

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.02.2017

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

C.M.A.No.836 of 2017

and C.M.P.No.4248 of 2017

The Manager,
United India Insurance Company Limited,
38, Anna Salai, Chennai-2. ... Appellant/2nd Respondent

Vs.

1.Lakshmi

2.[Minor] Manikandan

Rep. by his mother and natural guardian
the 1st respondent herein

3.Deivayani

4.Mohamed Sajid ... Respondents 1 to 3/Petitioner
(R4 set exparte in the lower court)

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.12.2004 made in M.C.O.P.No.757 of 2003 on the file of the Motor Accident Claims Tribunal, [Subordinate Court], Tiruvallur.

For Appellant : Ms.N.Mala

J U D G M E N T

The deceased, Murugesan, aged 34 years, employed as Grade-I Constable under the Superintendent of Police, Tiruvallur, died in an accident that took place on 15.09.2003. The claimants who are wife, son and mother of the deceased, filed a claim petition in M.C.O.P.No.757 of 2003, claiming a sum of Rs.15,00,000/- as compensation.

2. The Tribunal, on consideration of the oral and documentary evidence awarded a sum of Rs.9,34,304/- as compensation, the break-up of which reads as under :-

Loss of Dependency	-	Rs.7,02,304/-
Funeral Expenses	-	Rs. 5,000/-
Transport Expenses	-	Rs. 2,000/-
Loss of Estate	-	Rs. 50,000/-
Loss of Support	-	Rs. 25,000/-
Loss of Consortium	-	Rs. 25,000/-
Mental Shock & Agony	-	Rs. 50,000/-
Loss of Happiness	-	Rs. 50,000/-
Loss of Love & Affection	-	Rs. 25,000/-

Total	-	Rs.9,34,304/-

Aggrieved that the amount awarded is excessive, the appellant/Insurance Company has preferred this appeal.

3. Learned counsel for the appellant submitted that the compensation granted under the head mental agony at Rs.50,000/- and loss of happiness at Rs.50,000/- are unwarranted and it is not based on well settled principles of law. It is also pointed out that the multiplier adopted is on higher side, considering the age of the deceased.

4. In order to appreciate the contentions raised above, it is necessary to go into the details of the award passed. The salary certificate Ex.P5 shows the income of the deceased as Rs.5,164/-. Based on Postmortem Certificate, the age of the deceased is fixed as 34. According to the ratio laid down in Sarla Verma's case reported in 2009[6] SCC 121, the multiplier that is to be adopted for the age 34 is 16 and not 17. However, the Tribunal, after deducting 1/3rd towards personal expenses of the deceased, arrived at the actual yearly dependency at Rs.41,312/-. Adopting multiplier of 17, loss of dependency has been quantified at Rs.7,02,304/-. Though wrong multiplier of 17 has been adopted, however, it is to be pointed out that the Tribunal has not considered the future prospective increase in income of the deceased. If the future prospective increase in income of the deceased is taken into account, the compensation to be awarded will increase. Therefore, the difference in compensation granted due to wrong adoption of multiplier of 17 would compensate the amount that would be awarded if future prospective increase in income is taken into consideration. In fact, such a computation would only be more to the benefit of the claimants rather than to the appellant. However, since the increase would not be high, this Court is not inclined to interfere with the compensation awarded under the head loss of dependency and, accordingly, the compensation granted by the Tribunal is confirmed. सत्यमेव जयते

5. Apart from the above, the Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses; Rs.2,000/- towards transport expenses; Rs.50,000/- towards loss of estate; Rs.25,000/- towards Loss of support; Rs.25,000/- towards loss of consortium; Rs.50,000/- towards mental shock and mental agony; Rs.50,000/- towards loss of happiness and Rs.25,000/- towards loss of love and affection. In all, the Tribunal has awarded a sum of Rs.9,34,304/- as compensation.

6. As noticed above, the award of compensation in respect of mental agony at Rs.50,000/-; loss of happiness at Rs.50,000/- and a sum of Rs.25,000/- towards loss of love and affection are under serious challenge.

7. Legally speaking, no compensation can be awarded for mental shock and mental agony and loss of happiness. However, the fact remains that under the other heads, viz., loss of love and affection, loss of estate and transportation expenses, the compensation awarded is on the very lower side. This Court is of the considered opinion that the sum of Rs.50,000/- awarded under the head mental shock and mental agony shall stand transposed under the head loss of love and affection and the amount of Rs.50,000/- awarded under the head loss of happiness shall stand transposed under the head loss of estate, funeral expenses, transportation expenses and loss of consortium of which Rs.10,000/- Rs.10,000/- and Rs.5,000/- will stand added to the head loss of estate, funeral expenses, transportation expenses and Rs.25,000/- shall stand modified to the head loss of consortium. Accordingly, this Court enhances the compensation under the head loss of love and affection to Rs.75,000/-, Rs.60,000/- under the head loss of estate and Rs.7,000/- under the head transportation expenses, Rs.15,000/- under the head funeral expenses and Rs.50,000/- under the head loss of consortium.

8. Accordingly, the award passed by the Tribunal is confirmed, however restructuring the heads under which compensation is granted as hereunder :-

Loss of Dependency	-	Rs.7,02,304/-
Funeral Expenses	-	Rs. 15,000/-
Transport Expenses	-	Rs. 7,000/-
Loss of Estate	-	Rs. 60,000/-
Loss of Support	-	Rs. 25,000/-
Loss of Consortium	-	Rs. 50,000/-
Loss of Love & Affection	-	Rs. 75,000/-

Total	-	Rs.9,34,304/-

9. For the reasons aforesaid, this civil miscellaneous appeal is dismissed confirming the award passed by the Tribunal, however restructuring the compensation under the heads as mentioned above. Consequently, connected Miscellaneous Petition is closed.

10. The Appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs as awarded by the claims 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 accounts of the major claimants through RTGS within a period of two weeks thereafter, as apportioned by the Tribunal. The amount payable

to the minor claimant shall be kept in in fixed deposit in anyone of the Nationalised Bank, till the minor claimant attains majority. The interest payable on such deposit shall be payable to the mother once in three months by the bank under due intimation to the Tribunal.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gya/GLN

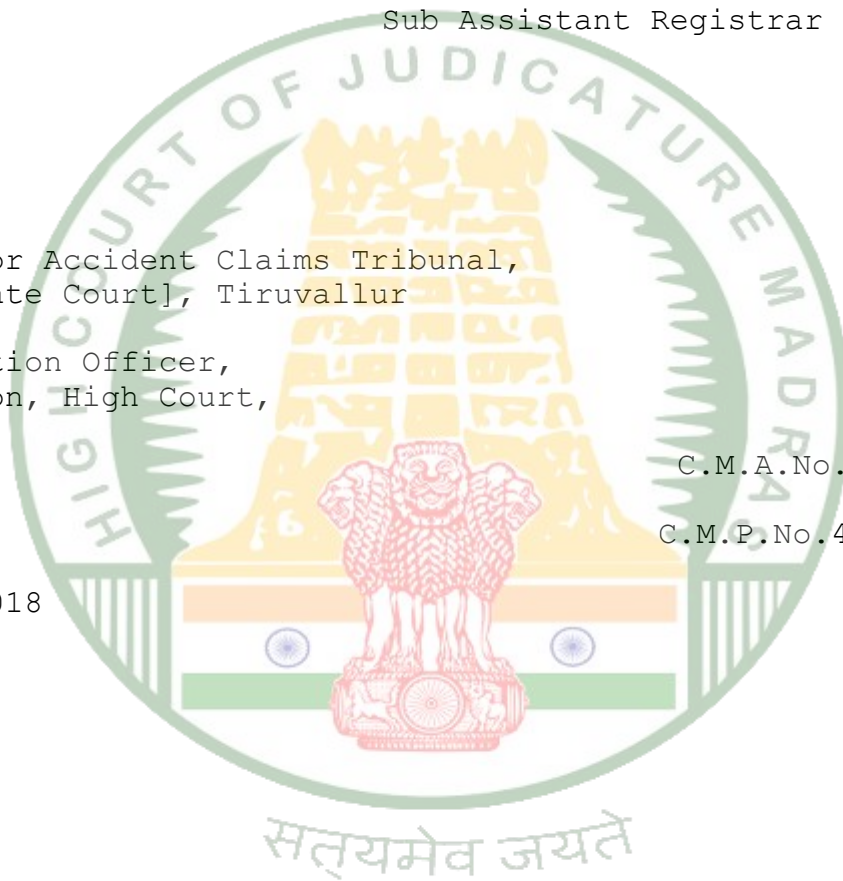
To

1.The Motor Accident Claims Tribunal,
[Subordinate Court], Tiruvallur

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

C.M.A.No.836 of 2017
and
C.M.P.No.4248 of 2017

AD(CO)
sm:20.3.2018



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