000/- towards loss of consortium. As the learned Tribunal has awarded reasonable compensation with regard to the other heads namely, loss of estate, love and affection to the child and funeral expenses, the same are confirmed as it is. The corrected calculation as per the above discussions are as follows:

Loss of future income	...	Rs.9,36,000/-
Loss of love and affection to the child	...	Rs.1,00,000/-
Loss of consortium	...	Rs.1,00,000/-
Loss of estate	...	Rs.1,00,000/-
Funeral expenses	...	Rs. 25,000/-

Total	...	Rs.12,61,000/-

Therefore, the claimants are entitled to the above said modified compensation with interest at the rate of 9% per annum, as against the sum of Rs.13,78,000/- awarded by the Tribunal, by way of making wrong calculation, as compensation.

8.It is represented that the Insurance Company has deposited the entire award amount as ordered by the Tribunal. As this Court has reduced the compensation, by way of making correct calculation, the Insurance Company is permitted to withdraw the balance amount. The first claimant is entitled to withdraw his respective share with interest, as apportioned by the learned Tribunal. As the second claimant is minor, her share shall be deposited in a Fixed Deposit in a Nationalised Bank, until she attains majority. However, the interest accrued on the minor share shall be withdrawn by her guardian father, once in three months.

9.With the above modifications, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Motor Accidents Claims Tribunal,
(Subordinate Judge), Neyveli.

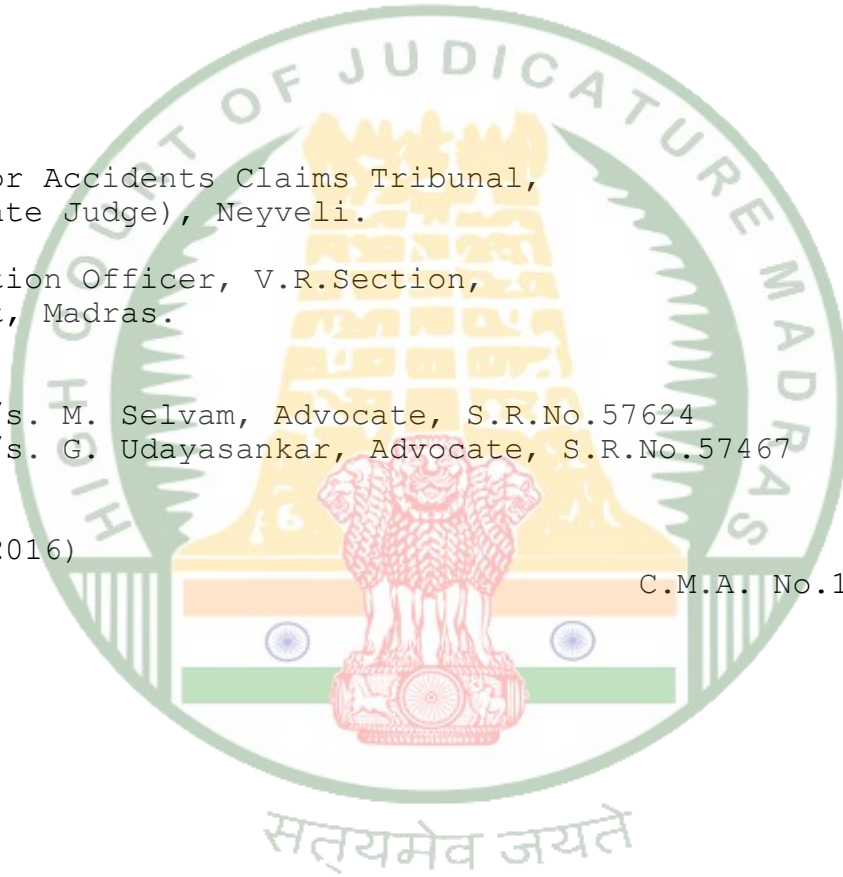
2.The Section Officer, V.R.Section,
High Court, Madras.

+1cc to M/s. M. Selvam, Advocate, S.R.No.57624

+1cc to M/s. G. Udayasankar, Advocate, S.R.No.57467

SM(CO)
EU(02/11/2016)

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