

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.2009 of 2017

1. Kogila
2. Mohanavel
3. Murali
4. Rani
5. Kalaiyarasan
6. Jeeva

... Appellants/Claimants

..vs..

1. Saravanan
2. Reliance General Insurance Company Ltd.,
Branch Office, 3rd Floor,
No.29 North Usman Road,
T.Nagar, Chennai ... Respondents/Respondents
(Seeking enhancement of quantum alone. Hence R-1 remained
exparte before the Tribunal, hence notice may be
dispensed with to him)

Appeal filed under Section 173 of Motor Vehicles Act 1988,
against the order and Decree, dated 01.07.2015 made in
M.C.O.P.No.69 of 2014 on the file of the Motor Accident Claims
Tribunal (Additional District Judge), Namakkal.

For Appellants : Mr.Ma.P.Thangavel
For Respondents : Mr. K.Moorthy, for R-2,
Exparte, R-1

J U D G M E N T

This appeal has been filed by the claimants, seeking
enhancement of the award passed by the Claims Tribunal.

2. The claimants, numbering six, have filed the claim
petition for compensation in respect of the death of one
Kanagaraj. The deceased Kanagaraj was aged 45 at the time of
accident and who had been employed as a Mason and he was earning
more than Rs.15,000/- per month and died in an accident that
took place on 01.08.2013. Claiming that, the first claimant as
wife, the second and third claimants as sons of the first wife
and the fourth claimant as the second wife and the fifth and
sixth claimants as children of the second wife, the claim
petition has been filed.

3. The Claims Tribunal, after consideration of the materials, has passed an award in favour of all the claimants, excepting the fourth claimant / second wife. The award has been passed for a sum of Rs.15,94,800/- under the following breakup details:

Loss of income	-	Rs.10,64,784/-
(Rs.6,338/- x 12 x 14)		
Loss of love and affection to		
Claimants 2, 3, 5 and 6 @		
Rs.1,00,000/- each	-	Rs. 4,00,000/-
Funeral expenses	-	Rs. 25,000/-
Loss of estate	-	Rs. 1,00,000/-
Transportation expenses	-	Rs. 5,000/-

		Rs.15,94,784/-

(rounded off to)	-	Rs.15,94,800/-

4. While calculating the loss of dependency, the Tribunal has fixed the monthly income at Rs.6,500/- and awarding 30% towards future prospective increase in income, it has fixed the monthly income at Rs.8,450/-. Deducting 1/4th towards the personal expenses, the monthly contribution has been assessed at Rs.6,338/-.

5. The learned counsel appearing for the appellants / claimants would submit that the monthly income should have been fixed at Rs.12,000/- based upon the Minimum Wages payable to the Mason during the relevant point of time.

5.1. Whereas the learned counsel appearing for the second respondent / Insurance Company would submit that the future prospective increase in income could be only 15% and not 30% as contended by the learned counsel for the appellants / claimants.

5.2. Relying upon the decision reported in 2015 (1) TN MAC 161 (SC) (Neeta v. Divisional Manager, MSRTC, Kolhapur), it is pointed out that in case of a carpenter, the Supreme Court has taken the monthly income at Rs.12,000/- as fixed by the State Government, as minimum wages, under the Minimum Wages Act. It is pleaded that on par with the above case, the income of the deceased herein who was doing the skilled job of Mason should also be fixed at Rs.12,000/-. The learned counsel for the Insurance Company would point out that even though the claimant claims the age of the deceased as 45, as per the postmortem report and the driving licence, the age of the deceased is 52 and therefore, the multiplier of 14 cannot be adopted and the 11 alone can be adopted.

5.3. The contention of both the learned counsel is acceptable. Fixing the monthly income at Rs.12,000/-, adding 15% towards the future prospective increase in income, deducting 1/4th towards the personal expenses and adopting the multiplier of 11, the loss of dependency would be Rs.13,66,200/- (Rs.12,000/- x 12 x (15%) x 11 (-) 1/4).

6. It is contended by the learned counsel for the second respondent / Insurance Company that the loss of consortium cannot be Rs.1,00,000/- when the first claimant was aged 43 years at the time of accident. Therefore, considering the said submission, it is awarded only at Rs.50,000/-.

6.1. There is no ground made out for the award of loss to estate. Therefore, the amount of Rs.1,00,000/- claimed for loss to estate cannot be granted.

6.2. The loss of love and affection for four persons, who are already grown up, is estimated at Rs.4,00,000/-. Therefore, the amount awarded under the head of loss of love and affection is reduced to Rs.3,00,000/-. The amount awarded under the Transportation expenses at Rs.5,000/- is reasonable and hence, the same is confirmed as such.

7. In view of the above, the re-structured breakup details of the award of compensation reads thus:-

Future loss of income	-	Rs.13,66,200/-
(Rs.12,000/- x 12 x (15%) x 11		
(-) 1/4)		
Loss of consortium	-	Rs. 50,000/-
Loss of love and affection to		
Claimants 2, 3, 5 and 6	-	Rs. 3,00,000/-
Funeral expenses	-	Rs. 25,000/-
Transportation expenses	-	Rs. 5,000/-

		Rs.17,46,200/-

8. In the result, the award is enhanced from Rs.15,94,800/- to Rs.17,46,200/- and this amount of compensation shall be deposited less the amount already deposited along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. The claimants are not entitled to the interest for the default period. The share of the compensation amount shall be apportioned between the appellants / claimants, as per the ratio of proportion made by the Claims Tribunal. On such deposit being made by the second respondent / Insurance Company, (since all the appellants / claimants are majors), the claimants are permitted to withdraw their shares of compensation along with proportionate interests.

The excess court fee shall be deposited by the claimants / appellants before receiving the copy of this judgment.

9. This Civil Miscellaneous Appeal is allowed. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

srk

To

1. The Additional District Judge
Motor Accident Claims Tribunal, Namakkal.

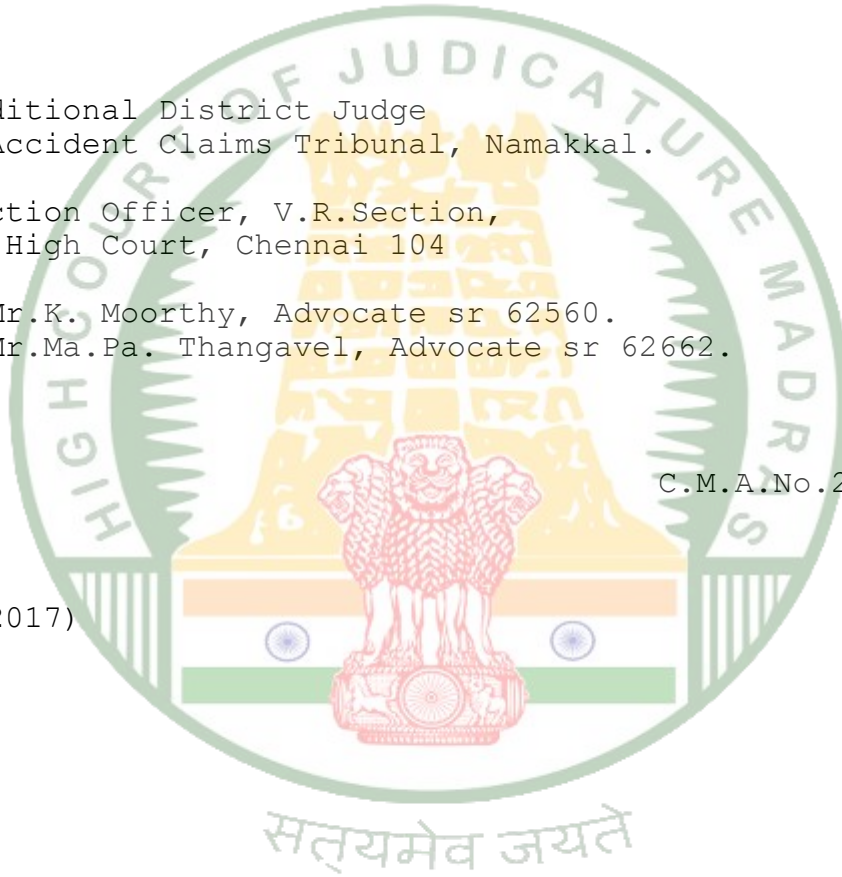
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

+1 cC to Mr.K. Moorthy, Advocate sr 62560.

+1 CC to Mr.Ma.Pa. Thangavel, Advocate sr 62662.

C.M.A.No.2009 of 2017

KJI (CO)
SP(18/12/2017)



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