

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 27.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.3672 of 2012

& M.P.No.1 of 2012

The New India Assurance Co. Ltd.,
Cuddalore. Appellant/2nd Respondent

-vs-

1.Usha
2.Seetha
3.Veeramani
4.Sumathi
5.Palaniswamy
6.Karunakaran ... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.06.2012 made in M.C.O.P.No.145 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Chidambaram.

For Appellant	:	Mr.S.Manohar
For Respondent Nos.1 & 2	:	Mr.S.Kumaradevan
For Respondent Nos.3, 4 & 5	:	Served
For Respondent No.6	:	Exparte

J U D G M E N T

The Insurance Company / second respondent in M.C.O.P.No.145 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Chidambaram, is the appellant. The second respondent is the owner of the offending vehicle. The first respondent is the wife; 2nd respondent is the mother, respondents 3 and 4 are sisters and 5th respondent is the brother of Palvannan, who died in a motor accident on 14.03.2011. The claimants have filed the petition claiming compensation of Rs.20,00,000/-. The Tribunal has awarded a total compensation of Rs.19,65,000/-.

2. Challenging the quantum of compensation fixed by the Tribunal, the Insurance Company preferred the appeal.

3. The accident occurred on 14.03.2011 at about 12.40 hours. It is not in dispute that the offending vehicle was insured with the appellant.

4. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to the negligent act of the driver of the Car and awarded total compensation of Rs.19,65,000/- with interest at the rate of 7.5% per annum.

5. It is seen that the deceased was aged 28 at the time of accident and his monthly income was fixed at Rs.13,500/- and by adopting multiplier 18, the Tribunal awarded Rs.19,44,000/- under the head loss of dependency. It awarded Rs.10,000/- towards consortium; Rs.10,000/- towards loss of love and affection and Rs.1,000/- towards damages to clothes.

6. The learned counsel appearing for the appellant would contend that the Tribunal went wrong in fixing the monthly income of the deceased as Rs.13,500/- per month. The learned counsel for the claimants supported the award.

7. The deceased left behind his wife, mother, sisters and brother. Though they jointly filed the claim petition, the Tribunal dismissed the petition as against sisters and brother. In support of the claim, the first claimant Usha has given evidence and marked Ex.P.5. It shows that the deceased was employed and he was running a Hotel. The Tribunal in its order would state that the deceased would have earned Rs.13,500/- per month.

8. The learned counsel appearing for the appellant would submit that the income of the deceased was fixed at higher rate without any basis. Having regard to the fact that the deceased was running a Hotel in a Village and in the absence of any concrete evidence, this Court is inclined to fix the monthly income of the deceased at Rs.9,000/-. Admittedly, the deceased was aged 28 and the multiplier to be adopted is 17, as per the dictum in SARLA VERMA vs. DELHI TRANSPORT CORPORATION [(2009) 6 SCC 121]. There are 2 dependants, namely, wife and mother. Therefore, 1/3rd has to be deducted towards personal expenses of the deceased.

9. The Tribunal awarded a meagre sum of Rs.10,000/- under the head consortium. As the age of the first claimant [wife] was 23 years and she has lost her husband, this Court is inclined to enhance the amount to Rs.50,000/-. The Tribunal allowed Rs.10,000/- for loss of love and affection to the second claimant [mother]. This Court feels that it is just and

reasonable to award Rs.25,000/- under this head. The Tribunal omitted to award any amount under the head funeral expenses and transportation. Hence, this Court is inclined to award Rs.25,000/- under the head funeral expenses and transportation. Thus, the compensation has to be reassessed as follows:

Sl.No.	Heads	Calculation
1.	Salary	Rs.9,000.00 per month
2.	1/3 rd deducted as personal expenses of the deceased	[Rs.9,000.00 - Rs.3,000.00] = Rs.6,000.00 per month
3.	Compensation after multiplier of 17 is applied	[Rs.6,000.00 x 12 x 17] = Rs.12,24,000.00
4.	Loss of Consortium to first claimant [wife]	Rs.50,000.00
5.	Loss of Love and Affection to the second claimant [mother]	Rs.25,000.00
6.	Funeral expenses and Transportation	Rs.25,000.00
Total	Compensation Awarded	Rs.13,24,000.00

10. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent as indicated above. The appellant-Insurance Company is directed to deposit the enhanced award amount of Rs.13,24,000/- [Rupees Thirteen Lakhs Twenty Four Thousand only] with interest @ 7.5% per annum and costs, less the statutory deposit, to the credit of M.C.O.P.No.145 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Chidambaram, within a period of six weeks from the date of receipt of a copy of this order. The claimants are permitted to withdraw the enhanced compensation amount awarded by this Court with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

1.The Motor Accidents Claims Tribunal
(Sub Court), Chidambaram.

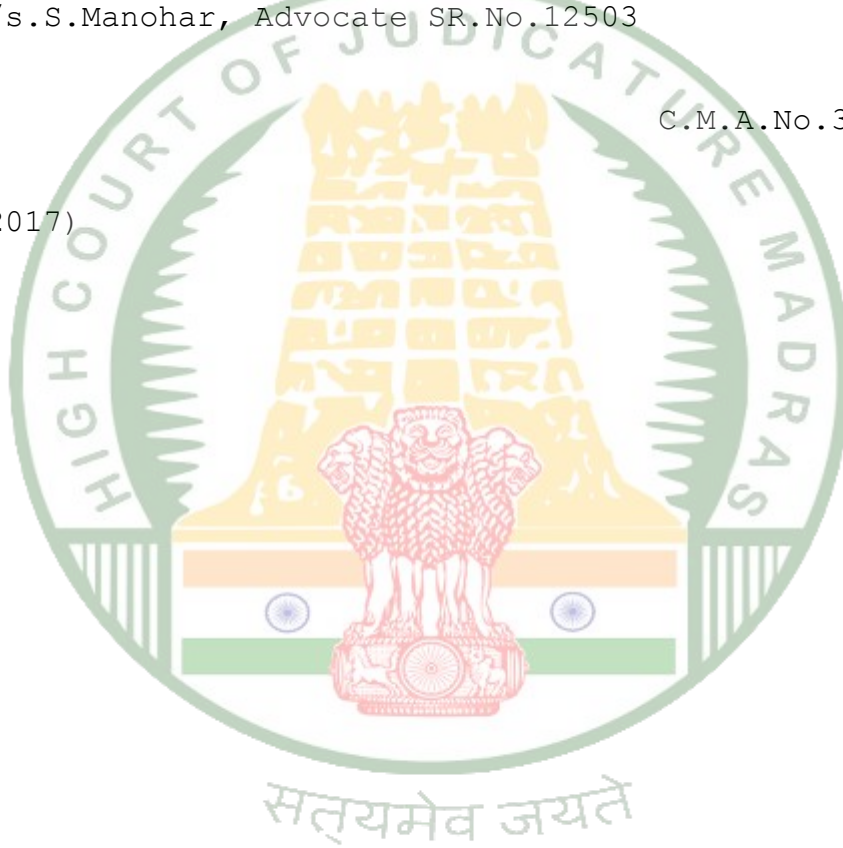
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.S.Kumaradevan, Advocate SR.No.12967

+1cc to M/s.S.Manohar, Advocate SR.No.12503

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CNR (CO)
GN (10/04/2017)



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