

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1982 of 2017

1. Sivagami
2. Minor.Gowtham
3. Minor. Kavya
(Minors 2 and 3 are represented through
next friend and mother, 1st appellant)
4. Indira ... Appellants / claimants

..Vs..

1. Balasubramanian
(R-1 set exparte before the Tribunal, hence,
notice for R-1 may be dispensed with, for
the timebeing)
2. National Insurance Co. Ltd.,
Divisional Office-7, 50 Janpath,
New Delhi 110 001 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 16.02.2017, passed in M.C.O.P.No.541 of 2010 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Sankari.

For Appellant : Mr. C.Kulanthaivel
For Respondents : Mrs. R.Sreevidhya, for R-2,
R-1 exparte.

J U D G M E N T

The first claimant as wife, the second claimant as son, the third claimant as daughter and the fourth claimant as mother have filed the claim petition for compensation in respect of death of Jayaprakash.

2. The deceased Jeyaprakash, aged 26, a flower vendor, earning a sum of Rs.15,000/- per month, died in an accident on 07.07.2010.

3. The Legal Representatives of the deceased claimed a sum of Rs.25,00,000/- as compensation. As against the claim made, the Tribunal has passed an award for a sum of Rs.18,62,000/- as compensation. Challenging the quantum of compensation as inadequate, the claimants have filed this appeal.

4. The learned counsel appearing for the appellants / claimants would submit that the monthly income fixed at Rs.6,000/- per month, is low, having regard to the fact that the deceased had been maintaining the aged mother, young wife as well as two minor children. It is claimed that the deceased was a multi talented person and he could have earned at least Rs.7,500/- per month, in order to support the family and that ignoring the evidence of P.Ws.1 and 2, the monthly income fixed at Rs.6,000/- is extremely low. It is contended that, in any event, relying upon the decision reported in 2014 (1) TNMAC 459 (Syed Sadiq etc., v. Divisional Manager, United India Insurance Co. Ltd.,) where the year of accident was 2008, for a vegetable vendor, the monthly income have been fixed at Rs.6,500/- per month.

5. In order to appreciate the contentions raised, it is necessary to find out the details of the award passed and the parameters taken into consideration by the Claims Tribunal, in fixing the loss of income.

6. A perusal of the award passed by the Claims Tribunal would go to show that the Tribunal has relied upon the evidence of P.W.1, the wife, in order to assess the monthly contribution of the deceased. The wife has admitted, in her evidence that, the deceased was not doing flower vending, on his own accord, but he was only doing a coolie work and he would have only 20 days work in a month. Only based upon the evidence of P.W.1, the monthly income has been fixed. The Tribunal has also considered the case of Syed Sadiq, supra, and only relying upon the evidence of P.W.1, the monthly income has been fixed at Rs.6,000/-. Therefore, there is no scope for interference, so far as the monthly income of the deceased is concerned.

7. The personal and living expenses have been deducted only by 1/4th, relying upon the decision reported in 2012 ACJ 2002 (Amrit Bhanu Shali and others v. National Insurance Co. Ltd., and others). The learned counsel appearing for the appellants / claimants would point out that, at the time of accident, the second and third claimants were minors, aged 6 and 4 respectively and at the young age, the minor children would have been under the guidance and support of the father and at the age when they will not be recognizing the father's face, they have lost the support of love and affection and therefore, the love and affection should be enhanced to at least, in respect of two

minor children, aged 6 and 4 respectively. Considering the age of the minors, at the time of death of the father, the loss of love and affection alone is enhanced to Rs.1,25,000/- to claimants 2 and 3 / appellants 2 and 3 herein. The award passed by the Claims Tribunal under other heads, namely, pecuniary loss, loss of consortium, loss of love and affection to the wife and mother, funeral expenses and transport expenses at Rs.13,77,000/-, Rs.1,00,000/-, Rs.1,50,000/-, Rs.25,000/- and Rs.10,000/-, respectively, are reasonable and hence, the same are confirmed as such.

8. In the result, this Civil Miscellaneous Appeal is allowed, by enhancing the total amount of compensation from Rs.18,62,000/- to Rs.19,12,000/-, which is payable with interest at 7.5% per annum from the date of petition till the date of deposit.

9. The second respondent / Insurance Company is directed to deposit the enhanced compensation amount, as awarded by this Court, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the wife / first claimant / first appellant herein is entitled to a sum of Rs.6,62,000/-, the minor son and daughters / second and third claimants / second and third appellants are entitled to a sum of Rs.5,25,000/- each and the mother / fourth claimant / fourth appellant herein is entitled to a sum of Rs.2,00,000/-, with the proportionate interest. It is made clear that the claimants are not entitled for any interest for the default period. The majors claimants are permitted to withdraw their shares of compensation and the share of the minors shall be deposited, in any one of the nationalized banks, in a Fixed Deposit, till they attain majority and the interest accrued thereon shall be withdrawn by the guardian of the second and third claimants, directly from the Bank and shall be used for the welfare of the minors. The excess court fee, for the enhanced compensation amount, shall be paid by the claimants before receiving the copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal cum Subordinate Court, Sankari.

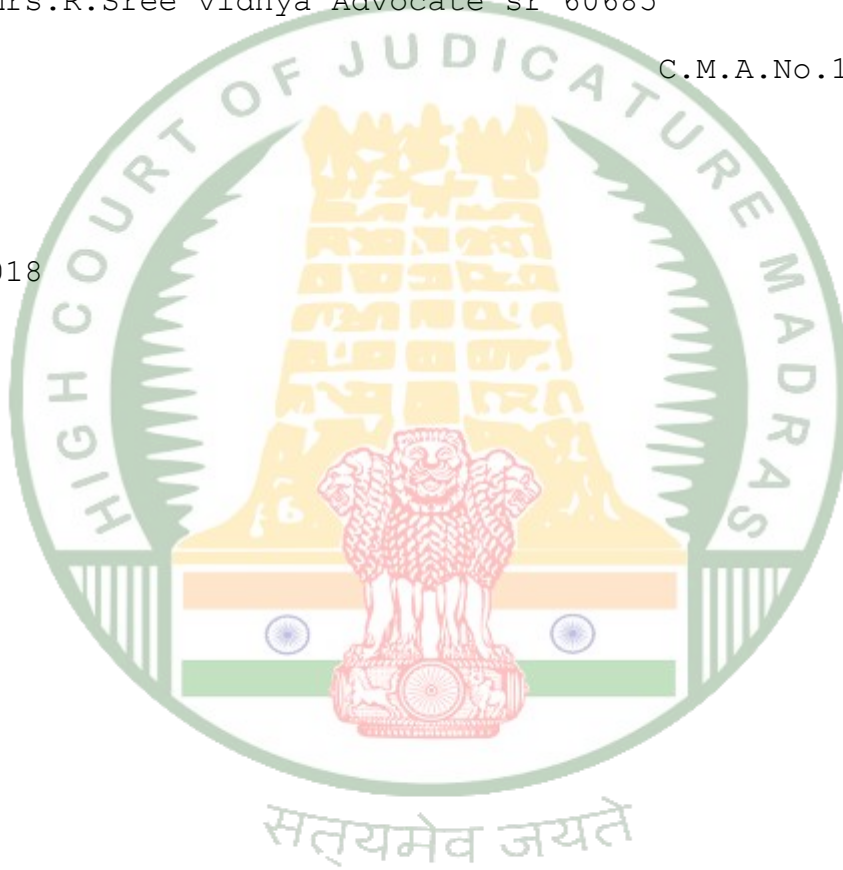
2. The Section Officer, V.R.Section,
High Court, Madras

+1 cc to Mr.C.Kulanthaivel Advocate sr 60464

+1 cc to Mrs.R.Sree vidhya Advocate sr 60685

C.M.A.No.1982 of 2017

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