

IN THE HIGH COURT OF JUDICATUE AT MADRAS
DATED 18.01.2017
CORAM
THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 2757 of 2015

Chinna Thambi (since deceased)
1. Sheela
2. Hebshebshyla .. Appellants /Petitioners 2
and 3
(Cause title accepted vide order
dated 18.09.14 in M.P.No.1/2014 in
CMA SR No.78349/2014)
versus

1. Paulraj
(R1 was set exparte before the trial court)
2. Reliance General Insurance Co., Ltd.,
Shri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem- 636 004 .. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the Judgment and Decree dated 22.03.2013 made in
MACT .O.P.No.35 of 2011 on the file of the Motor Accidents
Claims Tribunal (Subordinate Court), Perundurai.

For appellant : Mr.C.Munusamy
For respondents: Mr.K.Murthy (R2)
R1 set exparte

J U D G M E N T

The deceased, Edwin Thangadurai, aged about 29 years,
earning a sum of Rs.15,000/- per month, died in an accident that
took place on 10.12.2010. The father (since deceased) and
married sisters of the deceased filed claim petition, before the
Tribunal claiming compensation in a sum of Rs.10,00,000/-.

2. As against the claim made, the Tribunal, on consideration
of oral and documentary evidence, awarded a sum of
Rs.2,20,000/-. The details of the award passed are as under:

Loss of income (3000x12x5)	Rs.1,80,000/-
Loss of Love and affection to the first claimant	Rs. 10,000/-

Loss of Love and affection to the claimants 2 and 3 (Rs.10,000 each)	Rs. 20,000/-
Funeral Expenses	Rs. 5,000/-
Transportation	Rs. 5,000/-

Total	Rs.2,20,000/-
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3. Aggrieved that the compensation granted is inadequate, the claimants have filed the present appeal.

4. Before filing appeal, the first claimant, who is the father of the deceased, also died and the other claimants, who were already on record, filed the appeal, as the legal heir of the deceased..

5. The learned counsel for the appellant submits that the Tribunal ought to have adopted the multiplier, based on the age of the deceased and not based on the age of the claimant. In support of this contention, he has relied upon the decision of the Hon'ble Supreme Court, in Amrit Bhanu Shali & Ors. - Vs - National Insurance Company Limited & Ors. (2012 11 SCC 738).

6. It is further contended by the learned counsel for the appellants/claimants that though salary certificate has been filed to substantiate the monthly income of the deceased at Rs.15,000/-, however, the Tribunal has not appreciated the evidence in proper perspective, but has erroneously fixed monthly income of the deceased at Rs.3,000/- and quantified the compensation and, therefore, the same needs to be enhanced.

7. Per contra, the learned counsel for the 2nd respondent submits that the claimants are the sisters of the deceased who are married and, therefore, the contribution of the deceased towards the married sisters would be less and, therefore, the quantification needs to be confirmed.

7. This Court gave its anxious consideration to the contentions advanced by the learned counsel for the parties and perused the materials available on record as also the award passed by the Tribunal.

8. Insofar as the contention of the 2nd respondent that the claimants are married sisters of the deceased and, therefore, they are not dependent on the deceased and, therefore, the loss of dependency would be less is concerned, the said contention is liable to be rejected for the simple reason that though the claimants are married sisters of the deceased, insofar as compensation in cases of motor accidents are concerned, it is not based on the actual dependency, but more on notional dependency. The deceased, being an unmarried person, would definitely have helped his married sisters in times of need and, the untimely death of the deceased has disrupted the help and support which the claimants would have received. Therefore, loss of dependency has to be calculated on a lesser side cannot be sustained.

9. Insofar as the contention of the claimants relating to fixation of income is concerned, though it is the stand of the claimants that proof of income has been filed and, therefore, the Tribunal ought to have fixed the income as per the

documentary evidence, the said contention cannot be accepted for the reason that the proof submitted by the claimants need not be accepted by the Tribunal in toto. The Tribunal has thought it fit to fix the income on an analysis of the documents available on record and, therefore, the fixation in that backdrop cannot be said to be bad. However, a perusal of the basis on which the income has been fixed, reveals that the Tribunal has fixed the income on a very lower side. This Court, on appreciation of the matter, feels that the monthly income could safely be fixed at Rs.5,000/-. Further, adding 50% towards the future prospective increase in income of the deceased and deducting 50% towards the personal expenses of the deceased, the monthly contribution to the family is quantified at Rs.3,750/-.

10. Quantification of compensation has to be made on the basis of the monthly contribution of the deceased. However, it is contended by the learned

counsel for the claimants that the multiplier has been wrongly adopted based on the age of the claimants; rather it should have been based on the age of the deceased. In this regard, reliance was placed on the decision of the Supreme Court in Amrit Bhanu Shali's case (supra), wherein the Apex Court held that multiplier has to be determined based on the age of the deceased not not based on the age of the dependants. The relevant paragraph is extracted hereunder:

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the Dependant. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of the compensation.

In Sarla Verma this Court has held that the multiplier to be used should be as mentioned in column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 bringing it down to the multiplier of 13."

11. A perusal of the order passed by the Tribunal reveals that the Tribunal has fixed the multiplier based on the age of the claimants, which is not sustainable. The multiplier should have been fixed based on the age of the deceased. In such view of the matter, this Court feels that the proper multiplier to be adopted in the case on hand is 17. Accordingly, the loss of dependency is quantified at Rs.7,65,000/= (Rs.3,750 X 12 X 17).

12. Insofar as compensation towards loss of love of affection is concerned, the Tribunal has awarded a sum of Rs.10,000/= to each of the claimants under the said head. However, this Court feels that the said amounts requires enhancement and, accordingly, the compensation towards loss of love and affection is quantified at Rs.25,000/= to each of the claimants.

13. Insofar as funeral expenses is concerned, the Tribunal has awarded a sum of Rs.5,000/-, which is on the lower side. This Court is of the view that a sum of Rs.20,000/- towards funeral expenses would be a just and reasonable compensation. The compensation towards transport expenses at Rs.5,000/- is confirmed.

17. In the result, the appeal is allowed enhancing the compensation from Rs.2,20,000/- to Rs.8,65,000/= with interest at 7.5% p.a. from the date of petition till date of deposit except for the default period. No costs.

18. The ratio of apportionment as made by the Tribunal is confirmed. However, since it is reported that the 1st appellant died before filing the appeal, the share of the 1st claimant, viz., the father of the deceased, shall be equally shared between claimants 2 and 3, viz., the sisters of the deceased.

19. The 2nd respondent/insurance company is directed to deposit the compensation as ordered by this Court above along with interest at 7.5% p.a. from the date of petition till date of deposit along with costs as ordered by the Tribunal to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the share of the respective claimants as per the apportionment made above, directly to their bank account through RTGS, within a period of two weeks thereafter. The Court fee due shall be paid by the appellants, before obtaining copy of the Judgment.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Note:-Additional court fee filed
21/8/18 vide USR 65197 enclosed

To

1. Motor Accidents Claims Tribunal
(Subordinate Court), Perundurai.

2. The Section Officer, VR Section,
High Court, Madras.

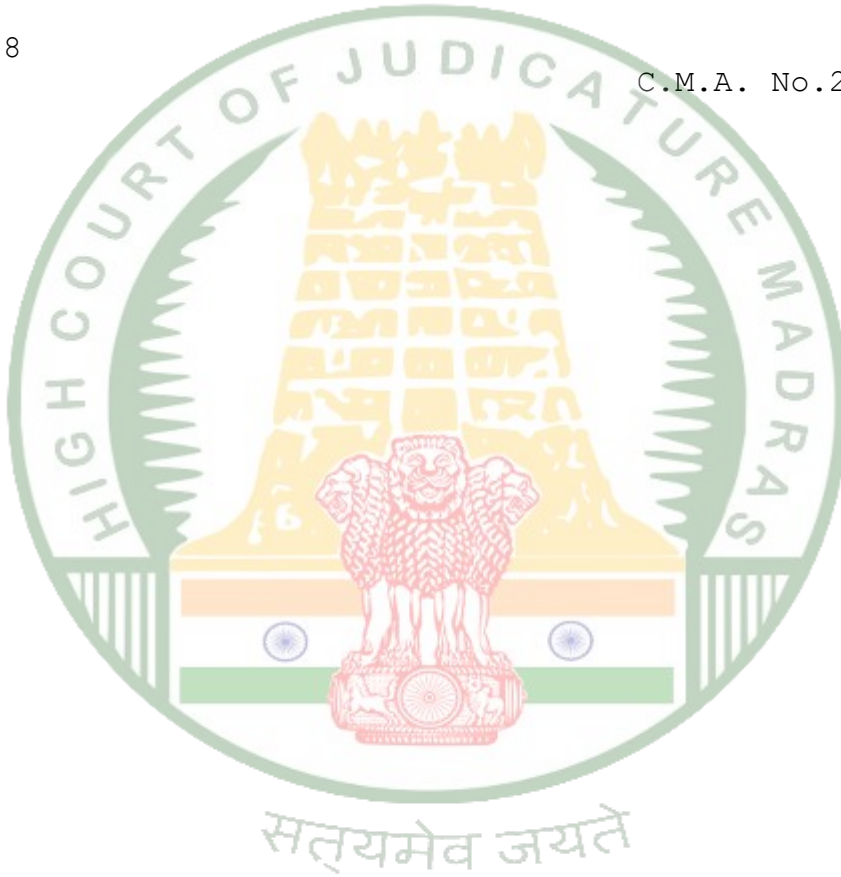
+lcc to Mr.K.Moorthy, Advocate SR.NO.3469

+lcc to M/s.C.Munusamy, Advocate SR.NO.3381

GP(CO)

sm:4.9.2018

C.M.A. No.2757 of 2015



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