

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.2771 of 2017

and

C.M.P. No.15805 of 2017

The Divisional Manager,
M/s.United India Insurance
company Limited,
No.46, Katpadi Salai,
Vellore.

... Appellant/2nd Respondent

Vs

1. Krishnamoorthy

2. Anjali

3. Minor Thilaga,

Son of Krishnamoorthy

Represented by her next friend /

guardian and father

Krishnamoorthy.

4. Nagarajan

... Respondents/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and Judgment dated 25.11.2016, passed by the Motor Accidents Claims Tribunal (In the Court of Special Sub Judge), at Tiruvannamalai, in M.C.O.P. No.34 of 2015.

For Appellant : Mr.Michael Visuvasam

JUDGMENT

The Insurance Company has filed the appeal, challenging the quantum of compensation awarded for the death of the minor child Dinesh.

2. The deceased, Dinesh, aged 10 years a student, met with an accident on 04.05.2014. Immediately, after the accident, he was admitted at Narayani Hospital, Vellore and then later on referred to Christian Medical College Hospital, Vellore, where he succumbed to the injuries and died on 26.06.2014. The

parents have filed the claim petition claiming a sum of Rs.20,00,000/- as compensation.

3. As against the claim of Rs.20,00,000/-, the Tribunal, on the basis of oral and documentary evidence, has passed an award for a sum of Rs.11,52,565/- under the following break up details :-

Loss of Income		Rs.7,20,000/-
Medical expenses	:	Rs.2,57,565/-
Loss of love and affection		
to P1 and P2	:	Rs.1,25,000/-
Loss of love and affection		
to P3	:	Rs. 25,000/-
Funeral expenses	:	Rs. 25,000/-

Total	:	Rs.11,52,565/-

Challenging this quantum of compensation as excessive and disproportionate, the Insurance Company has filed this appeal.

4. It is the contention of the learned counsel for the appellant that the monthly contribution of Rs.5,000/-, as assessed by the Tribunal is excessive, as the deceased was aged only 10 years at the time of the accident and the possibility of the minor child living in future and making a contribution of Rs.5,000/- is very remote and therefore, the award needs proportionate reduction, so far as loss of income is concerned. It is also submitted that the award under the head of loss of love and affection is also excessive.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record as also the order passed by the Tribunal.

6. The Claims Tribunal, relying upon the Division Bench Judgment of this Court in 2015 (2) TN MAC 490 (DB) (National Insurance Company Limited Vs. R.Vimala and others), has fixed the notional income at Rs.5,000/- and deducting 1/3 towards personal expenses, the loss of contribution to the family has been assessed at Rs.3,333/- and by adopting multiplier of 18, the loss of dependency has been quantified.

7. The first contention raised by the learned counsel for the appellant is that the deduction towards personal expenses

should have been $\frac{1}{2}$ and not as $\frac{1}{3}$ rd. However, this contention is to be rejected even at its inception, as only in case of bachelor, who is on the verge of marriage, personal expenses of 50% is reduced and not in case of minor, where the personal expenses would be minimal. Further, the income itself is fixed notionally and, therefore, notionally taking that at a later stage the family of the deceased gets enlarged on account of his marriage and getting children, the deduction would only be one-third and, therefore, the rationale adopted by the Tribunal for adopting one-third deduction is justifiable and requires no interference. Further, the notional income fixed by the Tribunal is also conservative and based on the ratio laid down by the Supreme Court in a catena of decisions and, therefore, the same is also confirmed.

8. Insofar as the contention raised with regard to the compensation awarded under the head Medical expenses, a perusal of the award reveals that even though the hospital expenses were to the tune of Rs.7,86,979/-, out of generosity, the hospital itself has given deduction for a sum of Rs.5,72,284/- and the balance amount payable was only to the tune of Rs.2,14,695/-. The Tribunal has not awarded the entire amount of medical expenses, but only the amount that was actually spent by the parents. Further, the medical expenses are supported by medical bills and, therefore, the compensation awarded by the Tribunal towards medical expenses requires no interference.

9. Insofar as compensation awarded under the heads of love and affection, and funeral expenses are concerned, it is to be pointed out that the period during which the deceased was under hospitalisation parents would have been on the verge of sorrow and grief to know about the survival of their kid. The mental agony, sufferings and shock of the parents have not been adequately compensated by the Tribunal and instead, the Tribunal has awarded only a sum of Rs.1,25,000/- for both the parents together. The funeral expenses awarded is in accordance with settled principles.

10. For the reasons aforesaid, the appeal, being devoid of merits, is liable to be dismissed and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also closed.

11. The appellant / Insurance company is directed to deposit the entire award amount, along with interest and costs as ordered by the Tribunal, less the amount, if any, already

deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of claimants through RTGS within a period of two weeks thereafter as per the ratio of apportionment ordered by the Tribunal.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

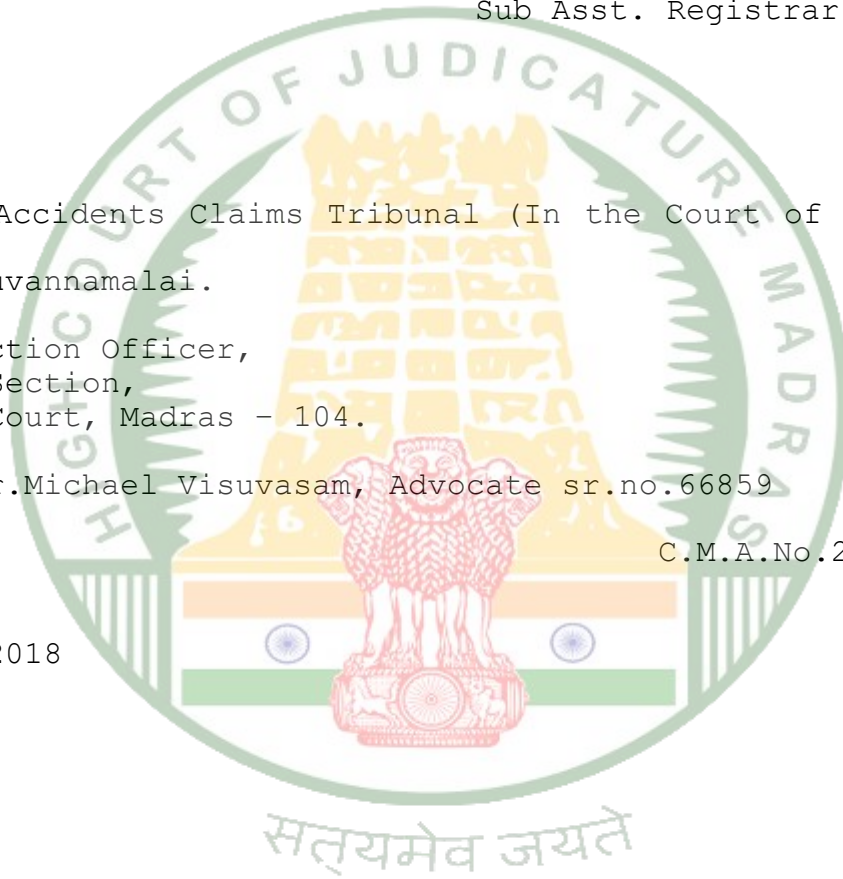
1. Motor Accidents Claims Tribunal (In the Court of Special Sub Judge),
at Tiruvannamalai.

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

+1cc to Mr.Michael Visuvasam, Advocate sr.no.66859

C.M.A.No.2771 of 2017

rj(co)
nr 09/04/2018



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