

In the High Court of Judicature at Madras

Dated : 27.09.2018

Coram

**The Honourable Mr.Justice K.K. SASIDHARAN
AND**

The Honourable Mr.Justice R. SUBRAMANIAN

**C.M.A.No.1358 of 2014
and
C.M.A.No.2742 of 2014**

CMA No.1358 of 2014

1. Tmt. Selvam
2. Tmt.Priya
3. Bharanidharan

.... Appellants

..VS..

- 1.P. Senthil Kumar
2. The National Insurance Co Ltd.,
Motor Third Party Office,
Anna Salai, Chennai

....Respondents

CMA No.2742 of 2014

- The National Insurance Co Ltd.,
Motor Third Party Office,
Anna Salai, Chennai

.... Appellant

VS

1. Tmt. Selvam
2. Tmt.Priya
3. Bharanidharan
- 4.P. Senthil Kumar

.... Respondents

Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP No.263 of 2009 dated 10.03.2014 on the file of Motor Accidents Claims Tribunal,(Sub Judge), Vellore.

For Appellants in : Mr.R. Singaravelan
CMA No.1358/2014 & Senior Counsel for
R.1 to R.3 in CMA No. Mr.V. Parivallal
2742/2014

For R.2 in CMA No.
1358/2014 &
appellant in CMA No. : Mr.D. Bhaskaran
2742/2014

R.1 in CMA No.
1358/2014 & R.4 : Dispensed with
in CMA No.2742/
2014

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBRAMANIAN, J.)

Challenge in these appeals, is to the Award dated 10.03.2014 in MCOP Nos.263 and 266 of 2009 passed by Motor Accidents Claims Tribunal, (Sub Judge), Vellore granting a sum of Rs.26,75,000/- for the death of one K.C. Mohan in the motor accident that had occurred on 12.09.2005.

2. Though Insurance Company has come forward with the appeal in CMA No.2742 of 2014, Mr.D. Bhaskaran, learned counsel appearing for the Insurance Company would fairly state that he is not questioning the finding of the Tribunal regarding negligence.

3. We have heard Mr.Singaravelan, learned Senior Counsel for the claimants. Since the only question to be decided is about the quantum of compensation, we are not dealing with the other aspects of the award passed by the Tribunal.

4. According to the claimants, on 12.09.2005 at 7.20 p.m, while the said K.C. Mohan was riding a motorcycle bearing Registration No.TN.01/A0605 at Kasiviswanatharkoil street at Walajapet, a lorry, bearing Registration No.KA-02-D-0009, belonging to 1st respondent in CMA No.1358 of 2014 and insured with the Insurance Company/2nd respondent in CMA No.1358 of 2014, driven by its driver in a rash and negligent manner hit against the said K.C. Mohan. As a result of which, he died on the spot. The claimants also contended that the deceased was an agriculturist owning 100 acres of land having coconut grove at Walaja Taluk in Vellore District. According to the claimants, the deceased was doing agriculture adopting modern cultivation methods and was earning a sum of Rs.75,000/- per month.

5. In order to prove their claim, the claimants examined P.W.1 to P.W.4 and Exs.P.1 to 69 were marked. On the side of the appellant Insurance Company, R.W.1 and R.W.2 were examined and Exs.R.1 to R.14 were marked.

6. The Tribunal, after considering the oral and documentary evidence adduced before it, came to the conclusion that the accident was caused due to rash and negligent driving of the driver of the lorry, insured with the respondent Insurance Company. Accordingly, the Tribunal fixed the entire liability on the appellant Insurance Company.

7. The Tribunal also came to the conclusion that the monthly income lost to the family because of the death of the deceased is about Rs.30,000/-. The Tribunal after deducting 1/3 towards personal expenses (30,000-10,000) arrived Rs.20,000/- as loss of contribution by the deceased to his family. The Tribunal, based on the age of the deceased, namely, 51 years, applied the multiplier "11" and calculated the loss of income at Rs.26,40,000/- (Rs.20,000 x 12 x 11).

8. Further, the Tribunal awarded a sum of Rs.5,000/- towards funeral expenses Rs.30,000/-(Rupees 10,000/- each to the wife and children) towards loss of love and affection and thus, the total award

worked out to Rs.26,75,000/- with interest at 7.5% p.a. from the date of petition till the date of deposit. The break up of the details of the compensation awarded by the Tribunal are as follows:

Loss of income	:	Rs.26,40,000
Loss of loss of love and affection	:	Rs. 30,000
Funeral expenses	:	Rs. 5,000

Total		Rs.26,75,000/-

Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the appeal in C.M.A.No.2742 of 2014 and seeking enhancement of compensation, the claimants have filed the appeal in C.M.A.No.1358 of 2014.

9. Mr. R.Singaravelan, learned Senior Counsel appearing for the claimants would contend that the Tribunal is not right in fixing Rs.30,000/- as monthly income. He would invite the attention of oral as well as documentary evidence showing the ownership of the lands and contend the Tribunal should have adopted higher amount as monthly income. He also submits that the Tribunal has not awarded any amount towards future prospects and the amount awarded by the Tribunal towards funeral expenses and loss of love and affection is also on the lower side.

10. Per contra, Mr.D. Bhaskaran, learned counsel appearing for the Insurance Company would contend that insofar as far as death of an agriculturist is concerned, the loss to the family is only lack of supervision.

11. We have considered the rival submissions made on either side and perused the materials available on record.

12. From the evidence on record, it is seen that the deceased was having 42 acres of land and had employed 10 persons in his agricultural land.

13. Learned Senior Counsel appearing for the claimants submitted that the claimants are entitled to just and reasonable compensation. He would invite our attention to the judgment of the Division Bench of this Court in ***New India Assurance Co Ltd vs Kayalvizhi and five others*** reported in **2010 (1) CTC 823**, wherein the Division Bench of this Court had discussed the basis for arriving at compensation for the death of an agriculturist.

14. Considering the extent of land and the evidence available on record to show that the deceased was employing 10 persons in his agricultural lands, loss of income to the family could be taken as Rs.27,000/- per month. Thus, the monthly loss of dependency would be Rs.27,000/- by adding 10% towards future prospects, the monthly income for the purpose of calculating loss of dependency would be Rs.29,700/-. Deducting 1/3 towards personal expenses the monthly loss of dependency would be Rs.19,800/- (Rs.29,700 – Rs.9,900), thus, the total loss of dependency would be $19,800 \times 12 \times 11 =$ Rs.26,13,800/-.

15. Further, the amount awarded by the Tribunal towards funeral expenses and loss of love and affection is definitely on the lower side. Considering the guidelines suggested by Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and other**, reported in **2018 (1) Law Weekly 331**, we enhance the amount towards funeral expenses to Rs.15,000/-; grant Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium to the wife of the deceased and Rs.80,000/-(Rs.40,000/- each) to the children towards loss of love and affection. Thus, the total compensation works out to Rs.27,63,800/-.

16. The details of the modified compensation as per the above discussion are as under:-

Loss of dependency	: Rs.26,13,800
Loss of consortium	: Rs. 40,000
Loss of estate	: Rs. 15,000
Loss of love and affection	: Rs. 80,000
Funeral expenses	: Rs. 15,000

Rs. 27,63,800

The same is rounded off to Rs.27,64,000/-

17. In fine, CM.A.No.2742 of 2014 is dismissed and C.M.A.No.1358 of 2014 is partly allowed. The award of the Tribunal is modified to Rs.27,64,000/- (Rupees Twenty seven lakhs sixty four thousand only) as against the compensation of Rs.26,75,000/- awarded by the Tribunal with interest at 7.5% from the date of petition till the date of deposit.

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18. The Insurance Company is directed to deposit the amount awarded by this Court less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. The apportionment between the claimants 1 to 3 is as follows:

(i) The first Appellant-wife is entitled to Rs.9,64,000/- with proportionate interest;

(ii) The children of the deceased/Appellants 2 and 3 are entitled to Rs.9,00,000/-each with proportionate interest.

On such deposit, the claimants namely the wife and children of the deceased are permitted to withdraw their shares with proportionate interest and cost as per the apportionment made above. There will be no order as to costs in these appeals.

सत्यमेव जयते

(K.K.S.J.,)

(R.S.M.J.,)

27 September 2018

sr

Speaking Order

Index:No

Website:yes

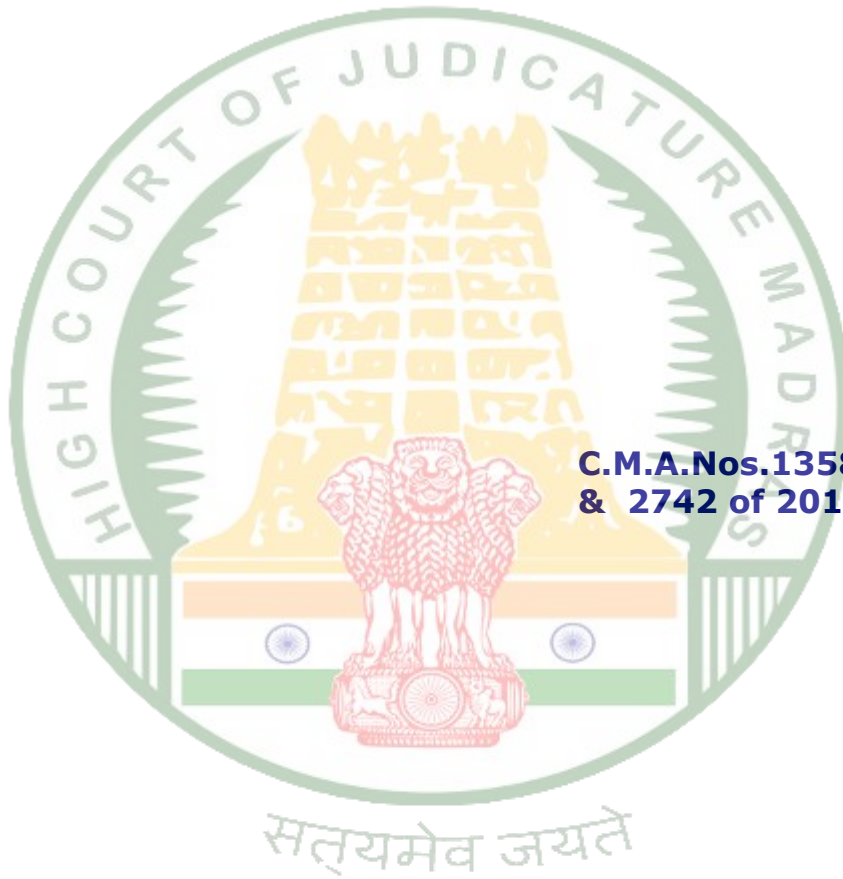
To

Motor Accidents Claims Tribunal,
(Sub Judge), Vellore.

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**K.K. SASIDHARAN,J.,
and
R. SUBRAMANIAN,J.,**

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**C.M.A.Nos.1358 of 2014
& 2742 of 2014**

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