

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.3159 of 2017

and C.M.P.No.19479 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Division-I, 37, Mettupalayam Road,
Coimbatore. Appellant/Respondent

versus

1. V.Balamani
2. L.Mythili
3. V.Ramesh
4. V.Arunkumar Respondents/Claimants/Petitioners

Appeal filed under Section 173 of Motor Vehicles Act, 1988,
against the Judgment and Decree dated 13.04.2016, made in
M.C.O.P.No.1775 of 2013 on the file of the Motor Accident Claims
Tribunal, II Additional District and Sessions Judge, Tirupur.

For Appellant : Mr.K.J.Sivakumar
For R1 to R4 : Mr.Ma.P.Thangavel

JUDGMENT

The deceased, Venkatachalam, aged 63 years, a owner of rice
shop, earning a sum of Rs.22,000/- p.m. died in an accident on
09.09.2013. The wife, aged 54 years, daughter, aged 36 years,
sons aged 34 and 32 years, filed a claim petition for
compensation, claiming a sum of Rs.20,00,000/-.

2. As against the claim made, the Tribunal, on the basis of
oral and documentary evidence, passed an award of Rs.6,22,500/-
under the following break-up details:

Loss of income	-	Rs.4,72,500/-
Loss of consortium		
to the first petitioner	-	Rs.1,00,000/-
Loss of love and affection		
to the Petitioners 2 to 4	-	Rs. 30,000/-
Cremation Expenses	-	Rs. 10,000/-
Transport Expenses	-	Rs. 10,000/-

Total	-	Rs.6,22,500/-

Rounded off	-	Rs.6,22,000/-

Challenging the award as excessive, the Transport Corporation has filed this appeal.

3. Though very many grounds have been raised in the appeal assailing the order of the Tribunal, however, at the time of argument, learned counsel appearing for the appellant restricted his argument only insofar as the quantum of compensation awarded by the Tribunal and, therefore, this Court is dealing only with the said issue pertaining to quantum of compensation.

4. Learned counsel appearing for the appellant contended that in the absence of proof regarding age and income, the amount of compensation fixed is unsustainable. Therefore, the quantum of compensation should be reduced.

5. The age of deceased mentioned in the claim petition was 63 years. Though it is contended that there is no discussion in the order of the Tribunal as to the basis on which the age of the deceased has been fixed and how multiplier of 7 has been adopted, however, no evidence to the contra has been adduced by the appellant to show that the adoption of age by the Tribunal is erroneous. The Tribunal could have fixed the age of the deceased on the basis of post-mortem certificate and has adopted the multiplier. In the absence of any evidence showing the error committed by the Tribunal in fixing the age of the deceased, the contention of the appellant that the fixation is bad is not sustainable. In such view of the matter, the fixation of age of the deceased and the consequent adoption of multiplier requires no interference.

6. Insofar as quantum of compensation is concerned, monthly income of the deceased has been taken at Rs.7500/- and considering the number of members in the family, 1/4th deduction has been ordered towards personal expenses and applying multiplier of 7, loss of income has been estimated at Rs.4,72,500/-. Though, it is the case of the claimants that the deceased was running business of rice selling and earning a monthly income of Rs.20,000/-, however, in the absence of any

documentary evidence, the Tribunal has conservatively fixed the income of the deceased and quantified the compensation and, therefore, the compensation awarded on the said head is reasonable and is confirmed.

7. Insofar as the compensation awarded towards loss of love and affection is concerned, each of the claimants 2 to 4 has been awarded for a sum of Rs.10,000/-, which according to the learned counsel for the claimants is inadequate. The above contention on the side of the claimants merit acceptance. However, it is submitted by the learned counsel for the appellant that the compensation awarded towards loss of consortium at Rs.1,00,000/- is on the higher side and it requires to be reduced.

8. Considering the fact that the compensation awarded under the head loss of consortium is on the higher while the compensation awarded under the head loss of love and affection is on the lower side, this Court deems it fit that a sum of Rs.40,000/- under the head loss of consortium would be just and reasonable compensation, while the a sum of Rs.30,000/- to each of the claimants 2 to 4 would be a just and reasonable compensation under the head loss of love and affection. The compensation amount awarded under the both the heads is restructured, although the amount is neither enhanced nor reduced keeping in mind the age of the deceased vis-a-vis the claimants.

9. For the reasons aforesaid, the civil miscellaneous appeal is dismissed, however restructuring the compensation awarded under various heads as under:-

Loss of income	-	Rs.4,72,500/-
Loss of consortium		
to the first petitioner	-	Rs. 40,000/-
Loss of love and affection		
to the Petitioners 2 to 4	-	Rs. 90,000/-
Cremation Expenses	-	Rs. 10,000/-
Transport Expenses	-	Rs. 10,000/-

Total	-	Rs.6,22,500/-

Rounded off	-	Rs.6,22,000/-

The award amount shall carry interest at 7.5% p.a., from the date of claim petition till date of deposit. No costs. Consequently, connected miscellaneous petition is closed.

10. The appellant Transport Corporation is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of

this Judgment. The respondents/claimants are entitled to compensation as per the ratio of the apportionment made by the Tribunal. On such deposit being made, the Tribunal shall transfer the share amount of the claimants to their respective Savings Bank Account through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar
ogy/GLN

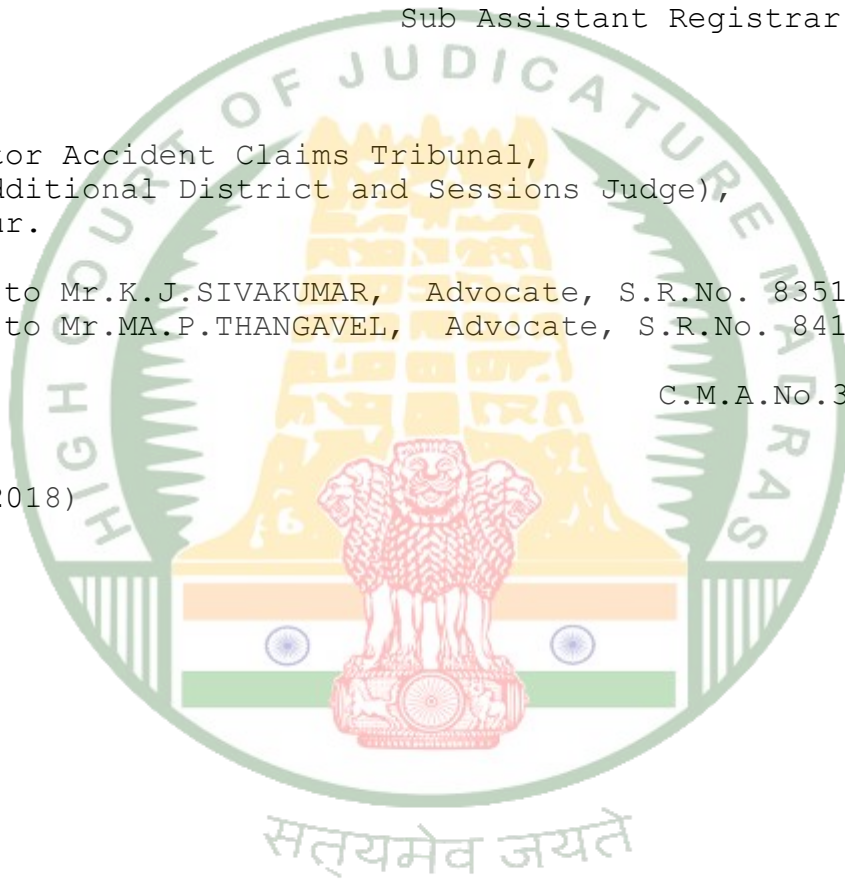
To

1. The Motor Accident Claims Tribunal,
(II Additional District and Sessions Judge),
Tirupur.

+1cc to Mr.K.J.SIVAKUMAR, Advocate, S.R.No. 83515
+1cc to Mr.MA.P.THANGAVEL, Advocate, S.R.No. 84122

C.M.A.No.3159 of 2017

KGK(CO)
TR(28/03/2018)



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