

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM:

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

CMA.No.2340 of 2018

K. Gnanasekaran (Died)

1. Kalaivani
2. Minor Kaviraj
3. Minor Krihnaram

Minor petitioners are Rep. By their  
next friend Guardian, Mother 1<sup>st</sup> appellant

.... Appellants/Petitioner

-vs-

1. P. Moovarasan
2. United India Insurance Company Limited,  
Functioning at 70 NSC Bose Road,  
IIIrd Floor, Sowcarpet,  
Chennai 600 079.
3. N. Ramesh
4. The New India Assurance Company Limited,  
Functioning at No.80, Arcot Road,  
Porur, Chennai 600 116.

... Respondents/Respondents

(R1 & R3 remained exporter before the Tribunal)

Civil Miscellaneous Appeal filed under Section 173, of the Motor Vehicles Act, 1988, against the Judgment and decree in MCOP No.74 of 2011, dated 13.07.2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellants : Mr. C.Thangaraju

For Respondents : Mr. T.Ravichandran for R2

Mr. J.Chandran for R4

## J U D G M E N T

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

The claimants who are the wife and minor children of one K.Gunasekaran, who were favoured with an award for Rs.21,55,000/- as compensation for the death of the said K.Gunasekaran in a motor accident that occurred on 17.02.2009, are the appellants.

2. According to the claimants, when the deceased K.Gunasekaran was travelling as a pillion rider in a Hero Honda motorcycle, bearing Registration No.TN.22/AC 8136, on Tambaram to Maduravayal road on the fateful day, a Tanker Lorry bearing Registration No.TN-04/D-6440, owned by the 1<sup>st</sup> respondent and insured with the 2<sup>nd</sup> respondent Insurance Company, came in the opposite direction and dashed against the two-wheeler. Claiming that the lorry was driven by its driver in a rash and negligent manner, resulting in the accident, the claimants sought for compensation of Rs.35,00,000/-.

3. Originally the Claim Petition was filed by the said Gunasekaran, as injured claimant. Subsequently he died and his legal representatives, namely the wife and the two minor children, were impleaded as claimants 2 to 4. Since the appeal is filed by the claimants, we are not going into the question of negligence as the Insurance Company has accepted the award.

4. On the quantum, the Tribunal took the monthly income of the deceased at Rs.7,000/-, added 50% towards future prospects and deducted 1/3 towards personal expenses and arrived at the monthly loss of dependency at Rs.7,000/-. Applying a multiplier of 16, the Tribunal awarded a sum of Rs.13,44,000/- towards loss of dependency. The Tribunal awarded a sum of Rs.7,43,000/- towards medical expenses, Rs.40,000/- towards loss of love and affection for the two children at Rs.20,000/- each, Rs.25,000/- towards loss of consortium to the wife, Rs.3,000/- towards funeral expenses. Thus, the total award works out to Rs.21,55,000/-.

5. Terming the same as below par, the claimants are before us by way of this appeal.

6. We have heard Mr.C.Thangaraju, learned counsel appearing for the appellant, Mr.T.Ravichandran, learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company and Mr.J.Chandran, learned counsel appearing for the 4<sup>th</sup> respondent/ Insurer of the two-wheeler. The owner of the lorry, namely the 1<sup>st</sup> respondent and the owner of the two-wheeler, namely the 3<sup>rd</sup> respondent remained ex-parte before the Tribunal and hence, notice to them is dispensed with in this appeal.

7. Mr.C.Thangaraju, learned counsel appearing for the appellant would contend that the Tribunal erred in fixing the monthly income of the deceased at Rs.7,000/-, when documentary evidence was available to show that the income was Rs.8779.50 per month.

8. Mr.T.Ravichandran, learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company is unable to justify the fixation of the monthly income at Rs.7,000/- by the Tribunal, when valid documentary evidence in the form of the certificate issued by the Metropolitan Transport Corporation, showing the salary of the deceased is available on record. We see no justification for reducing the same, as done by the Tribunal. We therefore take his monthly income at Rs.8,779.50 for the purposes of determination of compensation. Admittedly, the deceased was working as conductor in the Metropolitan Transport Corporation, which is a permanent job and he was aged about 32 years at the time of the accident. Hence 50% has to be added towards future prospects. Thus worked, the monthly income for the purposes of determination of the compensation payable will be Rs.13,169.25.

9. Admittedly, the deceased had left behind three dependants and hence 1/3 is to be deducted towards his personal expenses, leaving a sum of Rs.8,779.50 as the monthly loss of dependency. The Tribunal has adopted a multiplier of 16 but the proper multiplier applicable would be 15. Thus worked, the compensation towards loss of dependency would be

$$\text{Rs.8,779.50} + 50\% \times 12 \times 15 - 1/3 = \text{Rs.15,80,310/-}$$

10. The award of the Tribunal on the ground of medical expenses is confirmed, since it is based on documentary evidence. The Tribunal has not awarded any amount towards attender charges and pain and suffering. Admittedly, the deceased was an inpatient for nearly 90 days before his death. We therefore award a sum of Rs.1,00,000/- towards attender charges, another sum of Rs.1,00,000/- towards pain and suffering and we award a sum of Rs.25,000/- towards funeral expenses. The Tribunal has not awarded any amount towards loss of estate and transportation. We find that the deceased Gunasekaran had taken treatment at Bangalore, Namakkal and Chennai and therefore, he would have incurred a substantial sum as transport charges. We therefore award a sum of Rs.15,000/- towards loss of estate and Rs.10,000/- towards transportation. The Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection to the minor children. The same is enhanced to Rs.80,000/-, in view of the pronouncement of the larger Bench in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 1 LW 331. The award of the Tribunal for loss of consortium is increased to Rs.40,000/- instead of Rs.25,000/-.

11. In view of the above, the modified award is as follows:

| S.No. | Heads                                                                        | Amount            |
|-------|------------------------------------------------------------------------------|-------------------|
| 1.    | Loss of Dependency                                                           | Rs.15,80,310/-    |
| 2.    | Medical Expenses                                                             | Rs.<br>7,43,000/- |
| 3.    | Attender Charges                                                             | Rs.<br>1,00,000/- |
| 4.    | Pain and Suffering                                                           | Rs.<br>1,00,000/- |
| 5.    | Loss of consortium to the 2 <sup>nd</sup> claimant/1 <sup>st</sup> appellant | Rs.<br>40,000/-   |
| 6.    | Loss of love and affection claimants 3 and 4/ appellants 2 and 3             | Rs.<br>80,000/-   |
| 7.    | Funeral Expenses                                                             | Rs.<br>25,000/-   |
| 8.    | Loss of Estate                                                               | Rs.<br>15,000/-   |
| 9.    | Transport Charges                                                            | Rs.<br>10,000/-   |
|       | TOTAL                                                                        | Rs.26,93,310/-    |

The same is rounded off to Rs.27,00,000/-.

12. In fine, the Appeal is partly allowed. The award will carry interest at 7.5% per annum from the date of petition till date of payment. There shall be no order as to costs.

13. The award is apportioned as follows:

1. The 1<sup>st</sup> appellant, wife of the deceased, would be entitled to Rs.12,00,000/- with proportionate interest and entire costs.
2. The appellants 2 & 3/ minor children would be entitled to Rs.7,50,000/- each with proportionate interest.

14. The Insurance Company is directed to deposit the award amount as per the modified award, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the major claimant, namely, the 1<sup>st</sup> appellant will be entitled to

withdraw her share of the compensation. The Tribunal is directed to deposit the share of the minors, namely the appellants 2 & 3, in an interest earning fixed deposit in any one of the Nationalised Banks till they attain majority and the mother namely the 1<sup>st</sup> appellant will be entitled to withdraw quarterly interest from the fixed deposit for the maintenance of the minors.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,  
Chief Judicial Magistrate,  
Namakkal.

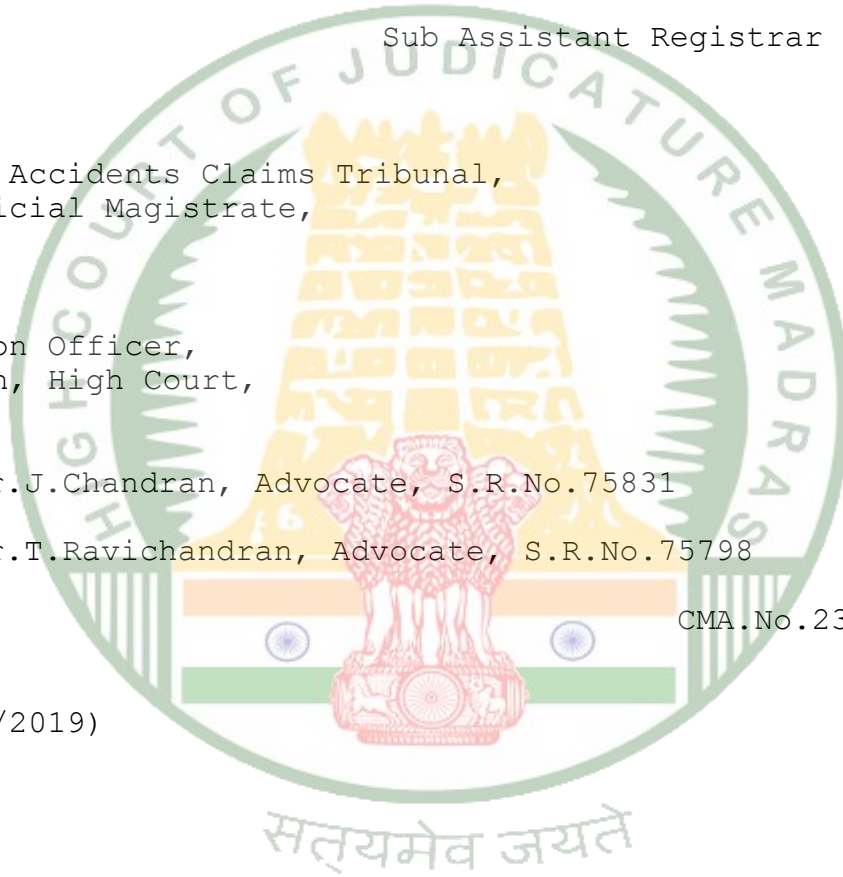
Copy to  
The Section Officer,  
VR Section, High Court,  
Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.75831

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.75798

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