

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALAC.M.A.No.2207 of 2017

1. P.Bakkiyam
P.Ravi (died)
 2. P.Udhayakumar
 3. P.Pappathi
 4. P.Madeshwaran
 5. R.Mangayarkarasi
 6. Minor. Sudhanthira
 7. Minor. Dharanidharan
(R-6 and R-7 represented by their
guardian next friend / mother,
Mangayarkarasi)
- ... Appellants

..vs..

1. R.Ramasamy
 2. M/s. Cholanmandalam MS General Insurance
Company Limited,
"Dare House" NSC Bose Road,
Chennai
- ... Respondent
- (R-1 is set-exparte before the Tribunal, hence,
notice may be dispensed with in this Appeal)

Appeal filed under Section 173 of Motor Vehicles Act 1988,
against the decree and Judgment, dated 26.10.2015 made in MCOP
No.99 of 2012 on the file of the Motor Accident Claims Tribunal,
Principal District Judge, Namakkal.

For Appellants : Mr. Ma.Pa.Thangavel
For Respondents : Mr. N.Vijayaraghavan, for R-2
Exparte R-1.

J U D G M E N T

The first claimant as the wife, second, third and fifth claimants as sons, fourth claimant as daughter and after the death of the second claimant, claimants 6, 7 and 8, as Legal Representatives of the deceased, second claimant, have filed the claim petition for compensation, claiming a sum of Rs.10,00,000/-, in respect of death of Ponnusamy.

2. Ponnusamy, aged 57, at the time of accident, an Agriculturist and Cattle Merchant, earning a sum of Rs.10,000/- per month, died in an accident on 14.11.2001. At the time of accident, the deceased was travelling as a pillion rider in the TVS XL vehicle and at that point of time, the fatal accident is stated to have occurred.

3. The Tribunal has quantified the compensation at Rs.3,85,000/-. Taking monthly income at Rs.5,000/- and deducting 1/3rd towards the personal expenses, loss of dependency has been quantified at Rs.3,60,000/- (Rs.5,000/- x 12 x 9 (-) 1/3rd). Awarding funeral expenses at Rs.5,000/-, loss of love and affection

at Rs.10,000/- and loss of consortium at Rs.10,000/-, the total amount has been quantified at Rs.3,85,000/-. Challenging the award as grossly inadequate, the claimants have filed this Appeal.

4. The learned counsel for the appellants would submit that the Tribunal failed to consider 15% as the future prospective increase in income and the Tribunal ought to have deducted only 1/4th towards the personal expenses, as there are five dependents upon him; it is also claimed that loss of consortium awarded to the wife is also low.

5. In order to appreciate the contentions raised, it is necessary to consider the relevant evidence regarding the same.

6. The learned counsel for the appellants would submit that the monthly income of the deceased ought to have fixed at Rs.10,000/- and the future prospective increase in income also should be added to the extent of Rs.1,500/- and loss of dependency should be calculated.

7. Considering the age of the claimants, the monthly income could be fixed only at Rs.7,000/- and adding Rs.1,050/- (15%) towards the future prospective increase in income and deducting $\frac{1}{4}^{\text{th}}$ towards the personal expenses and adopting the multiplier of 9, the total loss of dependency would be Rs.6,52,050/- (rounded off to Rs.6,52,000/-) $(\text{Rs.7,000/-} + \text{Rs.1,050/-} : \text{Rs.8,050/-} \times 12 \times 9 (-) \frac{1}{4})$.

8. Considering the family circumstances in which the deceased had left the family of the deceased, the award passed under the heads of love and affection, funeral expenses, transport expenses and loss of consortium should have been awarded at a higher rate and therefore, the loss of love and affection is enhanced to Rs.2,00,000/-, funeral expenses at Rs.25,000/-, transport expenses at Rs.6,000/- and the loss of consortium at Rs.1,00,000/-. Thus, the total amount of compensation is quantified at Rs.9,83,000/-.

9. In the result, the appeal is allowed, by enhancing the quantum of compensation from Rs.3,85,000/- to Rs.9,83,000/-, which is payable with interest at 7.5% per annum from the date of

petition till the date of deposit. No costs.

10. The second respondent / Insurance Company is directed to deposit the entire amount of compensation, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment.

11. It is to be noted that the second claimant, Ravi, died leaving behind claimants 6, 7 and 8, as his legal representatives and out of claimants 6 to 8, two are minors, namely claimants 7 and 8 / respondents 7 and 8, who are aged 16 and 18 respectively. After the death of the second claimant, Ravi, the dependency of the minor Children 7 and 8 would be more on the income from the deceased. Therefore, the apportionment has to be made taking into account, the future dependency of the Minor respondents 7 and 8 also.

12. Therefore, on such deposit being made by the second respondent / Insurance Company, the first claimant / first appellant herein would be entitled to a sum of Rs.5,00,000/-, with proportionate interest. Each of the claimants 3, 4 and 5 /

appellants 2, 3 and 4 herein would be entitled to a sum of Rs.1,00,000/-, totalling to Rs.3,00,000/-, with proportionate interest, and the remaining sum of Rs.1,87,000/- with proportionate interest would be payable to the appellants 6, 7 and 8 herein together and out of appellants 6, 7 and 8, seventh and eighth appellants would be each entitled to a sum of Rs.75,000/- and the sixth appellant would be entitled to a sum of Rs.33,000/-, with proportionate interest. All major claimants / major appellants are permitted to withdraw their shares of compensation and the shares of the minor claimants shall be kept in a fixed deposit, in any one of the Nationalized Banks, till they attain majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants, once in three months directly from the Bank, under intimation to the Tribunal. The court fee for the enhanced compensation amount shall be paid by the claimants / appellants before receiving the copy of this judgment. The appellants are not entitled to any interest for the default period.

04.09.2017

Index : Yes / No
Web : Yes / No
srk

To

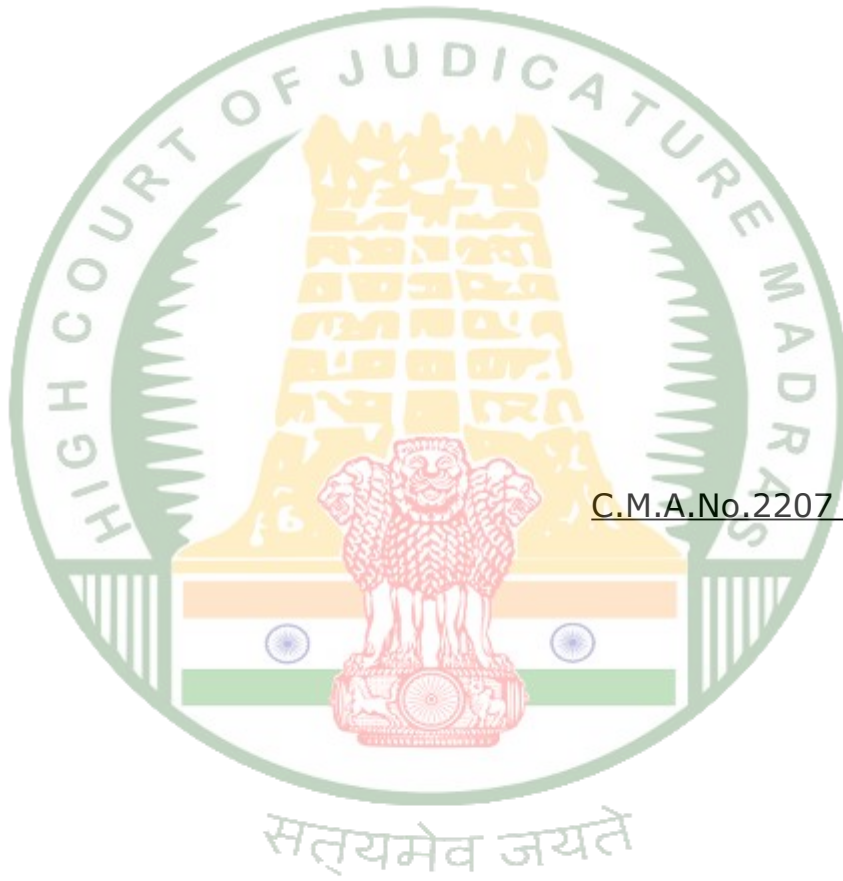
1. Motor Accident Claims Tribunal, Principal District Judge,
Namakkal.
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104



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Dr. S.VIMALA, J.,

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C.M.A.No.2207 of 2017

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