



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2018

CORAM:

WEB COPY

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.M.A. (MD) No.2060 of 2013

1.Indiragandhi

2.Abinaya

3.Minor Agalya

(Minor 3<sup>rd</sup> appellant is rep. by  
her mother and natural guardian  
1<sup>st</sup> appellant Indiragandhi)

... Appellants/Claimants

Vs.

1.Sri Sakthi Vinayagar Bus Service,  
having its office at  
91/273, Soorapallam Road,  
Pattukkottai.

2.The Oriental Insurance Company Ltd.,  
rep. by its Branch Manager,  
having office at  
1858, South Main Street,  
Thanjavur,  
(R-1 set exparte by the Tribunal,  
hence, notice may be given up  
against 1<sup>st</sup> respondent)

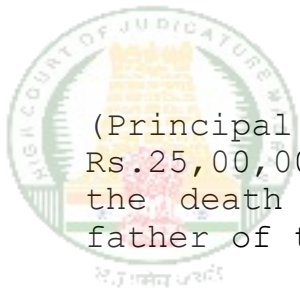
... Respondents/Respondents

**PRAYER:** Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, to allow the appeal and modify the judgment and decree of the Motor Accident Claims Tribunal (Principal District Judge), Thanjavur in M.C.O.P.No.339 of 2011, dated 11.1.2013 by enhancing the award amount to Rs.5 lakhs to the appellants with proportionate interest.

For Appellant : Mr.G.Karnan  
For R2 : Mr.K.Bhaskaran  
For R1 : No appearance

### JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants-claimants against the award, dated 11.01.2013, made in M.C.O.P.No.339 of 2011, passed by the Motor Accident Claims Tribunal (Principal District Judge), Thanjavur.



(Principal District Judge), Thanjavur, claiming a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as compensation, for the death of one Govindaraj, husband of the first appellant and father of the appellants 2 & 3.

### **3.Facts of the case:-**

According to the appellants, on 06.02.2010 at 7.15 p.m., the deceased along with his friend Azhagumuthu was travelling in a two wheeler bearing Registration No.TN.22 AV-2354 from Thanjavur to Orathanadu. The said Azhagumuthu was riding the two wheeler and the deceased was pillion rider. The two wheeler was proceeding on the Thennamanadu main road, a bus bearing Registration No.TN-49-AX-9147 belonging to the first respondent driven by its driver in a high speed in a rash and negligent manner in the opposite direction and dashed against the two wheeler. Due to the said accident, the said Govindaraj sustained grievous injuries and died on the spot. The deceased was 36 years at the time of accident and was working as Manager in Best Electricals at Orathanadu and was earning a sum of Rs.8,000/- per month. The appellants are the legal heirs and dependants of the deceased. The bus belonging to the first respondent was insured with the second respondent Insurance Company. Hence, they filed a claim petition, claiming a sum of Rs.25,00,000/- as compensation.

4.The first respondent remained ex-parte before the Tribunal.

5.The second respondent filed counter statement and denied all the averments made in the claim petition. According to the second respondent, the accident did not occur due to the rash and negligent driving by the driver of the first respondent, but only due to the rash and negligent driving on the part of the rider of the motorcycle.

6. Before the Tribunal, the first appellant/first claimant examined herself as P.W.1 and two other witnesses were examined as P.Ws.2 & 3 and marked 11 documents as Exs.P.1 to P.11. The second respondent did not let in any oral and documentary evidence.

7. The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the learned Counsel for the appellants/claimants, came to the conclusion that the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the first respondent and awarded a sum of Rs.5,50,000/- and directed the respondents 1 & 2 jointly and severally to pay the said compensation to the claimants.

8. Aggrieved by the quantum of compensation granted in award dated 11.01.2013, the appellants/claimants have filed the present appeal for enhancement of compensation.

<https://hcservices.ecourts.gov.in/hcservices/>

9.I have heard the learned counsel appearing for the appellants

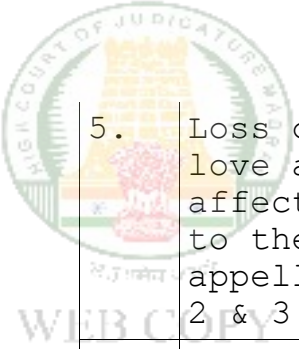
and second respondent and perused the materials available on record.

10. Considering the age of the deceased, nature of work done by him, the monthly income fixed by the Tribunal is very meagre and therefore the monthly income of the deceased is fixed at Rs.6,000/- and the Tribunal has not awarded any amount towards future prospects. The appellants are entitled to 40% towards future prospects. The loss of income of the deceased would be Rs.6,000+2,400 =8,400/- and after deducting 1/3<sup>rd</sup> towards personal expenses of the deceased, the amount would be Rs.5,600. The age of the deceased as 36 years. As per the judgment reported in 2009(2)TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation, the correct multiplier is '15'. The Tribunal erred in applying the multiplier of '16' instead of '15'. The loss of income of the deceased is Rs.5,600 x 12 x 15 = 10,08,000/-. The Tribunal has granted a sum of Rs.20,000/- towards loss of consortium. As per the judgment of the Hon'ble Apex Court reported in 2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi], the appellants are entitled to Rs.70,000/- towards conventional heads i.e., the first appellant is entitled to get Rs.40,000/- towards consortium as against Rs.20,000/- awarded by the Tribunal, the appellants 1 to 3 are entitled to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The amount awarded by the Tribunal towards loss of love and affection is confirmed. The amount awarded by the Tribunal towards transportation and for shock and mental agony is set aside.

11. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed.

12. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

| S.No | Description                | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|----------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.   | For loss of income         | 5,12,000                        | 10,08,000                         | enhanced                               |
| 2.   | For Transportat ion        | 1,000                           | -                                 | Set aside                              |
| 3.   | For shock and mental agony | 4,000                           | -                                 | Set aside                              |
| 4.   | For loss of Consortium     | 20,000                          | 40,000                            | enhanced                               |
|      | appellant                  |                                 |                                   |                                        |



|    |                                                    |             |              |                                     |
|----|----------------------------------------------------|-------------|--------------|-------------------------------------|
| 5. | Loss of love and affection to the appellants 2 & 3 | 10,000      | 10,000       | confirmed                           |
| 6. | For funeral expenses                               | 3,000       | 15,000       | enhanced                            |
| 7. | For loss of estate                                 |             | 15,000       | awarded                             |
|    | Total                                              | Rs.5,50,000 | Rs.10,88,000 | By enhancing a sum of Rs.5,38,000/- |

13. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only) to a sum of Rs.10,88,000/- (Rupees Ten Lakhs Eighty Eight Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

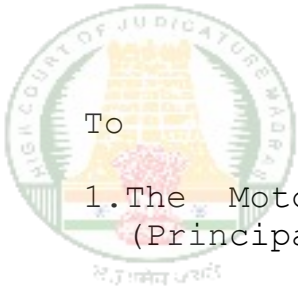
(ii) The the respondents 1 & 2 are directed to deposit the award amount, less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.No.339 of 2011, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Thanjavur, within a period of eight weeks from the date of receipt of copy of this judgment;

(iii) The appellants-claimants are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of this judgment;

(iv) On such deposit being made, the first appellant is entitled to get a sum of Rs.5,00,000/- with interest by making necessary application before the Tribunal. The second appellant is entitled to get a sum of Rs.2,94,000/- with interest by making necessary application before the Tribunal. The third appellant is entitled to get a sum of Rs.2,94,000/- and the Tribunal shall deposit the said amount in any one of the Nationalized bank in a Fixed Deposit, initially for a period of three years and renewable thereafter, till the minor attains majority. The mother of the third appellant is permitted to withdraw the accrued interest once in three months directly from the bank. No costs.

Sd/-

Assistant Registrar(w)



To

1.The Motor Accident Claims Tribunal  
(Principal District Judge), Thanjavur.

2.The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.( 2 copies)

+1cc to Mr.G.Karnan Advocate in SR.No.85567

+1cc to Mr.K.Bhaskaran Advocate in SR.No.85694

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