

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.2784 of 2005

and

C.M.P.No.14338 of 2005

1.M.Sumathi

2.M.Jayanthi ... Appellants/Petitioners2 & 3

Vs.

1.Palanisamy

2.United India Insurance Co. Ltd.

Divisional Office,  
No.34, Nehru Street,  
Kumaran Road,  
Tiruppur.

3.K.Muthusamy Gounder ... Respondents/Respondents  
and 1st Petitioner

[R1 - Exparte in the lower Court  
hence given up]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.06.2003 in M.C.O.P.No.343 of 1996 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.V), Coimbatore.

For Appellants : Mr.S.Saravanan

For R2 : Mr.S.Arunkumar

For R3 : No appearance

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## J U D G M E N T

The case in brief, is as follows:

On 31.08.1995, at about 07.00 p.m., the deceased Deivathal was travelling in the motorcycle bearing Registration No.TNV-7302 as a pillion rider which was proceeding from South to North direction on the Pongalur-Tiruppur Main Road. When the motorcycle reached near Allalapuram Bus stop, the car bearing Registration No.TN-39-9995 came from the opposite direction in a rash and negligent manner and dashed against the motorcycle in which the deceased was travelling. Due to the same, the deceased was thrown out of the motorcycle, resulting in grievous bleeding injuries to her. Immediately, she was taken to the Kovai Medical Centre Hospital, Coimbatore. Despite treatment, she succumbed to the injuries after a week. The claimants, being the family members of the deceased, filed a claim petition before the Tribunal, in M.C.O.P.No.343 of 1996, claiming a total compensation of Rs.6,00,000/- (Rupees six lakhs only). The Tribunal awarded a sum of Rs.1,60,000/- towards loss of income, Rs.10,000/- towards loss of consortium to the 1<sup>st</sup> claimant/3<sup>rd</sup> respondent, Rs.10,000/- towards loss of love and affection to the appellants and Rs.2,000/- towards funeral expenses, totalling a sum of Rs.1,82,000/- (Rupees one lakh and eighty two thousand only) with interest @ 9% from the date of claim petition, out of which, a sum of Rs.5,000/- each was directed to be given to the appellants and the remaining amount to the 3<sup>rd</sup> respondent.

2.The appellants/2<sup>nd</sup> and 3<sup>rd</sup> claimants, who are the daughters of the deceased, have filed the instant appeal, seeking enhancement and equal share of the award amount.

3.Learned counsel for the appellants has submitted that the Tribunal had failed to note that the appellants were then unmarried and they were also dependents of the deceased and hence, the Tribunal ought to have granted equal share in the compensation amount to the appellants. He further submitted that the amounts awarded under various heads are inadequate and hence, the same have to be enhanced.

4.Per contra, learned counsel appearing on behalf of the 2<sup>nd</sup> respondent Insurance Company submitted that there was contributory negligence on the part of the driver of the motorcycle in which the deceased was travelling. He further contended that the amount awarded by the Tribunal is reasonable and hence, the same does not require any enhancement.

5. Heard the submissions of learned counsel on either side and perused the materials available on record. Despite the service of notice, there is no representation for the third respondent.

6. The Tribunal, on perusal of the First Information Report (Ex.P1), case-sheet (Ex.P4) and all other exhibits and on considering the evidence of the 3<sup>rd</sup> respondent herein (P.W.1), all of which come to show that the accident was due to the negligence of the 1<sup>st</sup> respondent, has fixed the negligence on the part of the 1<sup>st</sup> respondent, which finding, this Court is not inclined to interfere with.

7. As far as the quantum of compensation is concerned, in the absence of any documentary evidence to establish the income of the deceased through agriculture, the Tribunal has relied upon the judgment of the Hon'ble Supreme Court in 2002 ACJ 2040, wherein, it is stated that a sum of Rs.15,000/- may be fixed as compensation towards death of a house wife and has accordingly, fixed the annual income of the deceased at Rs.15,000/-, adopted the multiplier of 16 and arrived at the sum of Rs.1,60,000/- towards loss of income, which according to this Court, is fair and just and hence, the same need not be interfered.

8. However, the award of Rs.10,000/- towards loss of consortium to the third respondent, Rs.10,000/- towards loss of love and affection to the appellants and Rs.2,000/- towards funeral expenses, in the opinion of this Court, appear to be on the lower side and hence, the same are hereby enhanced to Rs.25,000/-, Rs.20,000/- and Rs.10,000/- respectively. Further, no amount was awarded to loss of estate and hence, a sum of Rs.15,000/- is hereby awarded under this head, in the given facts and circumstances of the case. Accordingly, the compensation awarded by the Tribunal is hereby enhanced from Rs.1,82,000/- to Rs.2,30,000/-, the break-up details of which, read as follows:

| Heads                      | Amount awarded by the Tribunal (Rs.) | Amount awarded by this Court (Rs.) |
|----------------------------|--------------------------------------|------------------------------------|
| Loss of income             | 1,60,000/-                           | 1,60,000/-                         |
| Loss of consortium         | 10,000/-                             | 25,000/-                           |
| Loss of love and affection | 10,000/-                             | 20,000/-                           |
| Funeral expenses           | 2,000/-                              | 10,000/-                           |
| Loss of estate             | ..                                   | 15,000/-                           |

| Heads | Amount<br>awarded<br>by the<br>Tribunal<br>(Rs.) | Amount<br>awarded by<br>this Court<br>(Rs.) |
|-------|--------------------------------------------------|---------------------------------------------|
| Total | 1,82,000/-                                       | 2,30,000/-                                  |

However, it is made clear that the enhanced sum of Rs.48,000/- shall carry interest at 7.5%pa only from the date of filing of this appeal.

9. One more ground raised in this appeal by the appellants is with regard to the apportionment of compensation amount to them. As per the award of the Tribunal, the appellants are entitled to receive Rs.5,000/- each as compensation for the death of their mother, which in the considered opinion of this Court, is incorrect. Admittedly, the appellants are the daughters of the deceased and they were unmarried during the relevant point of time and hence, they were dependents on the deceased. In view of the same, this Court holds that the appellants are entitled to receive Rs.50,000/- each, out of the total compensation now enhanced by this Court. Consequently, the third respondent herein is entitled to receive the remaining sum of Rs.1,30,000/- as compensation.

10. In fine, this Civil Miscellaneous Appeal is allowed to the extent as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

11. The 2<sup>nd</sup> respondent Insurance Company is directed to deposit the entire compensation amount as awarded by this Court along with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,  
Additional District Judge,  
Fast Track Court No.V,  
Coimbatore.

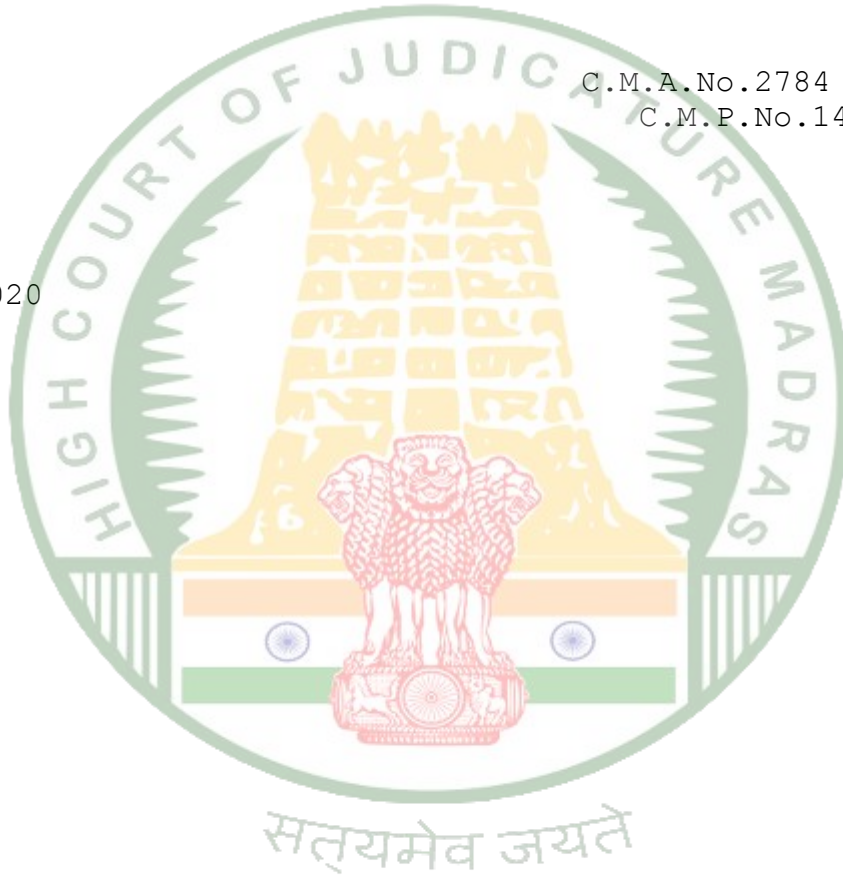
2.The Section Officer,  
VR Section, High Court of Madras.

+1 cc to Mr.S.Saravanan Advocate sr62228

+1 cc to Mr.S.Arunkumar Advocate sr62454

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