

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.1915 of 2018 and
CMP No.14758 of 2018

M/s.Cholamandalam MS General Insurance
Company Limited,
Dare House, II Floor,
No.2, N.S.C. Bose Road,
Chennai - 600 001. Appellant

-vs-

1.Nandhini Devi
2.Kamalesh @ Naresh Jeevan (Minor)
3.Madesh (Minor)
(Respondents 2 and 3 minors rep.
by mother and NF 1st respondent)
4.S.Vijayan Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicles Act, 1988 against the judgment and decree dated
21.03.2018 made in M.C.O.P.No.7081 of 2013 on the file of the
Motor Accident Claims Tribunal, VI Court of Small Causes,
Chennai.

For Appellant : Mr.M.B.Raghavan

For Respondents: Mr.C.Richard Sureshkumar
for Mr.N.Nanmaran for R1 to R3

J U D G M E N T

[Judgment of the Court was made by
R.SUBRAMANIAN, J.]

The Insurance Company is on appeal challenging the quantum
of compensation awarded by the Tribunal at Rs.27,63,000/- for
the death of one Gnanaraj in a motor accident that occurred on
11.10.2013. The negligence aspect is not in question. The
Insurance Company challenges only the quantum of compensation.

2. Mr.C.Richard Sureshkumar, learned counsel is on caveat for the respondents 1 to 3. With the consent of the learned counsel on either side, the appeal is taken up for final disposal.

3. Mr.M.B.Raghavan, learned counsel for the Insurance Company would submit that fixation of monthly income of the deceased, who was an Auto Driver at Rs.15,000/- is on the higher side. Considering the date of the accident as well as the experience of the deceased as an Auto Driver, we are of the opinion that the monthly income can be safely fixed at Rs.13,000/-. Being a self employed person, if 40% future prospects is added, the total monthly income comes to Rs.18,200/-. He is survived by wife and two minor children. Therefore, if $\frac{1}{3}^{\text{rd}}$ of his income is deducted towards personal expenses, $\text{Rs.18,200} - \text{Rs.6,066} = \text{Rs.12,134} \times 12 \times 16$, the total loss of dependency would be Rs.23,29,728/-.

4. The Tribunal has awarded a sum of Rs.40,000/- to the wife of the deceased for Loss of consortium; Rs.15,000/- towards loss of Estate; Rs.15,000/- towards of Funeral Expenses and Rs.5,000/- towards Transport Expenses. The compensation on these heads is sustained.

5. The Tribunal has not awarded any amount towards loss of love and affection. The learned counsel for the respondents would contend that the Tribunal should have awarded some amount for loss of love and affection for the two minor children. We deem it fit that Rs.80,000/- (Rs.40,000/- each) should be awarded towards loss of love and affection to the two minor children.

6. Thus the total compensation would be as follows:-

a) Loss of Dependency	: Rs.23,29,728/-
b) Loss of Consortium	: Rs. 40,000/-
c) Loss of Estate	: Rs. 15,000/-
d) Funeral Expenses	: Rs. 15,000/-
e) Transport Expenses	: Rs. 5,000/-
f) Loss of Love and Affection	: Rs. 80,000/-
(Rs.40,000/- each to two children)	

7. Accordingly, the compensation awarded by the Tribunal in M.C.O.P.No.7081 of 2013, stands modified as follows:

Sl. No	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Dependency	Rs.26,88,000.00	Rs.23,29,728.00
2	Loss of Consortium	Rs. 40,000.00	Rs. 40,000.00
3	Loss of Estate	Rs. 15,000.00	Rs. 15,000.00
4	Funeral Expenses	Rs. 15,000.00	Rs. 15,000.00
5	Transport Expenses	Rs. 5,000.00	Rs. 5,000.00
7.	Loss of Love and Affection	-	Rs. 80,000.00
	Total	Rs.27,63,000.00	Rs.24,84,728.00

Rounded off to Rs.24,85,000/-

8. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.27,63,000/- to Rs.24,85,000/-

ii) The compensation is apportioned as follows:-

a) 1st respondent wife will be entitled to Rs.10,85,000/- with proportionate interest and entire costs.

b) Respondents 2 and 3 (minor children) will be entitled to Rs.7,00,000/- each with proportionate interest.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iv) The appellant is directed to deposit the award amount, less the amount, if any, already deposited, along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment.

(v) The share of the minors is directed to be deposited in any one of the nationalised bank till they attain majority. The 1st respondent/Wife is permitted to withdraw her share of the award amount as ordered by this court. The first respondent is also permitted to withdraw the quarterly interest from out of the Fixed deposit for the maintenance of the minors.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

Svki

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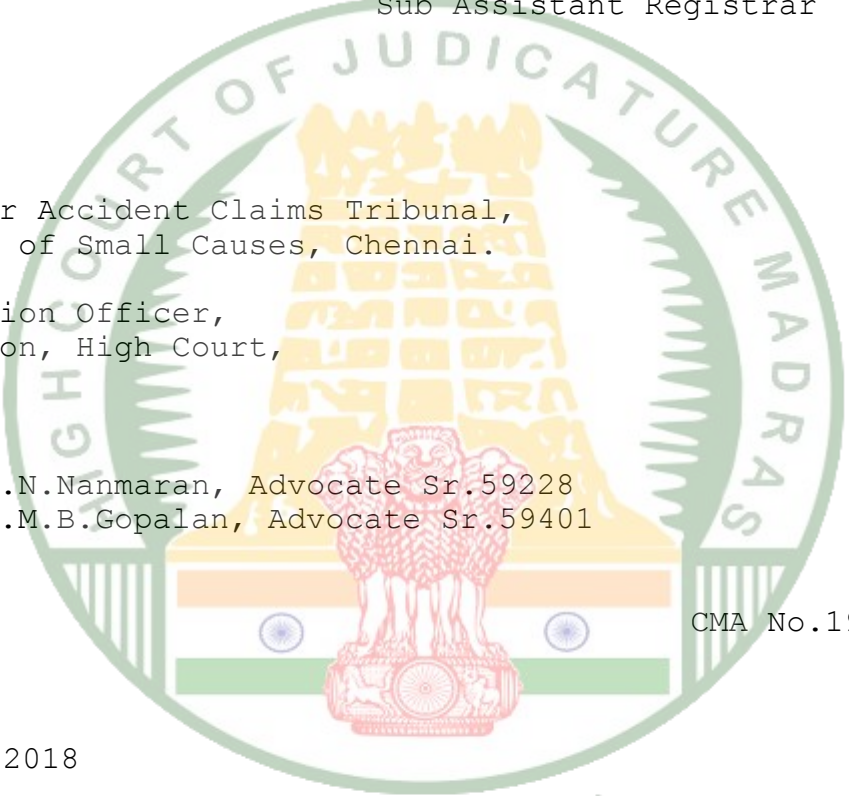
1.The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.N.Nanmaran, Advocate Sr.59228
+1cc to Mr.M.B.Gopalan, Advocate Sr.59401

CMA No.1915 of 2018

kji[col]
srg 11/10/2018



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