

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2017

CORAM:

THE HONOURABLE MRS. JUSTICE. PUSHPA SATHYANARAYANA

CMA.No.447 of 2017

1 . Venkatalakshmi
2 . Minor Sandhiya
3 . Kousalya ... Appellants
(Minor 2nd appellant represented by the
Next Friend/Grandmother Venkatalakshmi,
1st appellant)

//vs//

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Sipcot Branch, Madurai. ... Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree in MCOP.No.447 of 2012 dated 18.03.2014, on the file of the Motor Accidents Claims Tribunal-cum-Special District Court, Salem.

For Petitioners : M/s C.Kulanthaivel,
L.Muthusamy

For Respondent : Mr.S.V.Vasanthakumar

J U D G M E N T
सत्यमेव जयते

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, in M.C.O.P.No.447 of 2012, on 18.03.2014, the claimants have come forward with this Civil Miscellaneous Appeal for enhancement of compensation.

2. One Pandiayaraju, who was the husband of the first claimant, father and son of the second and third claimants, aged about 27 years and was working as a wholesale flowers seller, met with an accident that occurred on 22.02.2010 and due to which he died on the spot. Hence, the claimants filed a claim petition in M.C.O.P.No.447 of 2012, seeking compensation for a sum of Rs.25,00,000/-.

3. The Tribunal, on consideration of oral and documentary evidence, has awarded a sum of Rs.4,33,600/-, with interest @ 7.5% per annum from the date of petition till the date of deposit.

4. The break-up details of the same are as follows:

Pecuniary loss (4000 -1/3=2667x12x16)	-	Rs.5,12,000
Loss of consortium to wife	-	Rs. 10,000
Loss of love and affection for all 3 claimants-	Rs.	10,000
Funeral Expenses	-	Rs. 10,000

Total	-	Rs.5,42,000/-
(Less) 20% Contributory negligence fixed on the deceased and deducted 20% from total award		
	-	Rs.1,084,000/-

Total award of compensation		Rs. 4,33,600/-

5. The learned Counsel for the appellants/claimants submitted that the deceased, who was doing whole sale flower business and also a driver-cum-owner of a car, had driving license and the loss of future income of the deceased has to be decided based on his contribution and special skill and accordingly, notional monthly income with future prospects of the deceased have to be fixed at least minimum of Rs.6,000 p.m. as per the decision of the Hon'ble Apex Court in Syed Sadiq vs. Divisional Manager, United India Insurance Company Limited reported in 2014-1-TNMAC-459 SC. The learned Counsel further submitted that the loss of consortium to wife and loss of love and affection to the minor child and aged mother and funeral expense are to be decided based on the settled legal position in Jiju Kuruvila and others vs. Kunjamma Mohan and others reported in 2013(4) TN MAC 44 SC. It is also his submission that the amount of compensation awarded by the tribunal is very low, for the above said reasons, compensation needs to be enhanced.

6. A perusal of the award would go to show that the notional monthly income of the deceased with future prospects was fixed at Rs.4,000/-, since there was no evidence to show the income, age and occupation of the deceased and after deducting the 1/3 amount for the expenses of the deceased, a sum of Rs.5,12,000/- was fixed on the head of pecuniary loss. But, based on the arguments put forth by the learned counsel for the appellants, the income of the deceased is fixed at Rs.9,000/- and after deduction of 1/3 amount and calculating with multiplier of 16 (9,000-3,000 = 6,000 x 12 x16= Rs.11,52,000/-) a sum of Rs.11,52,000/- is fixed on the head of Pecuniary Loss and loss

of consortium to wife is fixed at Rs.1,00,000/- and loss of love and affection for all the three claimants is fixed as Rs.50,000/- each which will come to Rs.1,50,000/-. Likewise, a sum of Rs.25,000/- is fixed on the head of Funeral expenses and a sum of Rs.10,000/- is fixed on the head of Transport charges, which were not considered by the Tribunal. An amount of Rs.4,33,600/- which was already deposited and withdrawn by the appellants/ claimants is ordered to be deducted from the total Award of compensation.

7. In fine, the amount of compensation awarded by the Tribunal is enhanced from Rs.4,33,600/- to Rs.14,37,000/-, as follows:

Pecuniary loss ($9000 - 1/3 = 6000 \times 12 \times 16$)	-	Rs.11,52,000
Loss of consortium to wife	-	Rs. 1,00,000
Loss of love and affection for all 3 claimants (Rs.50,000x3= 1,50,000)	-	Rs. 1,50,000
Funeral Expenses	-	Rs. 25,000
Transport Expenses	-	Rs. 10,000/

Total	-	Rs.14,37,000
Less: Amount of withdrawal by the claimants	-	Rs. 4,33,600

		Rs.10,03,400/-

8. In the result, this Civil Miscellaneous Appeal partly partly allowed by enhancing the Compensation from Rs.4,33,600/- to Rs.14,37,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit. The interest shall be waived for the delay period of 897 days. The claimants 1 to 3 are entitled for their proportionate share in the total award amount and the claimants 1 and 3 are permitted to withdraw their respective shares and the 2nd claimant, being a minor, her respective share is directed to be invested in anyone of a Nationalised Bank under a Fixed Deposit Scheme for a period of 6 months which would be renewed periodically until she attains majority and the 1st appellant, being the Natural Guardian of the minor 2nd claimant, she is permitted to withdraw the interest accrued thereon in the said Fixed Deposit Account and

the same should be used for the welfare of the minor 2nd claimant. No costs. Further, for the enhancement of the award amount, requisite court fee has to be paid by the claimants. No Costs. Further, for the enhancement of the award amount, requisite court fee has to be paid by the claimants.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsi/mst

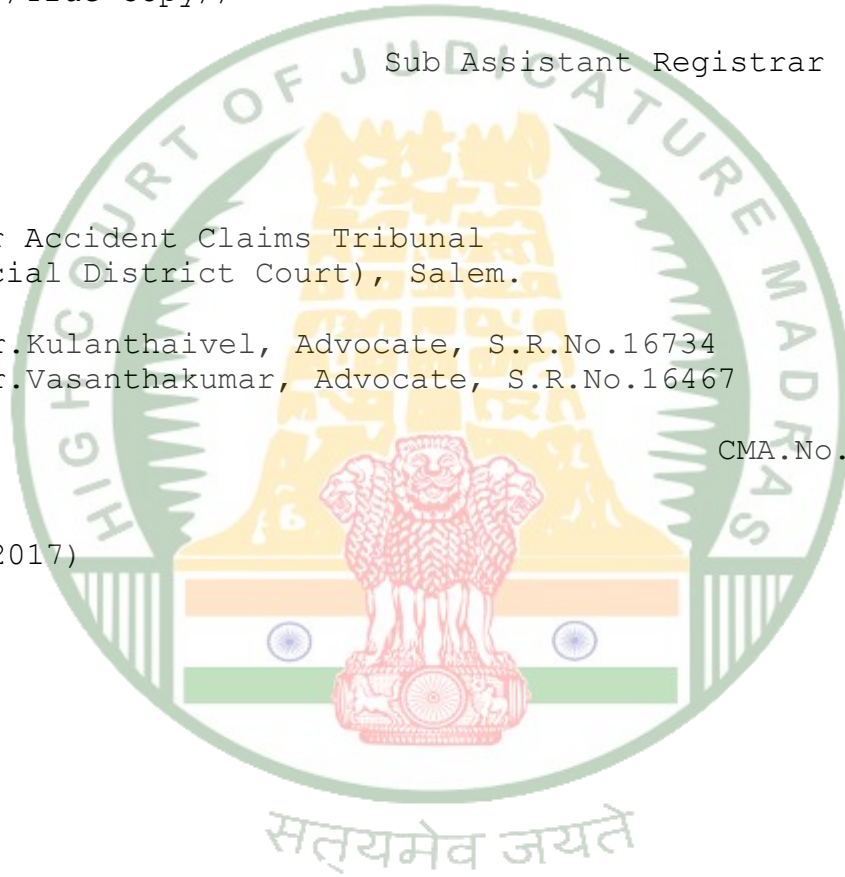
To

Motor Accident Claims Tribunal
(Special District Court), Salem.

+1cc to Mr.Kulanthaivel, Advocate, S.R.No.16734
+1cc to Mr.Vasanthakumar, Advocate, S.R.No.16467

CMA.No.447 of 2017

SSI (CO)
RS (19/04/2017)



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