

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.239 of 2017
and C.M.P.No.1559 of 2017

National Insurance Company Limited,
Branch Office,
No.58, Rajaji Street,
Kangayam.

...Appellant /3rd respondent

versus

1. Kalavathy
W/o.Rajan (now deceased) ...1st respondent / Petitioner

2. S.Ramarajan ...2nd respondent/1st respondent

3. M/s.Shanthi Steam Calenders,
No.3, Perichipalayam,
Dharapuram Road,
Tirupur. ... 3rd respondent/2nd
respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.11.2014 made in M.C.O.P.No.564 of 2011 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirupur.

For Appellant : Mrs.R.Sree Vidhya
For R-1 : Mrs.P.Mariyammal

JUDGMENT

In respect of death of one Jacqueline, who was aged about 21 years, a College Student, earning a sum of Rs.10,000/- p.m., the parents filed a claim petition before the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirupur, claiming compensation of Rs.25,00,000/- and the death was in the accident on 05.04.2011.

1.1. As against the claim of Rs.25,00,000/-, the Tribunal has awarded the compensation of Rs.10,75,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the deposit.

1.2. At the time of accident, the deceased had been studying 3rd year in the Bachelor Degree. Relying upon the decision in the case of Municipal Corporation of India vs. Association of Victims Uphaar Tragedy, the Tribunal has made an observation that when the age of the deceased is below 20 years, the

compensation must be at Rs.7.5 lakhs and when the age of the deceased is above 20 years, the compensation must be Rs.10,00,000/-. Therefore, for the loss of dependency, a sum of Rs.10,00,000/- has been awarded. Awarding Rs.50,000/- towards loss of love and affection and Rs.25,000/- towards cost of cremation, the total amount has been quantified at Rs.10,75,000/-.

1.3. Assailing the award as disproportionate, the Insurance Company has filed the present appeal.

2. Learned counsel for the appellant would submit that the award of compensation of Rs.10,00,000/- towards loss of dependency is excessive and that it cannot be justified as the reported decision is applicable only in the case of students studying professional degree courses and when the deceased was not studying professional degree course, the same yardstick cannot be applied and the loss of dependency utmost can be only at Rs.9,00,000/-. This submission is acceptable the deceased had been pursuing a bachelor degree, not a professional degree.

3. Learned counsel for the claimant would submit that loss of love and affection to the parents should be at least at Rs.50,000/- each and therefore, the award cannot be said to be excessive.

4. Even though the loss of dependency is fixed at Rs.9,00,000/-, the compensation on account of loss of love and affection deserves enhancement and it is enhanced to Rs.1,00,000/- and funeral expenses is awarded at Rs.25,000/- and total compensation is Rs.10,25,000/-.

5. In the result, the Civil Miscellaneous Appeal is partly allowed, restructuring the award awarded by the Tribunal. The compensation of Rs.10,25,000/- shall be payable by the Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, 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, the respondent is permitted to withdraw the same, less the amount already withdrawn, if any. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

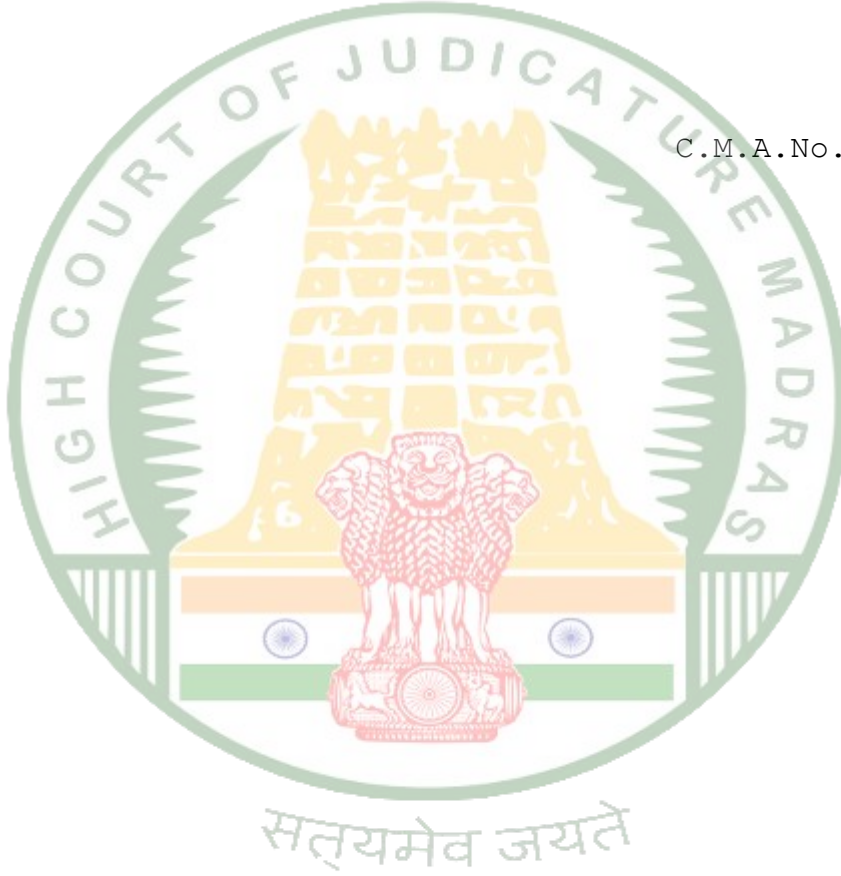
To

The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Tirupur.

+1cc to M/s. R. Sreevidhya, Advocate, S.R.No.9872
+1cc to M/s. P. Mariyammal, Advocate, S.R.No.9459

MV (CO)
EU 29.6.17

C.M.A.No.239 of 2017



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