

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3746 of 2010

1.D.Hilda Rani
2.R.Joline Tiffany (Minor)
3.R.Derick (Minor)
(Minors rep. By their mother &
natural guardian D.Hilda Rani)
4.N.Mariasiluvai
...Appellants

..Vs..

Metropolitan Transport Corporation,
Ltd. Rep. By managing Director,
Pallavan Salai, Chennai -2
...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in MACT.O.P.No.3984 of 2007, dated 10.06.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Madras.

For Appellants : Mr.S.Gangaram Prasad
For Respondent : Mr.S.S.Swaminathan

JUDGMENT

The appellants are the claimants in MCOP.No.3984 of 2007, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. The brief facts of the case of the appellants/claimants are as follows:

On 05.09.2007, the deceased Raju, husband of the first claimant and father of the 2nd and 3rd claimants was riding his motor cycle bearing Registration No.TN-05-C-0637 along E.V.R. Periyar Salai. When he was nearing the Broadway Junction, a speeding bus belonging to the respondent bearing Registration No.TN-01-N-3511 (Route No.71E), hit the motorcycle from behind as a result of which, the deceased sustained injuries and died on the way to the hospital. According to the claimants, the deceased was aged 38 years, on the date of the accident and and he

was doing the business in the name and style of "The Dairy World" in Chennai, earning a sum of Rs.20,000/- per month.

3. According to the appellants/claimants, the rash and negligent driving of the driver of the respondent was the cause of the accident and that they are liable to pay the compensation of Rs.25,00,000/- to them. The respondent filed a counter denying all the allegations of the appellants/claimants.

4. The trial Court after analyzing the entire evidence on record, awarded a sum of Rs.9,25,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

5. Mr.S.Gangaram Prasad, the learned counsel appearing for the appellants would contend that when the appellants/claimants have filed the certificate of registration of his firm (Ex.P11), current bank account statement (Ex.P15), Advance receipts and rental receipts (Ex.P16) and Salary vouchers (Ex.P17), the trial Court has fixed the income of the deceased only as Rs.7,500/- per month.

6. A perusal of the judgment passed by the trial Court shows that the trial Court after considering all the documentary evidence adduced on the side of the appellants/claimants with regard to the income has opined thus,

On a careful reading of the above said cases reveals that the above said case differs from the case on hand and in the above said cases, eventhough income tax return has not filed. On the side of the petitioners have produced other documentary evidence to the income of the deceased. In the instant case, apart from non production of income tax return, also not produced relevant documents to show that the deceased was earning Rs.20,000/- per month. On perusal of records produced on the side of the petitioners and considering the oral evidence of P.W.1. I am of the view that the monthly income of the deceased is to be taken as Rs.7,500/- per month and Rs.90,000/- per annum and after deducting 1/3rd of the same towards the personal expenses of the deceased, the loss of income of the petitioners is fixed at Rs.60,000/- per annum.

7. The trial Court in fact has relied on the various decisions of the Hon'ble Supreme Court and had arrived at the above conclusion. Furthermore, the above observation of the trial Court cannot be faulted with and therefore, I hold that the monthly income fixed by the Tribunal as Rs.7,500/- is perfectly in order. However, the trial Court has not fixed any amount towards future prospects. As per the decision laid down in National Insurance Co. Vs. Prany Sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects and since, there are four persons depending on the income of the deceased $1/4^{th}$ should be deducted towards personal expenses. Since the age of the deceased was 38 years, on the date of the accident, the proper multiplier to be adopted in the instant case is '15' as per the decision rendered in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus, loss of dependency is calculated as follows:-

$$\begin{aligned}
 &= \text{Rs.}7,500/- + \text{Rs.}3,000/- \text{ (40\% of Rs.}7,500/-) \\
 &= \text{Rs.}10,500/- \text{ (-) } 1/4^{th} \text{ deduction (2625)} \\
 &= \text{Rs.}7,875/- \times 15 \times 12 \\
 &= \text{Rs.}14,17,500/-
 \end{aligned}$$

8. Apart from the above amount, the appellants/claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of consortium and funeral expenses. The award passed under various heads is extracted hereunder:

S.Nos.	Heads	Amount granted
1.	Loss of dependency	14,17,500/-
2.	Loss of estate	15,000
3.	Loss of consortium	40,000/-
4.	Funeral expenses	15,000/-
Total		Rs.14,87,500-

9. Thus, the appellants/claimants are entitled to a sum of Rs.14,87,500/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit. The respondent is directed to deposit the enhanced compensation amount, less the amount already deposited by them with interest and costs, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the claimants who are major are at liberty to withdraw their respective shares as per the apportionment made by the Tribunal after following necessary procedures. The share of the minor claimants shall be deposited in any

one of the Nationalized Bank till they attain majority.
The claimants shall pay additional Court fee, if any, for
the enhanced amount.

10. With the above observations, the Civil
Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dna

To

The Chief Judge, Court of Small Causes, Chennai.
(Motor Accidents Claims Tribunal).

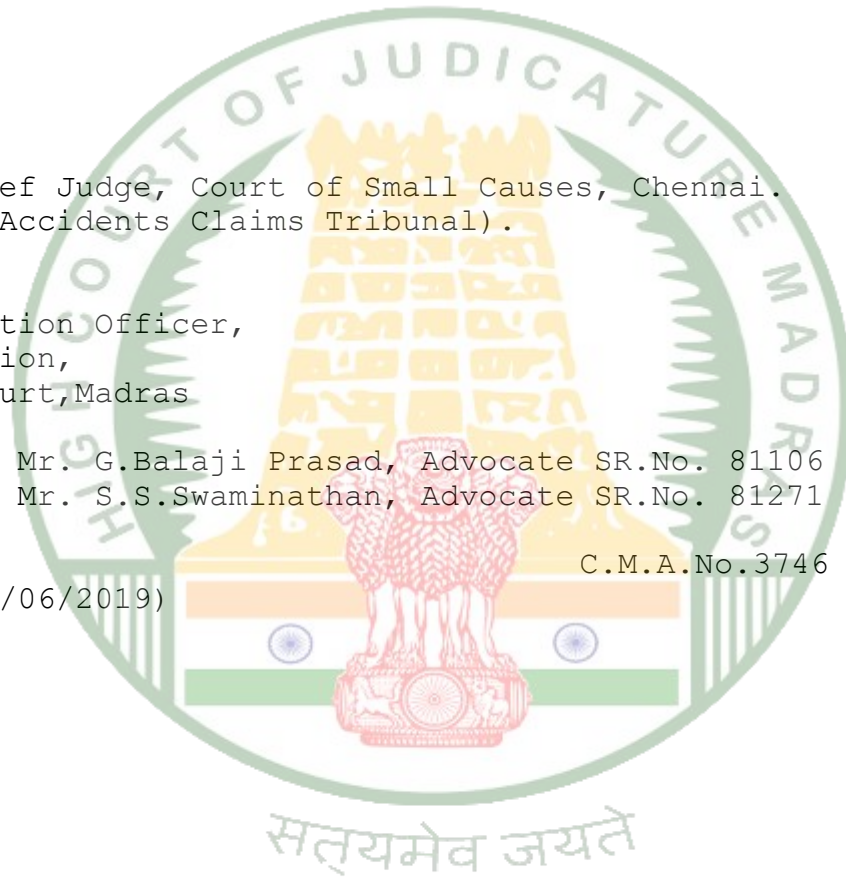
Copy to
The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr. G.Balaji Prasad, Advocate SR.No. 81106

+1cc to Mr. S.S.Swaminathan, Advocate SR.No. 81271

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A.SK(06/06/2019)



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