

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1657 of 2018
and
C.M.P.No.13076 of 2018

M/s.Liberty Videocon General
Insurance Company Limited,
No.88, G.N.Chetty Street,
T.Nagar, Chennai. ... Appellant/2nd Respondent

Vs

1.Theerthan
2.Manjula
3.Priya
4.Jamuna
5.Vasanthamani (Minor)
6.Manikandan (Minor) ... Respondents 1to6/Claimants

(Respondents 5 & 6 Minors Rept.
by father & NF 1st respondent)

7.Chitra ... 7th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment
and Decree made in MCOP.No.3 of 2016, dated 28.03.2017, on the
file of the Motor Accident Claims Tribunal, III Additional
District & Sessions Court, Cuddalore at Vridhachalam.

For Appellant :Mr.M.B.Raghavan

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company,
against the award of Rs.17,42,000/-, for the death of one
Pachaiyammal, aged about 45 years, self employed, allegedly
earning about 15,000/- per month, in the accident, which
occurred on 17.12.2015, when she was walking on Trichy to
Chennai National Highway and hit down by the lorry belonging
to the 7th respondent, insured with the appellant/insurance
company.

2.Heard, Mr.M.B.Raghavan, learned counsel appearing for
the appellant. He would submit that in the absence of any
proof regarding income, the Tribunal erroneously determined

the monthly income at Rs.9,000/- and added 30% towards future prospects, whereas only 25% has to be added. Further, he would submit that as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), only Rs.40,000/- has to be added towards loss of consortium, whereas the Tribunal awarded a sum of Rs.50,000/-. Hence, he seeks for reduction of compensation.

3.A perusal of the records would show that the deceased is said to have worked as a Coolie and earned Rs.15,000/- per month. However, the Tribunal in the absence of any proof rightly determined the monthly income at Rs.9,000/- notionally, which is inconsonance with judgment of the Honourable Supreme Court delivered in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459. In the referred judgment, the Hon'ble Supreme Court, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 whereas in the present case, the accident occurred on 17.12.2015. In view of inflation and consumer price index, Rs.9,000/- determined by the Tribunal is justified.

4.The contention made by the learned counsel for the appellant that 30% should not have been added towards future prospects and only 25% has to be taken towards future prospects is justified. Therefore, this Court adds only 25% towards future prospects. After adding 25% towards future prospects, the monthly income would be at Rs.11,250/- (Rs.9000/- + 25% of Rs.9000/-).

5.The size of the family is six. As per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), 1/5th has to be deducted towards personal expenses, whereas the Tribunal wrongly deducted 1/4th. After deducting 1/5th towards personal expenses, the monthly contribution would be at Rs.9,000/- (Rs.11,250/- (-) 1/5th of Rs.11,250/-)

6.The age of the deceased is 45 years, as per Ex.P.2-Post mortem certificate and the appropriate multiplier of "14" was rightly adopted by the Tribunal. Hence, the same is confirmed. Therefore, applying the said multiplier, the loss of income would be at Rs.15,12,000/- (Rs.9,000/- x 12 x 14).

7.Loss of consortium:

The Tribunal awarded a sum of Rs.50,000/- under this head, which is contrary to the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Hence, the same is reduced to Rs.40,000/-.

8.Loss of love and affection:

The Tribunal awarded a sum of Rs.1,50,000/- under this head to claimants 2 to 6. The same is confirmed.

9.Funeral expenses:

The Tribunal awarded a sum of Rs.25,000/- under this head. The same is reduced to Rs.15,000/-

10.Transportation:

The Tribunal awarded a sum of Rs.5,000/- under this head. The same is enhanced to Rs.10,000/-

11.Loss of estate:

No amount was awarded by the Tribunal, under this head. Hence, this Court awards a sum of Rs.15,000/- under this head.

Head	Amount (Rs.)
Total loss of income	1512000
Loss of consortium	40000
Loss of love and affection	150000
Funeral expenses	15000
Transportation charges	10000
Loss of estate	15000
Total	1742000

12.Hence, the total compensation payable in this case is Rs.17,42,000/-. Therefore, the Tribunal's award of Rs.17,42,000/- is confirmed in the above manner.

13.The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed and the ratio fixed by the Tribunal in respect of the shares of the claimants is also confirmed.

14.The appellant/Insurance Company is directed to deposit the entire award amount, with interest and costs, as per the award passed by this Court, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the shares of claimants 1 to 4 to their respective bank accounts, through RTGS, within a period of one week thereon. As far as 5th and 6th claimants/minors' share are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

15.Accordingly, this appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-Iv)

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Sub Assistant Registrar

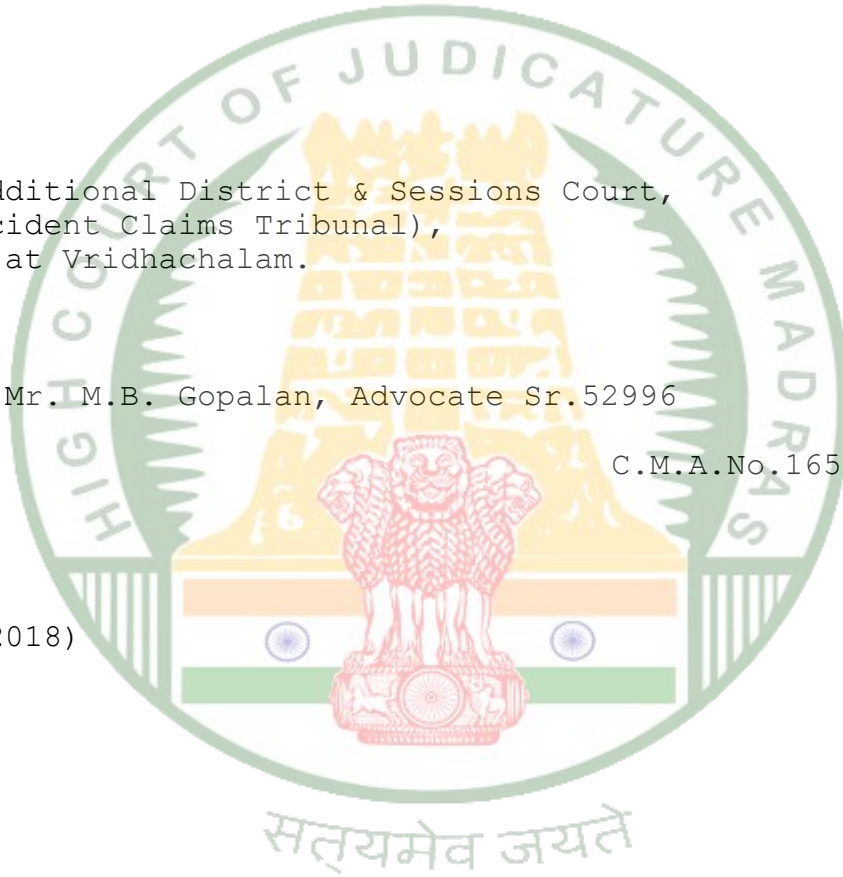
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To
The III Additional District & Sessions Court,
(Motor Accident Claims Tribunal),
Cuddalore at Vridhachalam.

+ 1 cc to Mr.M.B. Gopalan, Advocate Sr.52996

C.M.A.No.1657 of 2018

SV(CO)
EU(22/10/2018)



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