

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2084 of 2017

1. Saraswathy
 2. V.Sivasankari (Minor)
 3. V.Sangeetha (Minor)
 4. V.Deva (Minor)
- (Minor petitioners are rep by their mother and next friend the first petitioners herein)
5. Govindammal Appellants

Vs.

- 1.P.Jayabal
2. Royal Sundaram Alliance Insurance Co.Limited,
Sorrento Building, 1st Floor,
No.6, Lattice Bridge Road,
Adyar, Chennai-20. Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed in M.C.O.P.No.4373 of 2013, dated 22.12.2015, on the file of Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

सत्यमेव जयते

For Appellants : Mr.K.Varadhakamaraj

For Respondents: Mr. Srinivasa Ramalingam for R-2

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J U D G M E N T

The first claimant as wife, claimants 2 to 4 as children and 5th claimant as the mother, have filed the claim petition for compensation, in respect of death of one Velu, claiming a sum of Rs.20,00,000/- as compensation.

2. The deceased Velu was aged 34, employed as driver of the Tractor Tanker, doing independent profession, earning a sum of Rs.1,000/- per day, died in an accident on 23.07.2012.

3. The Tribunal, by the judgement, dated 22.12.2015, passed in MCOP No.4373 of 2013, has awarded compensation for a sum of Rs.14,46,250/- under the following break up details:-

Loss of income	-	Rs. 13,16,250/-
Loss of Consortium	-	Rs. 50,000/-
Loss of love and affection	-	Rs. 50,000/-
Funeral Expenses	-	Rs. 25,000/-
Transport	-	Rs. 5,000/-

Total	-	Rs. 14,46,250/-

4. Raising the following contentions, the claimants have filed the appeal, challenging the quantum of compensation as inadequate.

5. The main grievance of the claimants are that, when the evidence has been let in to the effect that a) the deceased had been earning a sum of Rs.1,000/- per day, fixing the monthly income at Rs.6,500/- is grossly inadequate; b) the loss of consortium and loss of love and affection have not been adequately compensated when some of claimants are aged 11 (P-2), aged 9 (P-3), aged 7 (P-4),

6. A perusal of the award passed by the Tribunal would go to show that the loss of dependency has been arrived at, by fixing the monthly income at Rs.6,500/- and adding 50% towards the future prospective increase in income, the monthly income has been calculated at Rs.9,750/-; $1/4^{th}$ has been deducted towards the personal expenses and loss of pecuniary benefit has been arrived at Rs.9,750 x $\frac{3}{4}$ x 12 x 15 = Rs.13,16,250/-; Rs.50,000/- has been awarded towards loss of consortium to the first petitioner and Rs.50,000/- has been awarded to the remaining petitioners for loss of love and affection and Rs.25,000/- towards the funeral expenses and Rs.5,000/- towards Transport expenses, the total compensation has been arrived at.

7. The learned counsel for the appellant would submit that the monthly income should be fixed, including future earnings at Rs.12,000/-.

7.1 For the driver the monthly income at Rs.8,000/- is reasonable and it is not possible to maintain family consisting of 5 members, without even earning the minimum income of

Rs.8,000/- per month. Therefore the contention that the monthly income, including the future prospective increase in income, at Rs.12,000/- cannot be discarded. Considering the number of dependent maintained by the deceased and also considering the nature of the job, monthly income can be fixed at Rs.8,000 and 50% is added towards future prospective increase in income, the monthly would be Rs.12,000/-.

8. If that is taken into consideration, the loss of income would be Rs.16,20,000/- ($12,000 \times 3/4 \times 12 \times 15$). The loss of love and affection for each of the minors is awarded at the rate of Rs.1,00,000/- and it is fixed as Rs.3,00,000/- for P-2 to P-4. The loss of consortium awarded to the wife is at Rs.50,000/- and the loss of love and affection for the 5th petitioner is fixed at Rs.25,000/-. Awarding funeral expenses at Rs.25,000/-, the total amount is quantified at Rs.20,20,000/-.

9. In the result, this Civil Miscellaneous Appeal is appeal is partly allowed to the extent indicated above. Consequently, connected Civil Miscellaneous petition is closed. No costs.

9.1 The second respondent Insurance company is directed to deposit the entire amount of compensation amount, less the amount already deposited if any, with interest at 7.5 p.a from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of copy of this Judgement. The claimants are entitled to the compensation as apportioned by the Tribunal below. The mother and wife of the deceased are entitled to withdraw 50% of the deposited amount and the balance shall be deposited in a fixed deposit initially for a three years and renewable thereafter. The compensation payment to the minor claimants shall be kept in renewable fixed term deposit till the minor attain majority. The interest accrued on such fixed deposit shall be withdrawn by the guardian of the minor once in three months. The excess Court fee payable shall be paid by the claimants before receiving the copy of this Judgement.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

To

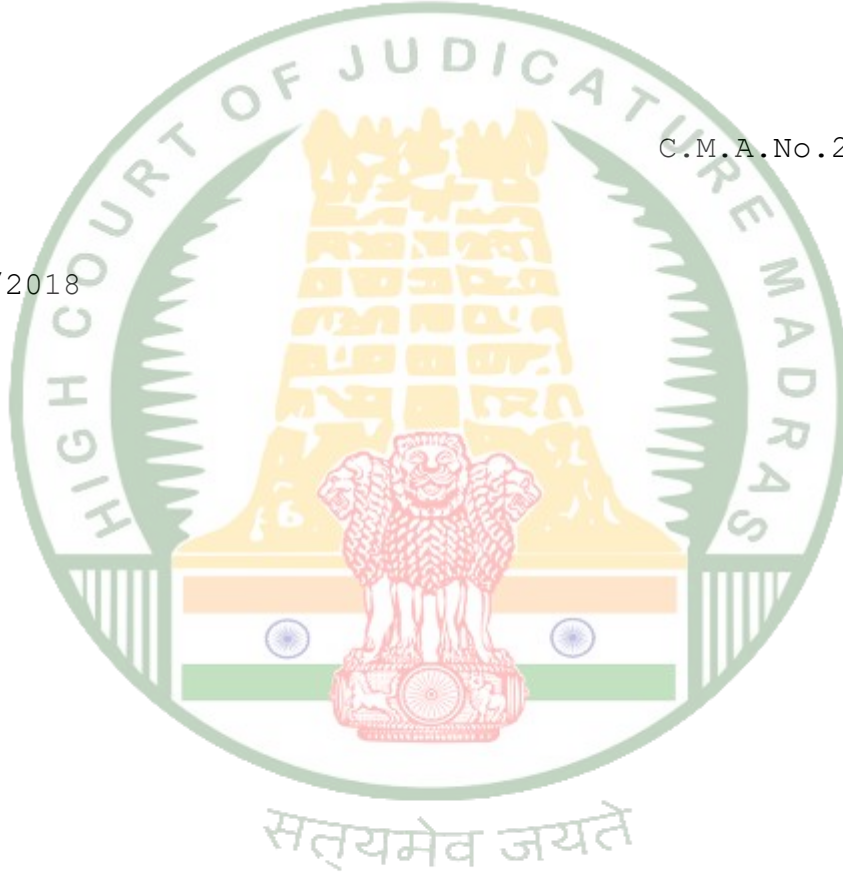
1.Motor Accident Claims Tribunal,
(Chief Small Causes Court), Chennai.

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

+1cc to M/S.K.Varadhakamaraj, Advocate sr.53396
+1cc to M/S.Srinivasa Ramalingam, Advocate Sr.53455

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