

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

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

C.M.A. No.2200 of 2018

1.Lavanya

2.Minor Thirumalini Appellants/Petitioners

(minor petitioner rep. by their
next friend guardian / Mother Lavanya)

-vs-

1.A.Subramanian

2.National Insurance Company Limited,
Sendamangalam Business Centre,
Old No.455/2, New No.457/2, Near Lakshmi Theatre,
Rasipuram Main Road, Sendamangalam,
Namakkal Town and District.

(R1 exparte in lower court) Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the judgment and decree dated
13.03.2018 made in MCOP.No.643 of 2015 on the file of MACT/
Additional District Court at Namakkal.

For Appellants : Mr.MA.P.Thangavel

For Respondents : Mr.S.Vadivel for R2
R1 - exparte

J U D G M E N T

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

1. The Claimants who are the wife and daughter of one
Sasikumar, who died in a motor accident that occurred on
06.11.2014 are the appellants.

2. The challenge is to the award of the Motor Accident Claims Tribunal/ Additional District Judge, Namakkal, in and by which, the Tribunal awarded a sum of Rs.10,35,600/- as compensation to the claimants for the death of the said Sasikumar.

3. We have heard Mr.MA.P.Thangavel, learned counsel appearing for the appellant and Mr.S.Vadivel, learned counsel appearing for the 2nd respondent Insurance Company. The 1st respondent who is the owner of the offending vehicle viz., the lorry bearing registration No.TN-28-AP-8210 had remained exparte before the Tribunal and hence, notice to him in this appeal is dispensed with.

4. Mr.MA.P.Thangavel, learned counsel appearing for the appellants would contend that the Tribunal erred in taking the income of the deceased at Rs.6,000/- per month. According to him, considering the qualifications of the deceased viz., M.A.,B.Ed., the Tribunal should have taken atleast Rs.15,000/- as monthly income. Though the deceased had the educational qualifications required for a teacher he was actually running a hotel business apart from driving Taxis.

5. Mr.S.Vadivel, learned counsel appearing for the Insurance Company would contend that in the absence of any concrete evidence to prove the income of the deceased, the Tribunal was justified in taking the monthly income at Rs.6,000/-.

6. We have considered the rival submissions as well as the evidence on record. The accident had occurred in the year 2014. Even an unskilled labourer would have earned more than Rs.300/- per day at the relevant period. We therefore find that the fixation of the monthly income at Rs.6,000/- made by the Tribunal is below par. Admittedly, the deceased was having a post graduate degree and a bachelors degree in Education, thus he was qualified to be a teacher. He was carrying on a small hotel business and he was also driving taxis.

7. We are therefore of the considered opinion that the monthly income could be taken at Rs.12,000/-. Thus, worked the compensation for loss of dependency would be Rs.21,50,400/- ($12000 + 40\% \times \frac{2}{3} \times 12 \times 16$). The Tribunal has awarded Rs.50,000/- towards loss of consortium to the wife, Rs.40,000/- towards loss of love and affection to the minor daughter, Rs.10,000/- towards transport charges and Rs.20,000/- towards funeral expenses, apart from awarding a sum of Rs.1,47,600/- towards medical expenses based on bills.

8. We find that the awards on the conventional heads are not strictly in compliance with the amounts suggested by the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331. We had also taken the monthly income at Rs.12,000/- instead of Rs.6,000/- as fixed by the Tribunal. Hence, the award of the Tribunal needs to be reworked and the same is reworked as follows:

Award towards	Amount
Loss of dependency 12,000 + 40% (Future prospects) x 12 x 16 x 2/3	: Rs.21,50,400/-
Loss of consortium	: Rs. 40,000/-
Loss of love and affection to the minor daughter	: Rs. 40,000/-
Funeral expenses	: Rs. 25,000/-
Loss of estate	: Rs. 15,000/-
Transportation	: Rs. 15,000/-
Medical expenses	: Rs. 1,47,600/-
Total	: Rs.24,33,000/-

9. In view of the above, the award of the Tribunal is modified and enhanced to Rs.24,33,000/-. The award will carry interest at 7.5% per annum. The Insurance Company shall deposit the compensation as per the modified award less any amount if any already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. The award is apportioned as follows:-

(i) The 1st claimant/ 1st appellant wife would be entitled to Rs.12,33,000/- with proportionate interest and the entire costs.

(ii) The minor daughter will be entitled to Rs.12,00,000/- with proportionate interest.

10. The 1st appellant wife of the deceased is permitted to withdraw her share of the compensation. The Tribunal is directed to deposit the share of the minor claimant in interest earning fixed deposit in any one of the Nationalized Bank till she attains majority and the 1st claimant mother of the minor daughter is permitted to withdraw quarterly interest there upon.

11. In fine, the appeal is allowed in part with proportionate costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

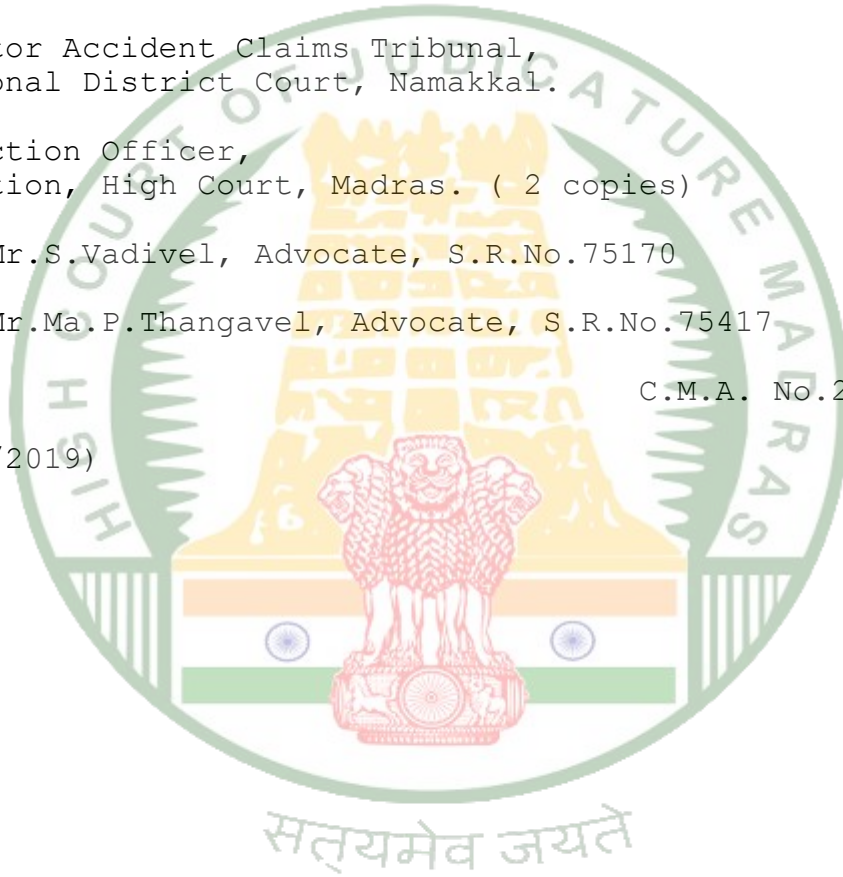
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To

1. The Motor Accident Claims Tribunal,
Additional District Court, Namakkal.
2. The Section Officer,
VR Section, High Court, Madras. (2 copies)
- +1 cc to Mr.S.Vadivel, Advocate, S.R.No.75170
- +1 cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.75417

C.M.A. No.2200 of 2018

NMI (CO)
SSM(21/01/2019)



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