

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 03.03.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 500 of 2017

1.Chittamma

2.Sriramulu

.. Appellants

Versus

1. Jayaraman

2. Suganthi

3. Manager

IFFCO-TOKIO General Insurance Company Limited,
Having their office at No.28-North Usman Road,
2nd Floor, T.Nagar,
Chennai-17.

4. Manager,

ICICI Lombard General Insurance Company Limited,
Having their office at No.1/D, Chottabai Street,
Opposite to Landmark Book Stall,
Nungambakkam, Chennai-6.

.. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Judgment and Decree dated 30.01.2013 made in M.A.C.T.O.P.No.596 of 2009 on the file of the Motor Accident Claims Tribunal, District Judge, Tiruvannamalai.

For appellant : Mr.M.Malar

For Respondents: Mr.J.Michael Visuvasam for R3

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.596 of 2009 dated 30.01.2013, the claimants have preferred this Civil Miscellaneous Appeal.

2. The deceased, Kishore, aged 24 years, a lorry driver, earning a sum of Rs.10,000/- per month met with an accident that

occurred on 15.05.2009, due to which he sustained grievous injuries and died. Hence, his mother and brother filed a claim petition in M.C.O.P.No.596 of 2009, seeking compensation for a sum of Rs.15,00,000/-.

3. The Tribunal on consideration of oral and documentary evidence has awarded a sum of Rs.4,99,000/-. The break-up details of the same are as under:

Loss of earnings	-	Rs.4,68,000/-
Loss of Love and affection	-	Rs. 20,000/-
Funeral expenses	-	Rs. 10,000/-
Transport Charges	-	
Damage to articles	-	Rs. 1,000/-

		Rs.4,99,000/-

4. Learned counsel for the appellants submit that the award passed by the Tribunal is very low and the same needs to be enhanced. He further submits that the Tribunal has taken the monthly income of the deceased at Rs.4,500/-, which is very low. It is further submitted that the monthly income ought to have been fixed at Rs.6,500/- p.m. based on the decision of the Hon'ble Apex Court in Syed Sadiq Vs. Deputy Manager, United India Insurance Co. Ltd., reported in 2014 (1) TNMAC 459.

5. The learned counsel for the 3rd respondent submits that the deceased is a bachelor person and 50% has to be deducted towards his personal expenses, but the Tribunal has deducted only 1/3rd towards his personal expenses, which is incorrect and, therefore, the award needs proportionate reduction.

6. This Court has given its anxious consideration to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record as also the findings rendered by the Tribunal.

7. Insofar as the contention relating to fixation of monthly salary in the absence of documents to prove the monthly income earned by the deceased, the Tribunal, in the absence of any documentary proof to substantiate the income earned by the deceased, has fixed the monthly income at Rs.4,500/=. The accident had happened in the year 2013. Attention of this Court was drawn to the decision of the Apex Court in Syed Sadiq Vs. Deputy Manager, United India Insurance Co. Ltd., reported in 2014 (1) TNMAC 459, wherein the Supreme Court has fixed the monthly income of the unskilled labour at Rs.6,500/- in the absence of documentary evidence. The Tribunal has not taken

into consideration the ratio laid down in the above decision. Accordingly, this Court, fixes the monthly income of the deceased at Rs.6,500/-. It is well settled only the age of the deceased is to be taken into consideration for fixing multiplier and not the age of the claimants. The age of the deceased being 24, the proper multiplier that needs to be adopted is 8. Further, as contended by the learned counsel for the respondent/insurance company, the number of dependents being two, 50% should have been deducted towards the personal expenses of the deceased.

8. Accordingly, fixing the monthly income of the deceased at Rs.6,500/- and adding 50% towards future prospective income of the deceased and deducting 50% towards personal expenses, a sum of Rs.4,875/= is taken as monthly income and by adopting multiplier 18, the total compensation under the head loss of income is quantified at Rs. 10,53,000/- (Rs.4,875 X 12 X 18).

9. Insofar as the compensation awarded towards funeral and transport expenses and loss of love and affection is concerned, the quantification is on the lower side and, accordingly, this Court feels that the compensation under the above heads requires enhancement. Accordingly, the compensation awarded towards Funeral expenses and Transport expenses is enhanced from Rs.10,000/- to Rs.25,000/- and the compensation under the head loss of love of affection is enhanced from Rs.20,000/- to Rs.1,00,000/-.

10. In the result, this Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.4,99,000/- to Rs.11,78,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants shall pay the requisite court fee on the enhanced compensation ordered by this Court before receiving a copy of this order. No costs.

11. It is represented that the compensation ordered by the Claims Tribunal has already been deposited and withdrawn by the Claimants. However, the appeal has been filed after a delay of 4 years. Accordingly, this Court directs the insurance company/3rd respondent herein to deposit the balance portion of the enhanced compensation as ordered by this Court with interest at 7.5% p.a. from the date of petition till date of deposit, excluding interest for the period of delay in filing the appeal. The above amount shall be deposited by the insurance company to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. The claimants would be entitled to compensation as per the ratio of apportionment ordered by the Tribunal. On the deposit being

made by the insurance company, the Tribunal is directed to transfer the amount directly to the bank account of the respective claimant as per apportionment through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Motor Accident Claims Tribunal
District Judge, Tiruvannamalai.

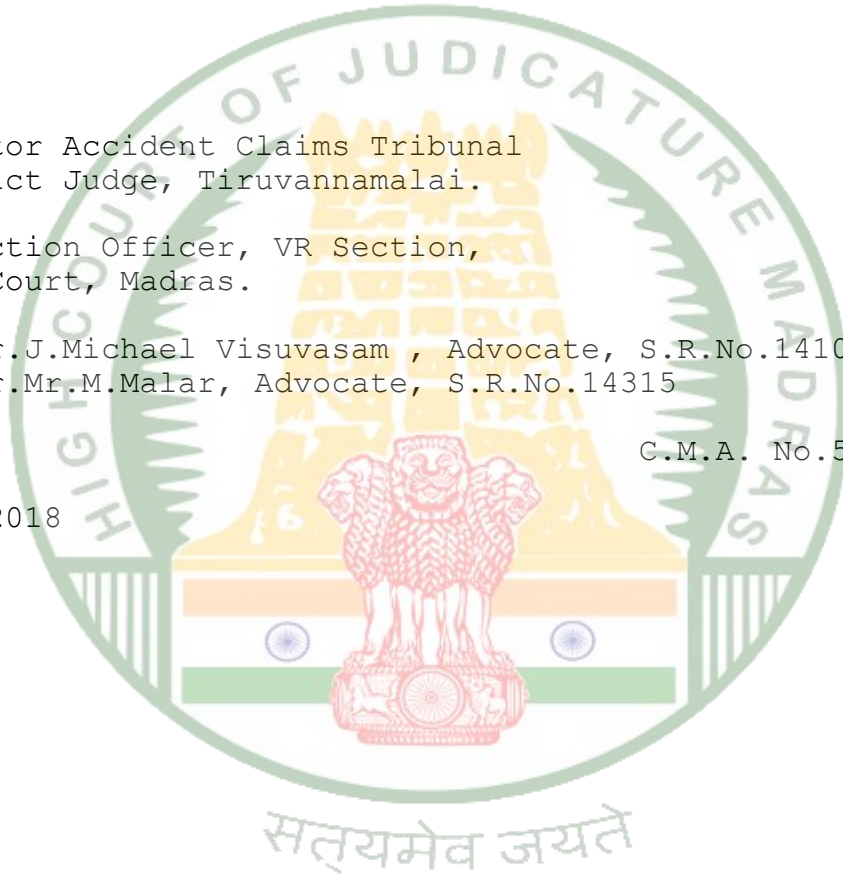
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.J.Michael Visuvasam , Advocate, S.R.No.14102

+1cc to Mr.Mr.M.Malar, Advocate, S.R.No.14315

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