



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. (MD) No.1278 of 2016

1.T.Geetha
2.T.Parthasarathy
3.T.Rengarajan
4.T.Ramesh

... Appellants/Claimants

Vs.

1.C.Indra

2.The Branch Manager,
The New India Assurance Company Ltd.,
109, Nungampakkam High Road,
Chennai - 600 034.

... Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 29.11.2013 made in M.C.O.P.No.1440 of 2008 on the file of the Motor Accident Claims Tribunal/Southern Districts Communal Clashes Cases Trial Court/District and Sessions Court, Madurai.

For Appellants : Mr.B.A.Muruganantham
For 1st Respondent : No appearance
For 2nd Respondent : Mr.K.Murugesan

JUDGMENT

The claimants, who are sister and brothers of Vidya, who died in motor accident on 03.09.2006 are the appellants. Though the Tribunal has found negligence on the part of the driver of the car, it had awarded Rs.1,70,000/- only towards loss of love and affection as well as loss of support. It has rejected the claim on the ground of loss of dependency. Aggrieved, the claimants have preferred the above appeal.

2.The learned counsel for the appellants relied on the decision of a Division Bench of this Court in **Anandha Lakshmi v. TNSTC (Villupuram Division-I) Ltd., (D)** reported in **2017 (1) TN MAC 383 (DB)**, wherein this Court held that the elder brother would be entitled to claim compensation. The Division Bench of this Court has referred to the entire case laws relating to the definition 'legal representatives' under the Motor Vehicles Act, 1988 and held that

the brother of the deceased would be entitled to claim compensation. In the light of the above authoritative pronouncement of the Division Bench of this Court, I have no hesitation to conclude that the Tribunal came to a wrong conclusion that the claimants, who are brothers and sister of the deceased are not entitled to claim compensation on the ground of loss of dependency. Hence, I hold that the claimants are entitled to compensation towards loss of earning and the quantum of compensation has to be determined.

3. It is claimed that the deceased was working as a teacher. However, no supporting evidence has been produced. The Tribunal has found the evidence in the form of salary certificate issued by Sri Aurovindo Mira Matriculation School in the year 1999, whereas the accident has occurred in 2006. Therefore, the Tribunal has concluded that there is no evidence to show that the deceased was employed at the time of accident. However, taking into account the nature of the qualification and the decisions of the Hon'ble Supreme Court, which lay down that notional income can be fixed in respect of the persons who are qualified as well the date of accident, this Court fixes the income of the deceased as Rs.4,000/- per month.

4. Since the deceased was living on her own, I deem it appropriate to deduct 50% of the income for her personal expenses. Therefore, loss of income would come to Rs.2,000/- per month. The deceased was aged about 48 years at the time of accident, the multiplier as suggested by the Hon'ble Supreme Court in **Smt. Sarla Verma & ors. v. Delhi Transport Corporation & another (SC)** reported in **2009 (2) TN MAC 1 (SC)** is 13. Therefore, the loss of income is worked out as $2000 \times 12 \times 13 = \text{Rs.}3,12,000/-$. The Tribunal has awarded Rs.50,000/- towards loss of love and affection for 4 claimants. It is very low. Therefore, the compensation under the head loss of love and affection is enhanced to Rs.68,000/-. The Tribunal has also awarded Rs.5,000/- towards funeral expenses and Rs.15,000/- towards transportation charges. I do not think that the said amounts need any revision.

5. Accordingly, the award of the Tribunal is modified as follows:

(i) For Loss of income	.. Rs.3,12,000
(ii) For Loss of Love and Affection	.. Rs. 68,000
(iii) For Funeral expenses	.. Rs. 5,000
(iv) For Transport Charges	.. <u>Rs. 15,000</u>
Total	.. <u>Rs.4,00,000</u>

6. Accordingly, this Civil Miscellaneous Appeal partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.1,70,000/- to Rs.4,00,000/-. The appellants are entitled to the award amount in the ratio as apportioned by the Tribunal. The second respondent/Insurance Company is directed to deposit the entire award amount with proportionate interest and costs, less the amount already deposited, within a period of twelve weeks from the



date of receipt of a copy of this order. The appellants/claimants are permitted to withdraw the entire award amount with proportionate accrued interest and costs, less the amount already received through RTGS by making necessary applications before the Tribunal. No costs.

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Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/
Southern Districts Communal Clashes Cases Trial Court/
District and Sessions Judge,
Madurai.

+ 1 CC TO Mr.B.A.MURUGANANTHAM, ADVOCATE IN SR No. 59818
+ 1 CC TO Mr.K.MURUGESAN, ADVOCATE IN SR No. 59947

SJ

TE/MR-KKR/SAR-I : 19/07/2017 : 3P/4C

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