

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.208 of 2014

1. K.Vanitha ...1st Appellant/1st Petitioner
2. Minor K.Rathik Selvam ...2nd Appellant/2nd Petitioner
rep by his mother and next
friend K. Vanitha

Minor K.Rohith Kumar (Died)/3rd Petitioner

3. N.Selvaraj ...3rd Appellant/4th Petitioner

Vs.

1. K.Elumalai ...1st Respondent/1st Respondent

2. ICICI Lombard General
Insurance Co.Limited,
No.84, 85, Arihand Plaza,
Walltax Road, Park Town,
Chennai - 600 003. ...2nd Respondents/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles (Amendment) Act, 1988 against the award and
decree dated 28.06.2013 made in M.C.O.P.No.2438 of 2010 on the
file of Motor vehicle Accidents Claims Tribunal (In the Court of
Chief Judge, Small Causes) Chennai.

For Appellants : Mr.R.Thirugnanam
For respondents: Mr.R.Sreevidhya for R2

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH, J.)

This appeal has been filed by the claimants against the
judgment and decree dated 28.06.2013 made in M.C.O.P.No.2438 of
2010 on the file of the Motor Accident Claims Tribunal, (In the
Court of Chief Judge, Small Causes) Chennai, claiming enhanced
compensation.

2. It is a case of fatal accident. On 11.04.2010 at about 13.15 hours, while the deceased was riding the motor cycle bearing Registration No.TN-01-AE-8904 on the GNT Road, Moolakadai near Union Bank from east to west, the lorry bearing Registration No.AP-03-W-6660 driven in a rash and negligent manner dashed on the rear side of the motor cycle, due to which, the motor cyclist/deceased fell down and the lorry ran over the deceased and he died on the spot.

3. The claimants/ wife, son and father of the deceased have filed a claim petition in MCOP.No.2438 of 2010 seeking compensation of Rs.27,00,000/-. In support of the claim, the wife of the deceased examined herself as P.W.1, one Dillibabu, stated to be an eye witness to the accident was examined as P.W.2 and one Senthilkumar who was working along with the deceased was examined as P.W.3 and Exhibits P1 to P12 were marked. No one was examined and no document was marked on the side of the respondents.

4. The Tribunal, after taking note of the oral and documentary evidence held that the accident had happened only due to the rash and negligent driving by the driver of the lorry and therefore, fastened the liability on the owner and insurer of the lorry/ 1st and 2nd respondents therein and consequently, the insurer was directed to pay the compensation.

5. Accordingly, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.N o.	Head	Amount granted by the Tribunal
1	Loss of Dependency	Rs.7,95,600/-
3	Transport and Funeral expenses	Rs.10,000/-
4	Loss of estate	Rs.10,000/-
5	Loss of consortium	Rs.10,000/-
	Total	Rs.8,25,600/-

Aggrieved by the above award, the present appeal has been filed by the claimants for enhanced compensation.

6. Heard the learned counsel for the claimants and the learned counsel appearing for the Insurance Company.

7. According to the learned counsel appearing for the claimants, the quantum of the award is on the lower side and the award passed is without taking into consideration the actual income of the deceased. He further submitted that the deceased was aged 28 years at the time of death and 50% of his income ought to have been added towards future prospects and hence,

the amount awarded on the head of loss of dependency has to be enhanced. He further submitted that the amount awarded towards loss of consortium is very meagre which needs enhancement and also the compensation awarded under the other heads are also on the lower side and requires to be enhanced.

8. Per contra, learned counsel appearing for the Insurer submitted that the quantum of the award is on the higher side and the actual income of the deceased has not been properly proved and the multiplier adopted is also on the higher side. Hence, the compensation awarded has to be reduced.

9. The accident in question is not in dispute and also the age of the deceased is not disputed. It appears the Tribunal has taken the income of the deceased as Rs.5500/- per month. The salary certificate said to have been produced shows that the deceased was working as a Marketing Executive in Unicare System and was earning a sum of Rs.9800/- per month. P.W.3, a co-employee has been examined in this regard. In the above scenario, the income of the deceased having been proved by the oral and documentary evidence by the claimants, in the absence of any contra evidence, the income arbitrarily fixed by the Tribunal at Rs.5500/- per month cannot be sustained. Accordingly, this Court fixes the income at Rs.9000/- per month. Further having regard to the age of the deceased, the multiplier of 18 adopted is appropriate. Accordingly, while deducting 1/3rd towards his personal expenses from the income of Rs.9000/- and adding 50% towards future prospects, the pecuniary loss is quantified at Rs.19,44,000/- (9000 x 12 x 18). Insofar as loss of consortium is concerned, the Tribunal has awarded Rs.10,000/- which in our opinion is very meagre. Therefore, we award a sum of Rs.50,000/- towards loss of consortium. Insofar as the amount of Rs.10,000/- awarded towards "Loss of Estate", the same stands confirmed and this Court award a sum of Rs.50,000/- towards loss of love and affection. This Court, keeping in mind the cost of living index as also the expenses that would be incurred in performing the religious rites, enhances the compensation awarded under the head "Transport & Funeral Expenses" to Rs.25,000/-. There is no serious objection in respect of the interest granted at 7.5 % per annum. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Dependency	Rs.7,95,600/-	Rs.19,44,000/-
2	Transport and Funeral expenses	Rs.10,000/-	Rs.25,000/-

Sl. No	Head	Amount granted by the Tribunal	Amount awarded by this Court
3	Loss of love and affection	Rs.10,000/-	Rs.50,000/-
4	Loss of consortium & loss of estate	Rs.10,000/-	Rs. 50,000/- + Rs.10,000/-
	Total	Rs.8,25,600/-	Rs.20,79,000/-

10. Accordingly, Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The award of the Tribunal is enhanced from to Rs.8,25,600/- to Rs.20,79,000/-.

(ii) Out of the award amount modified by this Court, the first claimant/ wife of the deceased is entitled to a sum of Rs.10,00,000/- and the second claimant/son of the deceased is entitled to a sum of Rs.9,00,000/- and the fourth claimant/father of the deceased is entitled to a sum of Rs.1,79,000/-. (The third claimant/minor son of the deceased died during the pendency of the proceedings).

(iii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iv) The 2nd respondent/ Insurer is directed to deposit the entire award amount granted by this Court along with accrued interest and costs within a period of three months from the date of receipt of a copy of this order to the credit of M.C.O.P.No.2438/2010 on the file of the Chief Judge, Court of Small Causes, Chennai.

(v) On such deposit being made, the first and fourth claimants are permitted to withdraw the award amount as per the apportionment ordered by this Court above.

(vi) The share of the minor / 2nd claimant shall be invested in Fixed Deposit in any one of the Nationalised Banks initially for a period of three years and the same shall be renewed periodically till the 2nd claimant attains majority. The interest accrued on the share of the minor 2nd claimant shall be paid to 1st

claimant/ mother of the minor 2nd claimant once in three months till the 2nd claimant attains majority.

(vii) There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

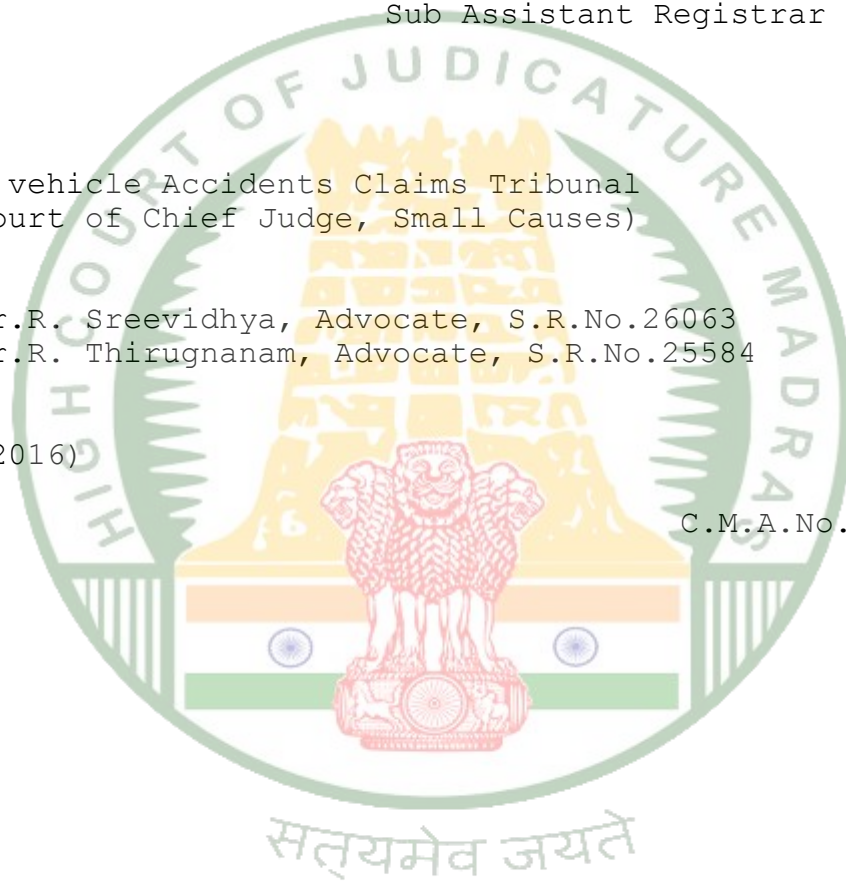
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To

The Motor vehicle Accidents Claims Tribunal
(In the court of Chief Judge, Small Causes)
Chennai.

+1cc to Mr.R. Sreevidhya, Advocate, S.R.No.26063
+1cc to Mr.R. Thirugnanam, Advocate, S.R.No.25584

AD(CO)
EU(29/07/2016)

C.M.A.No.208 of 2014



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