

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :24.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.108 of 2006

and

C.M.P.No.360 of 2006

The Divisional Manager,  
National Insurance Co. Ltd.,  
Divisional Office,  
J.N.Street,  
Pondicherry.

...Appellant/2<sup>nd</sup> Respondent

Versus

1. Banumathy
2. Minor Rekha
3. Minor Renuka
4. Minor Revathy
5. Minor Radhika
6. Royamma
- (Minors 2 to 5 represented by  
their mother Guardian 1<sup>st</sup> respondent  
herein)
7. K.V.Kumar

...Respondents/Petitioners 1 to 6  
/1<sup>st</sup> Respondent

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.06.2005 made in M.A.C.T.O.P.No.316 of 2003 on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Cuddalore,

For Appellant : Mr.S.Vadivel

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 17.06.2005 made in M.A.C.T.O.P.No.316 of 2003 on the file of the Motor Accident Claims Tribunal, (II Additional Subordinate Judge), Cuddalore.

2. The facts of the case are as follows :

On 30.07.2002, at about 4.30 p.m, when the deceased was riding his vehicle from east to west on the GST Road at Udumalpet keeping the extreme left of the road, the 1<sup>st</sup> respondent Lorry bearing Registration No.TN 10 C 4682 came behind the deceased vehicle in a rash and negligent manner and dashed against the deceased and the deceased sustained fatal injuries and he died on 01.08.2002 during the treatment at Government Hospital, Chennai. The claimants being the legal heirs of the deceased have claimed a sum of Rs.8,00,000/- as compensation.

3. The respondent/ Insurance Company in the counter statement has denied the mode of accident and negligence and also the sum claimed by the claimants is also an excessive one.

4. The Tribunal, after analyzing the evidence and documents placed before it, had given a finding that the accident had occurred only due to rash and negligent driving on the part of the lorry driver and also determined the age, occupation and annual dependancy of the claimants and awarded a sum of Rs.6,85,000/- as compensation. Aggrieved against the said order, the respondent/Insurance Company has preferred this appeal.

5. In the grounds of appeal, it has been stated that the age and income was not considered by the Tribunal by sufficient documentary evidence. The further grievance is that the income of the deceased taken at Rs.4,500/- is excessive and purely on presumption. The other grievance is that the sum awarded by the Tribunal is not based on relevant documents and evidence but, on the sympathy ground, a huge amount has been awarded. Hence, the appellant sought for setting aside the award passed by the Tribunal.

6. Heard the appellant side and perused the documents available on record.

7. The learned counsel for the appellant has argued that the age of the deceased was taken by the Tribunal as 31 years. To prove the same, on the side of the claimants, the postmortem certificate was filed. Hence, the age taken by the Tribunal at 31 years for the deceased is not disputed by the respondent. Further, when the occupation of the deceased was taken as one Centering worker, definitely, a person of that age would earn Rs.200/- per day to manage the family members of six. Hence, the loss of income determined by the Tribunal based on the occupation and age of the deceased by taking his monthly income as Rs.4,500/- arrived the sum at Rs.6,12,000/- is very much

reasonable and also, while considering the number of claimants, who are depending on the income of the deceased, not only the income but they have lost the support and love and affection and that has to be properly considered. While verifying the sum awarded by the Tribunal, the Tribunal has awarded a sum of Rs.10,000/- as nourishment and for loss of love and affection to the claimants 6 in numbers as Rs.30,000/- is very much reasonable. The sum awarded for loss of estate and care at Rs.30,000/- is also found very much reasonable because there are 4 minor claimants in the claim application. Hence, the argument advanced by the learned counsel for the appellant that the monthly income taken by the Tribunal is on the higher side is not reasonable one, when the age of the deceased is only 31 years leaving the minor children and the whole family is deserted now. Hence, this Court is of the view that the monthly income determined by the Tribunal and arriving the loss is very much reasonable and the sum awarded under various heads is also quite reasonable and proper. This Court finds no merit in the appeal. Hence the award passed by the Tribunal and the finding of the Tribunal does not require any interference.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

9. Accordingly, the Appellant/ Insurance Company is directed to deposit the entire Award amount along with interest as awarded by the Tribunal, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon, as apportioned by the Tribunal including the share of the minors as observed by the Tribunal.

uma

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

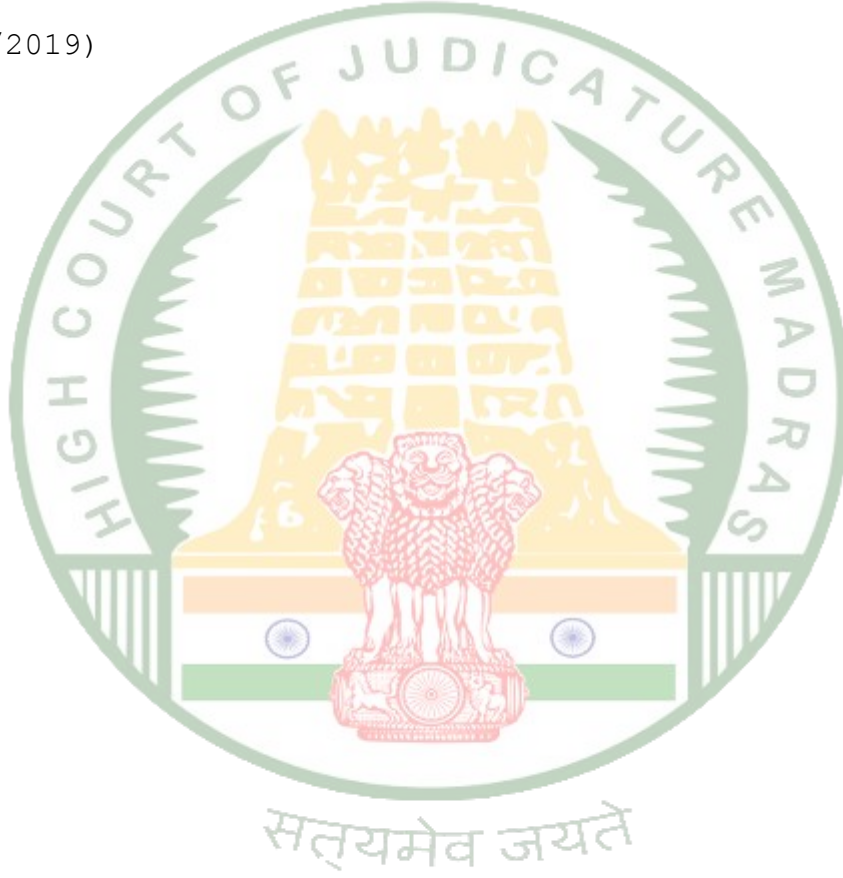
1. The Motor Accident Claims Tribunal  
(II Additional Subordinate Judge),  
Cuddalore,

2. The Section Officer,  
V.R.Section,  
High Court,  
Madras.

+1cc to Mr.S.Vadivel, Advocate, SR.No.72597/18

C.M.A. No.108 of 2006  
and  
C.M.P.No.360 of 2006

Kak(29/07/2019)



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