

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM:

THE HONOURABLE MRS. JUSTICE. PUSHPA SATHYANARAYANA

CMA.No.161 of 2017

1. Mrs. Anandhi
- 2 . Jothi (minor)
- 3 . Premkumar (minor)
(minors 2 & 3 are represented by their mother and
next friend first petitioner)
- 4 . Ammaniammal Appellants

//vs//

- 1 . Kanchana
- 2 . The New India Assurance Company Ltd.
No.45, Moore Street,
Parrys, Chennai-01. Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree in M.C.O.P.No.1049 of 2009 dated 24.02.2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court (II Fast Track), Poonamallee, Thiruvallur District.

For Appellant : M/s P.Selvaraj,
K.Varadhakamaraj
S.Karthick

For 1st Respondent : Mr.J.Chandran

For 2nd respondent : Exparte before Tribunal

J U D G M E N T

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, in M.C.O.P.No.1049 of 2009, dated 24.02.2011, on the file of the Motor Accident Claims Tribunal, Additional District Court (II Fast Track), Poonamallee, Thiruvallur District, the claimants have come forward with this Civil Miscellaneous Appeal seeking enhancement.

2. On 13.12.2009 at about 12.30 p.m. one Lavakumar, husband of the first claimant, father of the second and third claimants and son of fourth claimant, aged about 29 years, who was working as machine operator was riding his bi-cycle at Vandavasi Road, near Thenvanakkambadi Village bus stand and at that time, the driver of the first respondent-vehicle drove the vehicle in a rash and negligent manner and hit the said Lavakumar, due to which, he died on the spot. Hence, the claimants had filed a claim petition in M.C.O.P.No.1049 of 2009 seeking compensation for a sum of Rs.15,00,000/-.

3. The Tribunal, on consideration of oral and documentary evidence, has awarded a sum of Rs.4,82,000/-, with interest @ 7.5% per annum from 31.12.2009 till the date of deposit.

4. The break-up details in M.C.O.P.No.1085 of 2013 are as follows:

Loss of Income (2,000x 12 x 18)	-	Rs. 4,32,000
Consortium to the first claimant	-	Rs. 20,000
Love and affection for 2 nd and 3 rd respondents	-	Rs. 20,000
Transport expenses	-	Rs. 5,000
Funeral expenses	-	Rs. 5,000
Total	-	Rs.4,82,000/-

5. The learned Counsel for the appellants/claimants submits that the monthly income of the deceased fixed by the Tribunal is very low and it has to be fixed at Rs.10,000/- per month, as he had worked as a machine operator and compensation for future prospects also has to be added. Further, the learned counsel submits that the deduction of 1/3rd income for personal expenses is wrong and that the Tribunal ought to have deducted only 1/4th income, since there are four dependents. Also the award towards "consortium" to be enhanced and as such, the amount of compensation awarded by the tribunal needs to be enhanced.

6. Based on the arguments put forth by the learned Counsel for the appellants, the income of the deceased per month is fixed at Rs.5,000/- and after adding of 30% as future prospects i.e. Rs.5,000+1500, a sum of Rs.6,500/- is fixed as income of the deceased per month. As there are four dependents, 1/4th amount of above said Rs.6,500/- is deducted for personal expenses of the deceased and accordingly a sum of Rs.4,875 (6500-1625=4,875) is fixed as monthly income and by calculating the annual income with multiplier of 17, a sum of Rs.9,94,500/-

(4875x12x17) is fixed under the head of loss of income. So far as the head of "Consortium" is concerned, the Tribunal had awarded only a sum of Rs.20,000/- to the first claimant. Considering the fact that the first claimant, the widow of the deceased is only 32 years old, a sum of Rs.1,00,000/- is awarded. Under the Head "Love and affection", for two children, the Tribunal fixed as Rs.20,000/-, which should be Rs.1,00,000/-. Under the head "Funeral expenses" and "Transport expenses", the amount awarded by the Tribunal is enhanced from Rs.10,000/- to 15,000/-.

7. In fine, the quantum of compensation awarded by the Tribunal is enhanced from Rs.4,82,000 /- to Rs.12,59,500/-, as follows:

Loss of income (4875x12x17)	-	Rs. 9,94,500/-
Consortium to the first appellant	-	Rs. 1,00,000/-
Loss of Love and affection	-	Rs. 1,50,000/-
Funeral Expenses and Transport Expenses-		Rs. 15,000/-

Total	-	Rs.12,59,500/-

8. On going through the papers, it is seen that there was a delay of 1196 days in filing the appeal and while condoning the delay, the claimants have agreed for waiving of interest for the default period and hence the appellants are not entitled to any interest for the said period.

9. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the Compensation from Rs.4,82,000/- to Rs.12,59,500/- with interest @ 7.5% per annum from the date of petition till the date of deposit and the appellants/claimants are not entitled to any interest for the said delayed period in filing the appeal papers. The claimants 1 to 4 are entitled for their proportionate shares in the total award amount and the claimants 1 and 4 are permitted to withdraw their respective shares and the 2nd and 3rd claimants, being minors, their respective shares are directed to be invested in any one of a Nationalised Bank under a Fixed Deposit Scheme for a period of 6 months which would be renewed periodically until they attain majority and the 1st appellant, being the Natural Guardian of the minor 2nd and 3rd claimants, she is permitted to withdraw the interest accrued thereon in the said Fixed Deposit Account and the same should be used for the welfare of the minor 2nd and 3rd claimants. The Appellants/claimants are directed to pay additional court fee for the enhanced amount, if any.

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

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

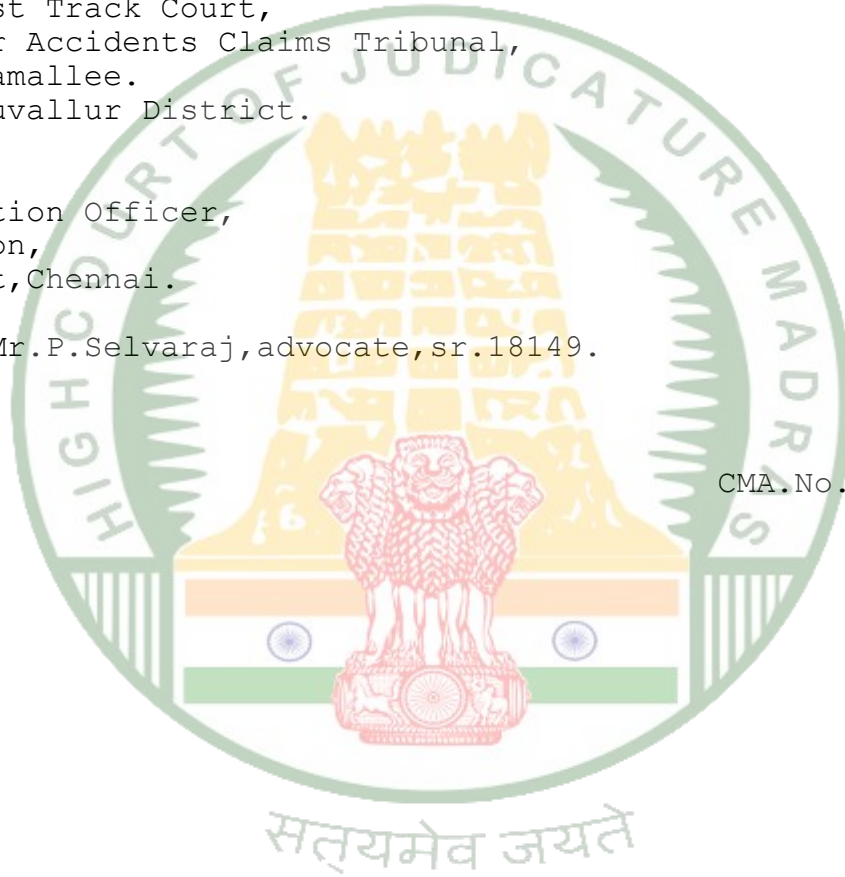
1. The Additional District Judge,
II Fast Track Court,
Motor Accidents Claims Tribunal,
Poonamallee.
Thiruvallur District.

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

+1 cc to Mr.P.Selvaraj,advocate,sr.18149.

kji(co)
krd 17/4

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