

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1939 of 2011

1. Ambiga  
2. Samikannu  
3. Sivagami  
4. Minor Karthi  
5. Minor Ammu  
6. Minor Appu .... Appellants/Claimants

Vs.

The Managing Director,  
Tamilnadu State Transport  
Corporation Limited,  
Vellore. .... Respondent/Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of Award passed in M.C.O.P.No.680 of 2004 dated 15.09.2005 by the District Judge, Motor Vehicle Accidents Claims Tribunal, Thiruvannamalai.

For Appellants : Ms.M.Malar

For Respondent : Mr.K.J.Sivakumar

सत्यमेव जयते  
J U D G M E N T

The appellants are the claimants in MCOP No.680 of 2004 on the file of the District Judge, Motor Vehicle Accidents Claims Tribunal, Thiruvannamalai.

2. The first claimant is the wife of the deceased Gandhi while the 2nd and 3rd claimants are his parents and the claimants 4 to 6 are his sons and daughter. They filed the claim petition in MCOP No.680 of 2004 seeking compensation of Rs.10,00,000/- for the death of Gandhi on account of a road accident involving motor vehicles.

3. The brief case of the appellants/claimants. On 13.06.2004, the deceased Gandhi was travelling as a passenger in an auto bearing registration No.TN-02-E-7083 on Pallipattu-Thiruvannamalai road. At about 11.30 p.m., when the auto was nearing Rangammal Hospital, a speeding bus bearing registration No. TN-23-N-1380 belonging to the respondent hit the auto, as a result of which, the deceased sustained injuries all over his body. Immediately, he was rushed to the Government Hospital, Thiruvannamali, however, he succumbed to injuries, on the way to the hospital. According to the claimants, the rash and negligent driving of the driver of the respondent was the cause of the accident and therefore, the respondent is liable to pay compensation to the appellants/claimants.

4. The respondent a filed counter affidavit before the tribunal, denying all the allegations of the claimants.

5. After analysing entire evidence on record, the tribunal awarded a compensation of Rs.2,62,000/- together with interest at the rate of 7.5% per annum. Not satisfied with the quantum of compensation awarded by the tribunal, the appellants filed the present appeal seeking enhancement of compensation amount.

6. Ms.M.Malar, learned counsel appearing for the appellants would contend that the deceased was aged 23 years on the date of accident and 6 persons were depending on his income. Her further contention is that, the trial court has fixed the monthly income of the deceased as Rs.1,875/-, which is very meagre.

7. Per contra, Mr.K.J.Sivakumar, learned counsel for the respondent would contend that the trial court awarded a compensation of Rs.2,62,000/-, based on the legal principles prevailing at that point of time and therefore, it does not warrant any interference by this court.

8. As far as the present case is concerned, the deceased was aged 23 years on the date of the accident and in the absence of proof of income, notional income should have been fixed at Rs.4,500/- by the tribunal. Further more, as per the decision of a Constitution Bench of the Honourable Supreme Court in National Insurance Company Vs. Pranay Sethi and others reported in 2017(2) TN MAC 601, future prospects at 40% should be added to the income  $(4500 + 1800 = 6300)$ . The proper multiplier to be adopted in the instant case is 18, as per the decision in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since 6

persons were depending on the income of the deceased, 1/4th should be deducted towards his personal expenses. Thus, Loss of dependency is awarded at (4725x12x18) Rs.10,20,600/-. In addition to that, the claimants are entitled to Rs.15,000, Rs.15,000/- and Rs.40,000/- towards Loss of Estate, Funeral Expenses and Loss of consortium to the first claimant respectively. The revised award of compensation under various heads is extracted hereunder.

| Sl.No | Heads                                     | Amount    |
|-------|-------------------------------------------|-----------|
| 1     | Loss of dependency (4725x12x18)           | 10,20,600 |
| 2     | Loss of consortium for the first claimant | 40,000    |
| 3     | Loss of Estate                            | 15,000    |
| 4     | Funeral Expenses                          | 15,000    |
|       | Total                                     | 10,90,600 |

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

9. In the result,

(i) The appeal is allowed. No costs.

(ii) The appellants/claimants are entitled to a compensation of Rs.10,90,600/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimants/appellants are directed to pay the court fee for the enhanced compensation amount and the Registry is directed to draft the decree, after receipt of the balance court fee.

(iv) The respondent is directed to deposit the enhanced compensation amount of Rs.10,90,600/- with accrued interest, less the amount already deposited by them, within 4 weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the respondent, the claimants 1 and 4 to 6 are entitled to withdraw Rs.2,50,000/-

each (totalling Rs.10,00,000) and the claimants 2 and 3 are entitled to Rs.45,300/- each (totalling Rs.90,600), after following due process of law.

Sd/-  
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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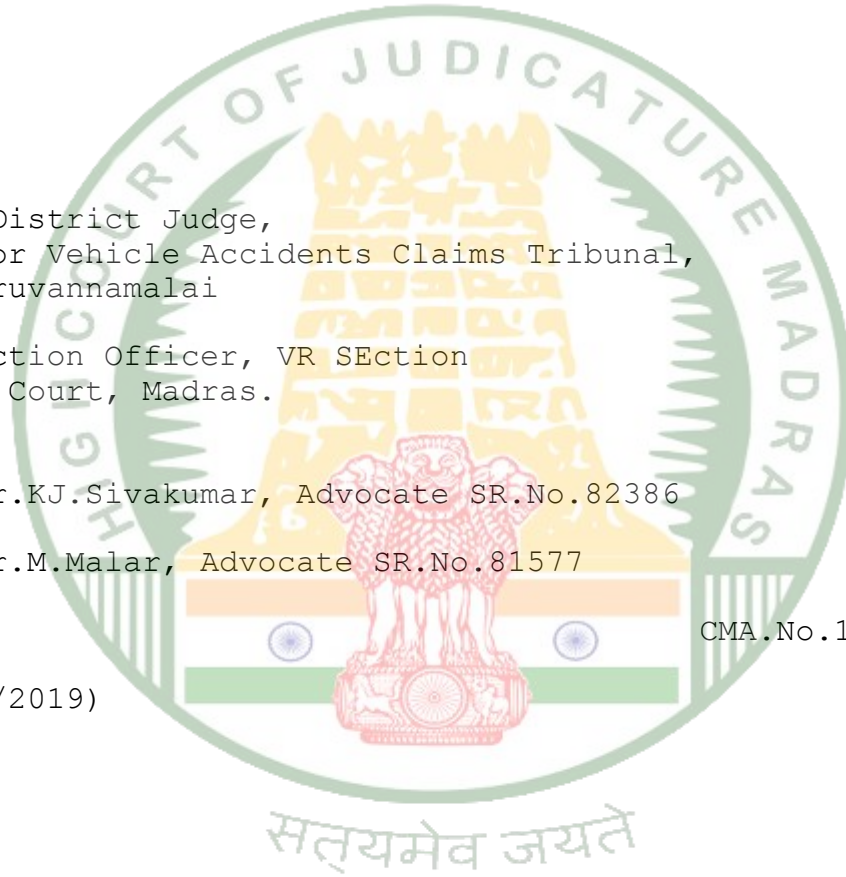
1. The District Judge,  
Motor Vehicle Accidents Claims Tribunal,  
Thiruvannamalai
2. The Section Officer, VR Section  
High Court, Madras.

+1cc to Mr.KJ.Sivakumar, Advocate SR.No.82386

+1cc to Mr.M.Malar, Advocate SR.No.81577

CMA.No.1939 of 2011

AK (CO)  
GMY (21/03/2019)



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