

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.149 of 2004
and CMP.No.443 of 2009

1.Kannammal
2.Minor.Srinivasan
3.Minor.Kannan
4.Minor.Mahalakshmi
5.Govindasamy
6.Chinnaponnu ... Appellants/Claimants
(Minors 2 to 4 rep by Next friend
and appellants No.1)

Vs.

The Managing Director,
Tiruvalluvar Transport Corporation,
Chennai. ... Respondent/Respondents

Prayer.: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 18.10.2001 in M.C.O.P.No.228 of 2000 on the file of the Motor Accidents Claims Tribunal (Additional District Judge cum Chief Judicial Magistrate)Villupuram.

For Appellants : Mr.S.Kalayanaraman
For Respondent : Mr.S.V.Vasanth Kumar

JUDGMENT

The appeal has been preferred by the claimants for enhancement of compensation.

2. The first claimant is the wife of the deceased Krishnamurthy. Claimants 2 to 4 are the children of the deceased. Claimants 5 and 6 are the parents of the deceased.

3. The appellants filed the above petition claiming a total compensation of Rs.4,50,000/- for the death of Krishnamurthy, who died in a motor accident on 15.07.1996. According to the appellants, when the deceased was travelling in a van bearing No.TN.F.239, the driver of the bus bearing No.TN.N.0322 drove it in a rash and negligent manner and dashed against the van. As a result of the accident, the deceased sustained injury and later succumbed to the injuries.

4. In support of their claim, the claimants examined two witnesses and marked seven documents. The Tribunal after considering the material held that the accident occurred only due to rash and negligent of the driving of the bus driver. The bus belonged to the respondent.

5. The Tribunal, on appreciation of materials, has awarded a total compensation of Rs.1,59,800/-. The compensation was directed to be paid with 9% interest from the date of the claim petition.

6. The learned counsel for the appellants would submit that the Tribunal ought to have fixed the monthly income of the deceased at Rs.4,000/- p.m. According to the claimants, the deceased was a scrap merchant. The Tribunal fixed the monthly income at Rs.1,000/-. The learned counsel for the appellants has relied upon the Judgment in National Insurance Company Limited vs. Khimlibai and Others, (2009) 10 Supreme Court Cases 648 wherein, the victim, who was a carpenter by profession, met with a motor accident on 24.05.1997. In the case on hand, the accident occurred in the year 1996. Further in this case, the deceased was not a carpenter and he is said to be a scrape merchant. the family consists of 7 members. The deceased was the only breadwinner of the family. He would also submit that the deceased Krishnamurthy was a scrap merchant and fixed the monthly income at Rs.1000/- is too low and hence, he seeks to redetermine the monthly income of the deceased at Rs.2,500/- p.m. Therefore, he prays for enhancement of the compensation.

7. Learned counsel for the respondent/Transport Corporation submitted that the compensation awarded by the tribunal is just and reasonable and hence, it does not warrant any interference.

8. It is not in dispute that the deceased was aged 35 at the time of accident. The first petitioner gave evidence that the deceased was a scrap merchant and was earning Rs.4,000 per month. It would be difficult to expect a scrap merchant to have documents for his income. Considering the number of family members and the nature of business of the victim, I am of the view the deceased would have earned Rs.2,500/- p.m. Therefore, the monthly income of the deceased should be fixed at Rs.2,500/-.

9. There are 6 dependents on the deceased at the time of the accident. The Tribunal deducted a sum of Rs.300/- towards his personal expenses. Having regard to the number of dependents, I am inclined to deduct 1/4 towards his personal expenses. As the deceased was aged 35, the multiplier 16 is to be applied to assess the loss of income.

10. The deceased left behind two minor children and his wife. The Tribunal awarded paltry sum of Rs.5000/- for the loss of love and affection and loss of consortium. Therefore, I am inclined to award Rs.30,000/- under the head loss of love and affection. It also necessary to award Rs.25,000/- under the head of loss of consortium to the wife, who is 30 years old. The Tribunal awarded Rs.2,000/- towards funeral expenses and the same is confirmed.

11. In view of the above discussion, compensation is reassessed as follows:-

Heads	Calculation
Loss of dependency Salary	Rs.2500/- p.m.
1/4 deducted as personal expenses of the deceased	2500 X 1/4 = 625 (2500-625=1875)
Compensation after multiplier of 16 is applied	1875 X 12 X 16 = 3,60,000
Loss of consortium	Rs. 25,000
Loss of Love and affection	Rs. 30,000
Funeral expenses	Rs. 2,000
Total	Rs.4,17,000/-

12. The appellants will be entitled to a total compensation of Rs.4,17,000/-. The appeal is disposed of accordingly. The enhanced amount will carry interest at 7.5% per annum. The appellant-Transport Corporation is directed to deposit the enhanced amount within a period of six weeks from the date of receipt of a copy of this order. Inter se apportionment, shall be in the same ratio as ordered by the Tribunal with proportionate increase in the light of the enhancement of the compensation. The appellants/claimants 1, 5 & 6 are permitted to withdraw their respective shares with accrued interest, on due application, after adjusting the amount, if any, already withdrawn. The share of the minor claimants are to be deposited in any one of the nationalised bank till they attain majority and the claimants 2 to 4/guardian of the minors is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay necessary court fee for the

enhanced amount. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-II)

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Sub-Assistant Registrar

To

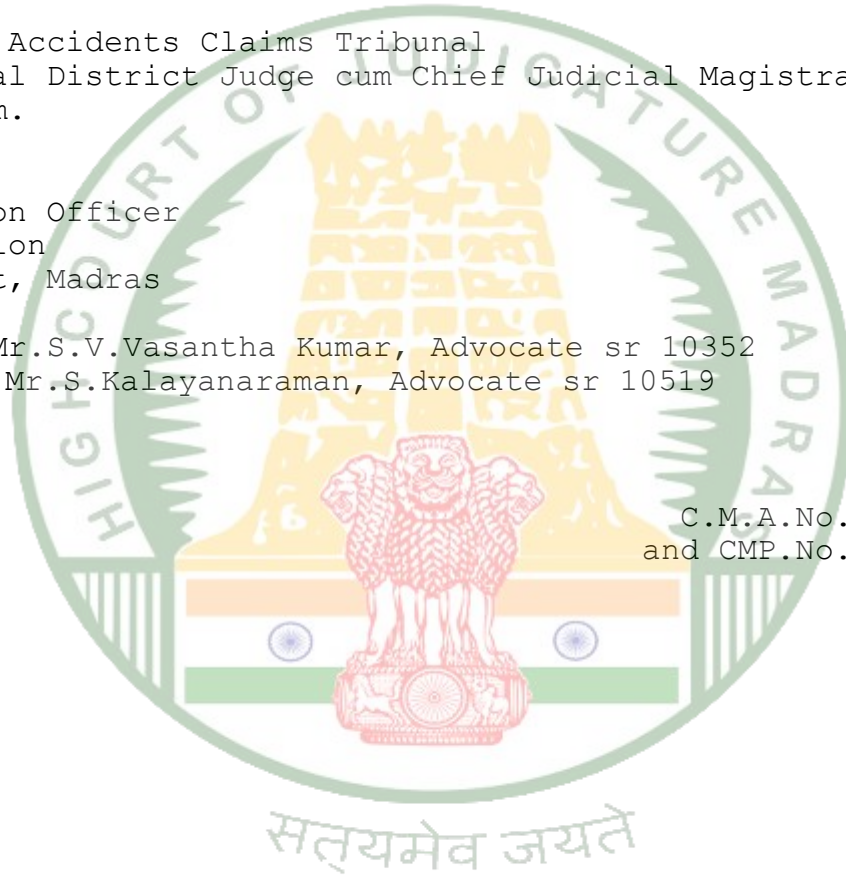
The Motor Accidents Claims Tribunal
(Additional District Judge cum Chief Judicial Magistrate)
Villupuram.

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+1 cC to Mr.S.V.Vasanth Kumar, Advocate sr 10352
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SS (CO)
sp/13/4



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