

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.34 of 2016

1.Usharani
2.Gokilavani @ Suguna
3.Sankar

...Appellants/Petitioners

Vs

1.V.Kaliyamoorthy

2.M/s.National Insurance Co. Ltd.,
Division No.IV,
169, Mount Road, Chennai-2.

3.C.Muthusamy

4.M/s.United India Insurance Co. Ltd.,
Kumar Complex,
West Car Street,
Tiruchengode-637 211.

5.Pavayee

6.Chinnagounder
(1st and 3rd Respondents herein remained
ex-parte in Lower Court and hence
notice may be dispensed with)

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order dated 23.06.2015 made in M.C.O.P.No.67 of 2009 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Tiruchengode.

For Appellants : Mr.S.Viswanathan

For Respondents: Mr.J.Chandran (for R2)

Mr.S.Arunkumar (for R4)

Ex-parte - (for R1 and R3)

No Appearance - (for R5 and R6)

O R D E R

Being dissatisfied with the quantum of compensation of Rs.3,35,000/- awarded by the Tribunal for the death of Ponnusamy in a road traffic accident occurred on 28.04.1994, the claimants have preferred this appeal.

2. I heard Mr.S.Viswanathan, learned counsel for the appellants, Mr.J.Chandran, learned counsel for the 2nd respondent and Mr.S.Arunkumar, learned counsel for the 4th respondent and also perused the materials available on record.

3. Considering the oral and documentary evidence adduced by both sides, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the first respondent and therefore, the second respondent who is the insurer of the first respondent vehicle is liable to pay compensation to the claimants for the death of the deceased Ponnusamy.

4. As against the order of the Tribunal fastening the liability on the second respondent, no appeal has been preferred by them. Therefore, it is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the claimants and secondly, none of those findings are under challenge. Only the quantum of compensation is under challenge by the claimants.

5. Qua the quantum of compensation awarded by the Tribunal, at the time of accident, the deceased Ponnusamy was working as driver in the lorry bearing registration No.TN-28 Y 7552 owned by the 3rd respondent, which was involved in the accident. According to the claimants, who are wife, daughter and son of deceased Ponnusamy, at the time of accident, the deceased was getting salary of Rs.3,000/- per month, apart from Rs.100/- and 2% collection batta per day.

6. It is stated by the claimants that at the time of accident, the deceased Ponnusamy was aged 33 years and to prove the same, the claimants have produced Ex.P3-death certificate issued by the Medical Officer of the Government Hospital, Tindivanam and Ex.P4-death certificate issued by the Tahsildar, Tindivanam and also P6-driving licence. However, on a perusal of Ex.P2-post mortem certificate, the age of the deceased was mentioned as 40 years. In such situation, the Tribunal has fixed the age of the deceased as 40 years. Considering Ex.P2-post mortem certificate, this Court is of the view that at the time of accident, the deceased was aged 40 years.

7. In the claim petition as well in her evidence P.W.1 stated that the deceased was earning Rs.3,000/- per month plus Rs.100/- and also 2% collection batta daily. Relying upon the evidence of P.W.2, who was also working as driver at the time of accident, the Tribunal has fixed the monthly income of the deceased at Rs.5,000/-. Since there was no contra evidence produced by the respondent Insurance Company, the monthly income of the deceased fixed by the Tribunal at Rs.5,000/- is reasonable and this Court does not want to interfere with the same.

8. The Tribunal while calculating the earning power of the deceased has adopted multiplier 15. However, the Tribunal deducted one-fourth towards personal expenses of the deceased. At the time of accident, the parents of the deceased Ponnusamy were alive. According to the claimants since there was no cordial relationship between the claimants and the parents of the deceased, they were added as respondents 5 and 6. Since the dependents of family of the deceased were 3, the Tribunal ought to have deducted one-fourth towards personal expenses. On the other hand, the Tribunal has wrongly come to the conclusion that the dependents were being 5 persons. In the case on hand, nothing has been produced by the respondent Insurance Company to show that the respondents 5 and 6 were living with the deceased and were dependents at the time of accident. Therefore, this Court is of the view that the Tribunal ought to have taken the dependents as 3 persons.

9. Taking the monthly income of the deceased at Rs.5,000/- and deducting one-fourth towards personal expenses, the monthly income of the deceased is fixed at Rs.3,750/- and the annual income is fixed at Rs.45,000/-. Adopting multiplier 15, the total loss of dependency would come to Rs.6,75,000/- ($\text{Rs.45,000} \times 15 = \text{Rs.6,75,000/-}$). Therefore, this Court awarded a sum of Rs.6,75,000/- towards loss of dependency.

10. The Tribunal awarded Rs.5,000/- towards transport charges, another Rs.5,000/- towards funeral expenses, Rs.50,000/- towards loss of love and affection and another Rs.50,000/- towards loss of consortium to the 1st claimant. Considering the age of the deceased at the time of accident and also considering the fact that at the age of about 26 years, the 1st claimant lost her husband and also at the young age, the other claimants have lost their father, a sum of Rs.50,000/- awarded by the Tribunal under the heads - loss of love and affection and loss of consortium are just and reasonable and the same are maintained. Further, sum of Rs.5,000/- each awarded by the Tribunal under the heads - funeral expenses and transport charges are also warrants no interference and the same are

maintained. Thus, the total compensation of Rs.3,35,000/- awarded by the Tribunal is enhanced to Rs.7,85,000/- as under:

Heads	Rs.
Loss of dependency	6,75,000.00
Transport charges	5,000.00
Funeral expenses	5,000.00
Loss of love and affection	50,000.00
Loss of consortium to 1 st claimant	50,000.00
Total	7,85,000.00

11. At this juncture, the learned counsel for the claimants submitted that they are entitled to get more compensation than claimed in the appeal and they are ready to pay the difference court fee.

12. In Nagappa v. Gurudayal Singh and others, reported in (2003) 2 SCC 274 : 2004 (2) TN MAC 398 (SC), the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such as award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable.

13. In the present case, based on the evidence produced by the claimants and considering the dependency and also following the decision of the Hon'ble Supreme Court in Nagappa v. Gurudayal Singh and others, supra, this Court enhanced the compensation to Rs.7,85,000/- and the claimants are directed to pay the difference court fee.

14. In the result, the Civil Miscellaneous Appeal is partly allowed. The total compensation of Rs.3,35,000/- awarded by the Tribunal is enhanced to Rs.7,85,000/-. The 2nd respondent is directed to deposit the award amount together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within period of eight weeks from the date of receipt of a copy of this order. The enhanced compensation of Rs.1,85,000/- will carry interest only from the date of this order till the date of deposit. The 1st claimant is entitled to get Rs.2,50,000/- including the amount awarded towards loss of consortium and the claimants 2 and 3 and the respondents 5 and 6

are each entitled to Rs.1,33,750/- with accrued interest and costs. The claimants are directed to pay difference court fee within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

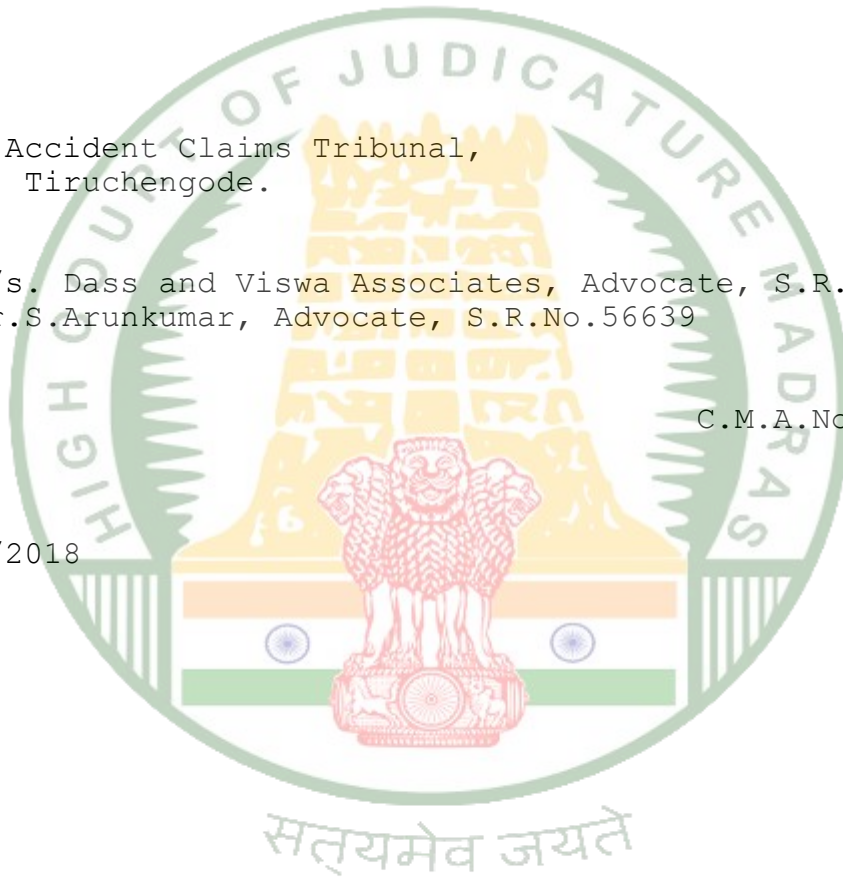
The Motor Accident Claims Tribunal,
Sub Court, Tiruchengode.

+1cc to M/s. Dass and Viswa Associates, Advocate, S.R.No.56575
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.56639

C.M.A.No.34 of 2016

VSN II(CO)

rrs 28/11/2018



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