

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.2699 of 2013
and M.P.No.1 of 2015

Dhanalakshmi

...

Appellant

Versus

1. R.Panneerselvam
2.Tamil Nadu State Transport Corporation Ltd.
Having office at No.37,
Mettupalayam Road,
Coimbatore – 641 043.

...

Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and award of the Motor Accident Claims Tribunal (Principal Sub Court), Erode in M.C.O.P. No.102 of 2012, dated 30.04.2013.

For Appellant : Mr.A.K.Kumaraswamy

For Respondents : Ms.N.B. Surekha, for R2

JUDGMENT

I woke up from the surgery minus my left and right leg(s)
With searing pain below my hip as if a powder keg
Exploded deep within my thigh, leaving nothing there
But tissues sewn together, which was more that I could
bear...

The pain, so knife-like, so intense has melted with the snow
And now as spring awakens in my chair I slowly go
To the window of my bedroom and the windows of my mind
Wondering if I will be forever so confined

- Richard Lackman.

1.1 The above said poetics reveal the unbearable pain every amputee has to undergo. Not only the physical pain, but also the mental pain for having become "forever confined" - this fact and thought would give perennial daunting and hunting pain in the mind. Even without any poetic prop, anybody can easily empathize with the cause of the amputees.

1.2. Here, the appellant / claimant is left with 10 centimeters leg below right knee and 12 centimeters leg below left knee has spoken out her problem in the language known to her and which reads as under :

1. Searing pain made the sufferings everlasting.
2. Financial expenses were immeasurable.
3. Health condition not restored despite several surgeries.
4. To eat and to attend natural calls, there is very great difficulty.
5. Not able to attend to the needs of the minor female child.
6. To educate the minor child, the injured has to struggle a lot.
7. She could not get through her teacher training course, because of the accident.
8. Because of the head injury, there is frequent giddiness.
9. To pay the school fees and hostel fees of the girl child,

she has to borrow debt, thus, has become a debtor.

10. For her personal education also, she has to borrow money.

11. The artificial calipers did not suit her and she frequently fell down.

12. Even after purchase of wheel chair, the injured has to depend upon others to go outside.

13. Wheel chair could not be operated inside the house, because the house is a hut.

14. But for the accident, she would have become a teacher and she would have earned much and would have led a quality life.

1.3. Apart from the amputation of both legs, the claimant also suffered fracture of **3,4,5, rib bones, suffered Extracerebral hematoma and Subarachnoid hemorrhage.**

2. The detailed investigation done and the procedure adopted during treatment is explained in the discharge summary, which reads as under (Ex.P21):

Extracerebral hematoma (maximum thickness 15mm) seen in left temporal region with adjacent parenchymal contusion. Mild compression on ipsilateral lateral ventricle. Midline shift towards right side seen by 7mm.

Subarachnoid hemorrhage seen along cortical sulci in bilateral fronto parietal region and in the inter-hemispheric fissure and along tentorium. Diffuse cerebral edema seen.

Head injury

Chest Injury

Major Crush injury right distal 1/3 leg with Grade III C Fracture

Distal 1/3 Tibia / Fibula with extensive composite tissue loss

Lower leg, ankle and foot,

Crush injury left foot / ankle mangled with foot and ankle extensive composite tissue loss

Right clavicle fracture 3,4, 5th right rib fracture

Post Traumatic right lower motor neuron Facial Palsy

Procedure

17.06.2011, Bilateral Below Knee amputation

18.06.2011, Left Fronto Temporo **Parietal craniotomy and contusenectomy.**

2.1. On the date of accident itself that is on 17.06.2011, the amputation has been done and on the every next day craniotomy has been done. The disability has been assessed by the Doctor at 100%.

2.2. With this document and evidence, the Tribunal has quantified the compensation at Rs.13,55,523/- and the break up details reads as under :-

		Rs.
Transport	:	15,000/-
Pain and sufferings	:	25,000/-
Extra nourishment	:	5,000/-
Loss of income for 4 months	:	18,000/-
Medical expenses	:	3,12,323/-
Attendant charges	:	
12,000/-		
Loss of future earning capacity	:	25,000/-
Future medical expenses	:	25,000/-
100% disablement	:	9,18,000/-

Total	:	13,55,323/-

2.3. The loss of earning capacity at Rs.9,18,000/- was arrived at by adopting multiplier of 17 after fixing the notional monthly income at Rs.4,500/- ($4,500 \times 12 \times 17 \times 100\%$) = Rs.9,18,000/- .

2.4. The percentage of disablement, as fixed by the Doctor at 100% did not help the claimant to get just compensation as the monthly income fixed was, not on the basis of the actual records made available, but on the basis of notional income (Rs.4,500/-p.m.).

2.5. ***When there was evidence let in to prove the income whether it is open to the claims Tribunal to fix the monthly income of the injured on the notional basis is the very important issue arising for consideration in this case.***

2.6. This award is under challenge on the following grounds :-

1. The Tribunal ought not to have fixed the monthly income at Rs.4,500/- without considering Ex.P17 and Ex.P18 and evidence of P.W.3.

2. The Tribunal should have taken the judicial notice of the fact that the claimant would need future medical expenses towards fixing the artificial limb in future.

3. The Tribunal should have considered the future earning capacity of the claimant in proper perspective.

3. The main contention of the learned counsel for the appellant is that the **intangible services** already rendered by the injured and which would be rendered by the injured to the minor child, till she attains majority, ought to have been considered, but it has not at all been considered.

3.1. The learned counsel for the appellant would submit the possibility of the claimant as the widow re-marrying cannot be ruled

out and but for the accident, the injured would have thought of remarrying again and compensation on account of loss of re-marriage prospects should also have been awarded, even though it has not been claimed.

4. Before considering the grounds of appeal and the contentions, it is necessary to consider the factual matrix of the case.

4.1. Dhanalakshmi, the claimant aged 35 years, a tuition teacher, self employed, earning a sum of Rs.6,000/-p.m., suffered amputation of both legs, below knee in an accident on 17.06.2011, involving the bus bearing Registration No.TN 33-N2044, TNSTC bus. At the time of accident, the claimant was studying Diploma in Teacher Training Education at Sarah Teachers Training Institute for Girls School, Nanjai Uthukkuli.

4.2. The injured is a widow having a female child of 11 years old studying 6th standard. She was taking tuition classes for children at her residence in order to meet the educational expenses of herself and her child. As she is the widow, there is no other earning member in the family, necessarily, she has to earn in order to educate the child and herself.

5. In order to appreciate the contention raised with regard to non-applicability of notional income, it is necessary to consider the evidence regarding the income placed by the claimant.

6. Factual matrix reveals that the child was going to school and the mother was going to teacher training school.

7. According to the claimant, she was earning a sum of Rs.6,000/- by taking tuition even while she was also upgrading herself by studying teacher training.

8. Whether this earnings would have been real or is it a booster figure for the purpose of claiming more compensation, is the issue to be decided.

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9. P.W.3, the parent of a student has testified that the injured was taking tuition classes for the students in and around her locality. It is a common knowledge that tuition classes are more than the regular classes.

10. There are documents to show that the injured had been spending for the welfare of the daughter and there are documents showing payment for her daughter for the period from January to March 2012 and for July 2011 to December 2011. A sum of Rs.16,373/- had been paid as hostel fees for the daughter as per Ex.P24.

10.1. Under Ex.P15, for herself, the injured has paid a sum of Rs.25,200/- towards tuition fees.

10.2. Ex.P17 is the Transfer Certificate issued by the Sarah Teacher Training Institute for Girls. This document would show that the claimant Dhanalakshmi (D.O.B. 20.01.1974) has actually left the institute on 02.07.2012. The certificate indicates that the academic years for the study is 2010-2011 and 2011-2012. Had she finished her studies, there is a good scope for her employment as a teacher, having studied Diploma in Teacher Education. But for the accident, in

all probability, she would have become a Teacher and would have been a guiding star for her minor daughter.

11. Under the circumstances, whether it is justifiable on the part of the Tribunal to take Rs.4,500/- as notional income.

12. What is the meaning of notional income? When the Tribunal can take the income based on notional basis and not on the basis of actual evidence let in?, is the critical issue to be considered.

13. It is appropriate to rely upon the decision of the Andhra Pradesh High Court, in the case of **M.Posham And Another vs S. Kalavathi And Others, (decided on 25 August, 2014)** in which, the circumstances under which the Court can take notional income has been highlighted. The important observation reads as under:-

"The notional income of Rs.15,000/- as provided in item No.6 of Second Schedule appended to M.V.Act applies to those persons who had admittedly no income prior to the accident. The heading to Item No.6 which reads as Notional income for compensation to those who had no income prior to accident, itself is self- explanatory in this regard. Should we give a plain meaning to the words who had no income prior to accident we understand that they refer to those

persons who admittedly had no income prior to accident. We can visualize those persons as old and infirm, bed ridden by sickness and those who had no earning capacity. In respect of those persons, notional income has to be taken as Rs.15,000/- for computation of compensation. However, ***honestly speaking the said notional income will not apply to other persons who are able bodied persons and having earning potentiality and those who are employed in one or other avocation and earning some income. In respect of such persons even if there is no concrete evidence regarding their earnings, the Court shall make a reasonable estimate of their earnings having regard to their age, nature of occupation etc..."***

13.1. Testing the rationality of fixing of income at Rs.4,500/- per month by the claims Tribunal in the light of the above judgment, the inevitable conclusion is that the finding of the Tribunal is far from reality and legality.

14. The Tribunal has faulted in the determination of monthly income based on notional basis at Rs.4,500/-. The flaw, which is noticeable in the above determination bespoke an utter lack of concern and egregious ignorance of economic thought on the part of the Tribunal. While considering her another claim that she was the

student of a Teacher Training Institution, her claim of earning income by conducting tuition classes is not strange and unbelievable but very logical and obvious and hence is a absolutely natural corollary. The Tribunal is not justified in reducing the above said monthly income of Rs.6000/- to Rs.4,500/-.

15. The victim in this case is placed under multi-pronged disadvantageousness, in which her widowhood coupled with responsibility to foster a vulnerable girl, all the while positing dependency upon father for security, compulsive circumstances to earn money, etc.

16. The term "disadvantaged" relate to persons with reduced "upward mobility", suffering social exclusion and having limited access to natural resources and economic opportunities. **While so, those disadvantaged are becoming more economically disadvantaged, when the disadvantaged groups are not recognized so, thus placing them in a more disadvantageous position, when their meagre income is not accounted for and a lesser income is taken for quantifying the compensation.**

Tangible and Intangible services:

17. The services rendered by the injured to the family are both tangible and intangible. Even tangible services are not valued in terms of money and it is left out of consideration either in the name of sacrifice or self-less service or invaluable.

18. The important aspect which eluded consideration by the Tribunal is the services, which were rendered by the injured woman prior to the accident and was thwarted by doing so, after that mishap. Calculation of those services in terms of money is the most difficult thing. In other words, the calculation of compensation in lieu of contribution to be made available by the widow to the upbringing of to her dependent child is critical and it becomes all the more difficult, as provision has to be made for her own life, apart from that of her child.

19. In this context, it is necessary to consider some of the decisions, though not concerning with injured claimants but covering the case of deceased persons, as the ***underlying basic tenets*** are one and the same.

1. Arun Kumar Agrawal v. National Insurance Co. Ltd.

MANU/SC/0507/2010: (2010) 9 SCC 218

"26. In India the courts have recognised that the contribution made by the **wife to the house is invaluable** and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. **A wife/mother does not work by the clock.** She is in the constant attendance of the family throughout the day and night, unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother, dedicating her selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. **In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the**

loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the Dependents cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family, which the deceased was giving earlier.

2. In **Mehmet vs. Perry (1977) 2 All ER 529 (DC)** the **pecuniary value of a wife's services were assessed and granted under the heads of**

(a) *loss to the family of the wife's housekeeping services;*

(b) *loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her;*

And

(c) *loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.*

3. In **Regan v. Williamson (1976) 1 W.L.R. 305**, the **Court considered the issue relating to quantum of compensation payable to the dependents of the woman who**

was killed in a road accident.

19.1. In this case, the practice of relegating the services of the wife to that of a housekeeper was condemned.

"I have been referred to a number of cases in which judges have felt compelled to look upon the task of assessing damages in cases involving the death of a wife and mother with strict disregard to those features of the life of a woman beyond her so-called services, that is to say, to keep house, to cook the food, to buy the clothes, to wash them and so forth. In more than one case, an attempt has been made to calculate the actual number of hours it would take a woman to perform such services and to compensate dependents upon that basis at so much an hour and so relegate the wife or mother, so it seems to me, to the position of a housekeeper."

19.2. In the same Judgment, it has been pointed out that the word services cannot be narrowly interpreted and it would include an acknowledgment towards the services of the wife/mother was neither with reference set hours nor set rules.

"While I think that the law inhibits me from, much as I should like to, going all the way along the path to which Lord Edmund-Davies pointed, I am, with due

respect to the other judges to whom I have been referred, of the view that the work 'services' has been too narrowly construed. It should, at least, include an acknowledgment that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance, save for those hours when she is, if that is the fact, at work,. During some of those hours she may well give the children instruction on essential matters to do with their upbringing and, possibly, with such things as their homework. This sort of attention seems to be as much of a service, and probably more valuable to them, than the other kinds of service conventionally so regarded."

20. The next contention is that the additional value and convenience in getting the services from the near and dear cannot be obtained from anybody else and that the services rendered by the one who does it out of willingness and love and affection cannot have an equivalence and therefore it has to be compensated.

21. In *Beesley v New Century Group Ltd.* at paragraph 79 of that judgment, Hamblen J said:

"79. The claimant submitted that this is an appropriate case for such an award, which is based on the premise that Mrs Beesley has not just lost domestic services, but on the extra value that is derived from having such help provided by a

husband and friend; see *Regan v Williamson* [1976] 1 WLR 305. It was submitted that a reasonable award would be £3,000.

80. The defendant submitted that this was not a maintainable head of claim. It was contended that it was contrary to the principle that Fatal Accident Act damages are only awarded for financial or pecuniary loss. The statutory award for bereavement covers any non-financial loss.

81. However, it is clear that there have been a number of cases in which such awards have been made. In *Regan v Williamson*, which followed the Court of Appeal decision in *Hay v Hughes* [1975] QB 790, the dependency figure for the loss of the services of a mother was increased to reflect the benefit of the **personal attention to a child's upbringing which a mother provided and which could not be replaced by a housekeeper, nanny or child minder, although no separate award was made.** However, in *Mehmet v Perry* [1977] 2 All ER 529 a separate award was made to the children and the approach extended to the husband's claim and a separate award was made to him as well. Subsequent cases have followed this approach.

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22. A. Rajam v. M. Manikya Reddy, MANU/AP/0303/1988 : 1989 ACJ 542 (Andhra Pradesh HC), M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word 'services' in cases relating to award of compensation to the dependents of a deceased wife/mother. Some of the observations made in that judgment are extracted below:

"The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife."

23. While estimating the 'services' of the housewife, a narrow meaning should not be given to the meaning of the word 'services' but it should be construed broadly and one has to take into account the loss of 'personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a

grandmother is prepared to render voluntary services."

24. *Coming back to the facts of this case*, to sum up, it is pertinent for the Tribunals to consider the invaluable, intangible services rendered by the ubiquitous home maker, while assessing the damages on account of the loss of limb / disability suffered by her.

25. In the instant case, the claimant Dhanalakshmi in her prime youth has been destined to live, with the use of her legs dispensed with. Further more, the accident had awarded her many injuries which are sufficient enough to make her immobile for her rest of life.

25.1. Apart from the monetary loss suffered on account of her inability to continue her intangible services for her family of herself and her minor daughter, her future prospects have also been stand compromised because of the accident. In this age of marriages not being made in heaven, no one can deny the fact that the amputee had brighter prospects of a re-marriage before the accident.

Restless legs syndrome

26. The claimant has to suffer not only exploding pain during surgery / after surgery not only till cure but also even after physical healing, that in medical language is described as Restless legs Syndrome.

26.1. Restless legs syndrome (RLS) is a common condition characterized by unpleasant sensations deep inside the legs, which usually occurs at rest and especially at night. These sensations are accompanied by an urge to move the limb, and movements result in a temporary relief of the symptoms. An individual with a below the knee amputation who developed restless legs in his real and phantom limbs is reported. Phantom limb pain is a more unpleasant pain than the real limb pain. Therefore, pain and suffering has to be compensated adequately.

26.2. Considering the totality of circumstances, the claims tribunal should have fixed the quantum of compensation

27. The decision of the Hon'ble Supreme Court reported in in the case of in **Dinesh Singh Vs. Bajaj Allianz General Insurance Company Ltd. [Civil Appeal Nos. 8215 - 8216 of 2009]** rendered

by the Full Bench of the Hon'ble Supreme Court, wherein in respect amputation suffered by an engineering graduate at the age of 24 was ordered to be compensated by awarding a sum of Rs.33,10,160/-.

28. The Hon'ble Supreme Court has emphasized the duty of awarding 'just compensation' in several cases and it is appropriate to quote a few :

1. Nagappa vs. Gurudayal Singh & Ors. (2003) 2 SCC 274:

" it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted his claim."

2. Oriental Insurance Company Ltd. vs. Mohd. Nasir & Anr. (2009) 6 SCC 280:-

"27. The function of Commissioner is to determine the amount of compensation as laid down under the Act. **Even if no amount is claimed, the Commissioner must determine the amount which is found payable to the workman.** Even in the cases arising out of the 1988 Act, it is the duty of the Tribunal to arrive at a just compensation having regard to the

provisions contained in [Section 168](#) thereof."

3. Ningamma & Anr. vs. United India Insurance Company Ltd. (2009) 13 SCC 710:

23. it is not necessary in a proceeding under the MVA to go by any rules of pleadings or evidence. Section 166 of the MVA speaks about "Just Compensation". The court's duty being to award "Just Compensation", it will try to arrive at the said finding ***irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not.***

29. It seems that the claimant was not adequately compensated under all the heads itemized in the impugned award. Besides, the Tribunal has over looked certain other aspects which are indeterminable but over looking them entails patent injustice to be done to the claimant.

30. The Tribunal has removed the compensation aspect from the consideration in granting the award in respect of the loss of marital prospectus, may be because the claimant happened to be a widow or may be because, it is not claimed. This deliberate omission to even think about a re-marriage of a widow that too at a relatively younger age of 35 in assessing the compensation payable to the

claimant, appears to be normal, while considering the patriarchal notions of common man or the Indian society but judicial institutions are expected to see or even presume that re-marriage of women is a thing which empowers the women. In this case, the Tribunal has not awarded anything towards loss of prospectus of re-marriage. Hence, this Court inclined to compensate the loss of prospects of marriage of a young woman, who, as evidenced by the documents before the Tribunal, was taking every steps to improve a standards of life by admitting herself into a teacher training institution for a full time course of Diploma in Teacher Education, even while her daughter was pursuing her 6th standard. Such an ambitious woman would have possibly contracted her second marriage, but for this accident, she is doomed to be a torso sans both her lower limbs. Money can only be a poor substitute to be paid in lieu of loss of good married life. Unfortunately, this Court is left to rely on this poor substitute and award a compensation on this count, which is quantified into a sum of Rs.1,00,000/- (Rupees one lakh only).

31. The monthly income of the claimant can be fixed at Rs.6,000/-. As the value of household services to herself and to the family now has to be performed by engaging a servant, the compensation had to be estimated at Rs.2000/-. Apart from,

considering the future prospective increase in income at Rs.2000/- p.m., the total monthly income can be fixed at Rs.10,000/-.

31.1. Applying multiplier of 16, the total loss of income would be Rs.10,000 x 12 x 16 = Rs.19,20,000/-.

	Rs.
Medical expenditure	40,000/-
Transport expenses	20,000/-
Extra nourishment	20,000/-
Loss of enjoyment amenities	2,00,000/-
Future medical expenditure/ Purchase of artificial calipers	3,00,000/-
Pain and sufferings	2,00,000/-
Loss of re-marriage prospects	1,00,000/-
Loss of future earnings	19,20,000/-
Loss of intangible services to the child:	3,00,000/-

	31,20,000/-

31.2. In the result the civil miscellaneous appeal is allowed enhancing the compensation from Rs. 13,55,323/- to Rs. 31,20,000/-.

32. The Transport Corporation shall deposit the enhanced amount of Rs.31,20,000/-, less the amount already deposited if any, 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 six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer an amount of Rs.10,00,000/- (Rupees ten lakhs only) directly to the bank account of the claimant, through RTGS, within a period of two weeks thereafter and the balance

amount shall be kept in a Fixed Deposit, Reinvestment Scheme, for a period of ten years. In case of emergent need / economically viable investment(s), it is open to the claimant to move out an application seeking permission to withdraw the required amount, after adducing satisfactory evidence, before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

25.07.2017

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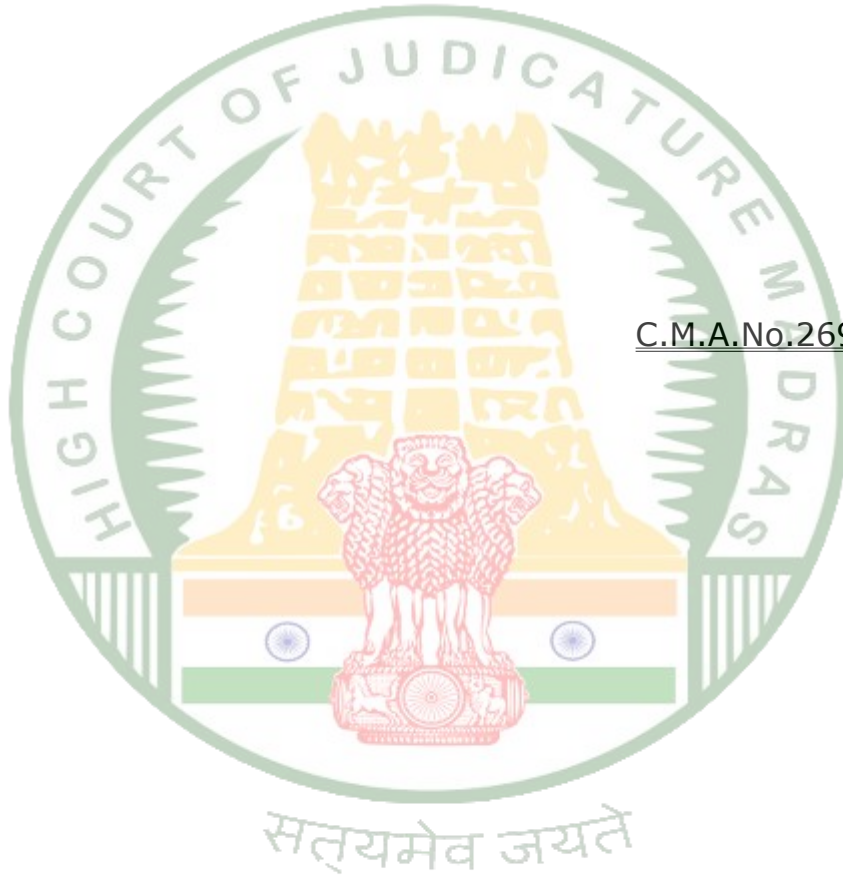
1. Motor Accident Claims Tribunal (Principal Sub Court), Erode
2. The Section Officer, V.R.Section, Madras High Court, Chennai.



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DR.S.VIMALA,J.

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C.M.A.No.2699 of 2013

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