



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2017

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THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.M.A(MD)No.995 of 2014

1.Vatshalakumari

2.S.Visagan

3.Usharani

4.Udhaya

...Appellants / Claimants

**Vs.**

1.S.Rameshkanna

2.I.C.I.C.I. Lambard General Insurance Company Limited,  
by its Branch Manager,  
AA Road, Gnanavolivupuram,  
Madurai-625 016.

3.Guruvammal

4.United India Insurance Company Limited,  
Rep by its Branch Manager,  
5-328, Sowgat Ali Street,  
Paramakudi-7.

...Respondents / Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 11.04.2014 and made in M.C.O.P.No.554 of 2010 on the file of the Motor Accidents Claims Tribunal, (C.C.Court) Madurai.

|               |                      |
|---------------|----------------------|
| For Appellant | : Mr.J.Ramamoorthy   |
| For R1 & R3   | : No Appearance      |
| For R2        | : M/s.V.Muthukamachi |
| For R4        | : Mr.A.S.Mathialagan |

### **J U D G M E N T**

The Civil Miscellaneous Appeal has been filed by the appellants to set aside the award dated 11.04.2014 made in M.C.O.P.No.554 of 2010 on the file of the Motor Accidents Claims Tribunal, (C.C.Court) Madurai.



2.It is the case of a fatal accident, which took place on 12.10.2009 at about 02.00 p.m., on Paramakudi to Ramanathapuram road, near Pottithatty shop.

3. It is the case of the claimants before the Tribunal that when the deceased S.Chakkaravarthy along with others was travelling in the TATA Qualis car bearing Registration No.TN-67 S-5451, from Madurai to Ramanathapuram near Pottithatti bus stand, the driver of the lorry bearing registration No.TN-65 F-9752, drove the vehicle in a rash and negligent manner and dashed against the car, due to which the deceased and four other co-passengers including the driver died on the spot.

4.The claimants filed an application in M.C.O.P.No.554 of 2010 on the file of the Motor Accidents Claims Tribunal, (C.C.Court) Madurai, seeking compensation.

5.Before the Tribunal, on the side of the claimants, examined three witnesses as P.W.1 to P.W.3 and marked thirteen documents as Ex.P.1 to Ex.P.13. On the side of the respondent, no witness was examined and no document was marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to rash and negligent driving of the driver of the lorry and therefore directed the first and second respondents to pay a sum of Rs.7,00,527/- to the claimants as compensation.

7. Against which, the appellants/claimants filed the present appeal seeking enhancement.

8.This Court heard the submission of the learned counsel for the appellant and perused the materials available on record.

10. The learned counsel appearing for the appellants would submit that the Tribunal has awarded a sum of Rs.7,00,000/- and it is very meagre compensation, since the deceased was having five years of remaining service in RMS and the award has to be enhanced to Rs.25,00,000/-. Further, it is contended that the deceased was earning a sum of Rs.22,159/- per month. The Tribunal ought to have reduced  $\frac{1}{4}^{\text{th}}$  of the income towards the personal expense of the deceased, instead of deducting  $\frac{1}{3}^{\text{rd}}$  of the income. The compensation awarded by the Tribunal under other heads are on the lower side and the same has to be enhanced.

11.As rightly pointed out by the learned counsel appearing for the appellants, the Tribunal has erred in fixing the income of the deceased. Therefore, as per Ex.P.2, Rs.14,470/- is taken as the income of the deceased. The Tribunal has wrongly deducted  $\frac{1}{3}^{\text{rd}}$

of the income towards personal expenses. In this connection, it is useful to refer to the judgment of the Honourable Supreme Court in the case of, Sarla Verma Vs. Delhi Transport Corporation reported in 2009(2) TNMAC 1 (SC), wherein, it has been held that the deduction towards personal and living expenses of the deceased, should be one-fourth ( $1/4^{\text{th}}$ ) where the number of dependant family members is 4 to 6. Accordingly, in the case on hand as there are four dependants,  $1/4^{\text{th}}$  of the income has to be deducted, and the income would be Rs.10,852/- ( $14470 - 1/4 \times 14470$ ). As per the claim petition the deceased was aged 56 years at the time of accident, the correct multiplier would be "9". and accordingly, the loss of income has to be arrived at Rs.11,72,016/- ( $10852 \times 9 \times 12$ ). The Tribunal has awarded Rs.20,000/- towards loss of consortium and the same is enhanced to Rs.50,000/- and The Tribunal has awarded Rs.60,000/- towards loss of love and affection, considering the number of claimants and their age, the same is enhanced to Rs.1,00,000/-. The compensation, under other heads, awarded by the Tribunal is hereby confirmed.

12. This Court modifies the award of the Tribunal by enhancing the compensation as under:-

| S. No | Description        | By Tribunal (Rs) | By this Court (Rs) | Result                   |
|-------|--------------------|------------------|--------------------|--------------------------|
| 1     | Loss of income     | 5,90,527         | 11,72,016          | Enhanced                 |
| 2     | Love and affection | 60,000           | 1,00,000           | Enhanced                 |
| 3     | Loss of consortium | 20,000           | 50,000             | Enhanced                 |
| 4     | Transportation     | 5,000            | 5,000              | confirmed                |
| 5     | Funeral expenses   | 25,000           | 25,000             | confirmed                |
|       | Total              | 7,00,527         | 13,52,016          | By enhancing Rs.651489/- |

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, by enhancing the award of the Tribunal from Rs.7,00,527/- (Rupees Seven Lakhs five hundred and twenty seven only) to a sum of Rs.13,52,016/- (Rupees Thirteen lakhs fifty two thousand and sixteen only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the respective shares with accrued interests and costs as



apportioned by the Tribunal, without filing any formal application before the Tribunal. The appellants shall pay additional Court fee, if any, within a period two weeks from the date of receipt of a copy of this judgment. No Costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,  
Motor Accidents Claims Tribunal,  
(C.C.Court) Madurai.

2. The Record Keeper,  
VR Section, Madurai Bench of Madras High Court,  
Madurai.

+ 1 cc TO Mr.K.K.Ramakrishnan , Advocate in SR No. 79963

+ 1 cc TO Mr.A.S.Mathialagan , Advocate in SR No. 79482

dsk/rmk

AE/MR KKR/SAR3/21.12.2017/4P/5C

C.M.A (MD) No.995 of 2014  
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