

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 12.02.2019  
CORAM:  
THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN  
C.M.A.No.1673 of 2011

1.Sarojiniammal  
2.Chandra  
3.Gunasekaran  
4.Manisanker  
5.Arumugam  
6.Sarala

....Appellants/Petitioners

Vs.

1.Alagarasu

2.Divisional Manager,  
The New India Assurance Co. Ltd.,  
No.106, Big Street,  
Tiruvannamalai.

.... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.12.2005 in M.C.O.P.No.249 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Mrs.M.Malar  
For Respondents : Mr.Vinoth for R2  
R1 - Ex-parte

JUDGMENT

The appellants are the claimants in M.C.O.P.No.249 of 2005, on the file of the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai. They have filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Perumal Chettiar in a road accident that took place on 14.01.2005. The first claimant is the wife of the deceased. The second and sixth claimants are the daughters of the deceased. The third, the fourth and the fifth claimants are the sons of the deceased.

2. The brief case of the appellants/claimants is as follows:

On 14.01.2005, at about 06.15 pm, the deceased was riding his motorcycle bearing Registration No. TN 25 B 6175 towards Ayingulam, Somasipadi village, near Gandhi street along Thiruvannamalai - Dhindivanan road. At that time, a mahendra van bearing Registration No. TN 04 4334, belonging to the first respondent, hit him, as a result of which, he sustained fatal injuries and died. According to the appellants/claimants, the rash and negligent driving of the driver of the mahendra van bearing Registration No. TN 04 4334 was the cause of the accident, and that, since, the said mahendra van was insured with the second respondent, both the first and second respondents, are jointly and severally liable to pay compensation of Rs.10,00,000/- to them.

3. The owner of the said mahendra van remained absent before the Tribunal and therefore, he was set ex-parte. The New India Assurance Company contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,99,000/- together with interest at the rate of 7.5% per annum to the appellants/claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. After hearing both the parties, this Court is of the considered view that the Tribunal has rightly arrived at the decision that the accident has taken place due to the rash and negligent driving of the driver of the first respondent. Taking into consideration that, the avocation of the deceased being 'mesthiri', the notional income is taken as Rs.4,500/- per month. On the date of the accident, the deceased was aged 60 years and accordingly, 10% should be added towards the future prospects of the deceased as per the decision in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601. The proper multiplier to be adopted in the instant case is 9 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since, there are six dependents depending on the income of the deceased, 1/4<sup>th</sup> has to be deducted towards his personal expenses.

Calculation:

Notional income = Rs.4,500/-

10% Future Prospects = Rs.450/-

Total = Rs.4,500/- + Rs.450 = Rs.4,950/-

Loss of dependency

= Rs.4,950 /- x 12 x 9 x 1/4 deduction

= Rs.4,00,950/-

5. The first appellant being a widow is entitled to a sum of Rs.40,000/- towards 'loss of consortium'. The compensation of Rs.2,000/- and Rs.5,000/- granted by the Tribunal under the heads 'funeral expenses' and 'loss of love and affection' are enhanced to Rs.10,000/- and Rs.30,000/- respectively. Apart from the said amount the appellants/claimants are also entitled to a sum of Rs.30,000/- towards 'loss of estate'.

6. Accordingly, the award of the Tribunal in M.C.O.P.No. 249 of 2005 is modified as follows:

| Sl. No. | Particulars                | Amount granted by the Tribunal | Amount granted by this Court |
|---------|----------------------------|--------------------------------|------------------------------|
| 1       | Loss of dependency         | Rs.1,92,000/-                  | Rs.4,00,950/-                |
| 2.      | Loss of love and affection | Rs.5,000/-                     | Rs.30,000/-                  |
| 3.      | Funeral expenses           | Rs.2,000 /-                    | Rs.10,000 /-                 |
| 4.      | Loss of consortium         | NIL                            | Rs.40,000/-                  |
| 5.      | Loss of estate             | NIL                            | Rs.30,000/-                  |
|         | Total                      | Rs. 1,99,000/-                 | Rs.5,10,950/-                |

Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,99,000/- to Rs.5,10,950/-.

7.

In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,99,000/- to Rs.5,10,950/- which shall carry interest at the rate of 7.5% per annum.

(iii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The second respondent - the New India Assurance Company Limited is directed to deposit the entire compensation of Rs.5,10,950/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.249 of 2005, dated 28.12.2005, on the file of the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the New India Assurance Company Limited, the appellants/claimants are permitted to withdraw the entire compensation awarded to them as per the apportionment made by the Tribunal.

-s/d-  
Assistant Registrar

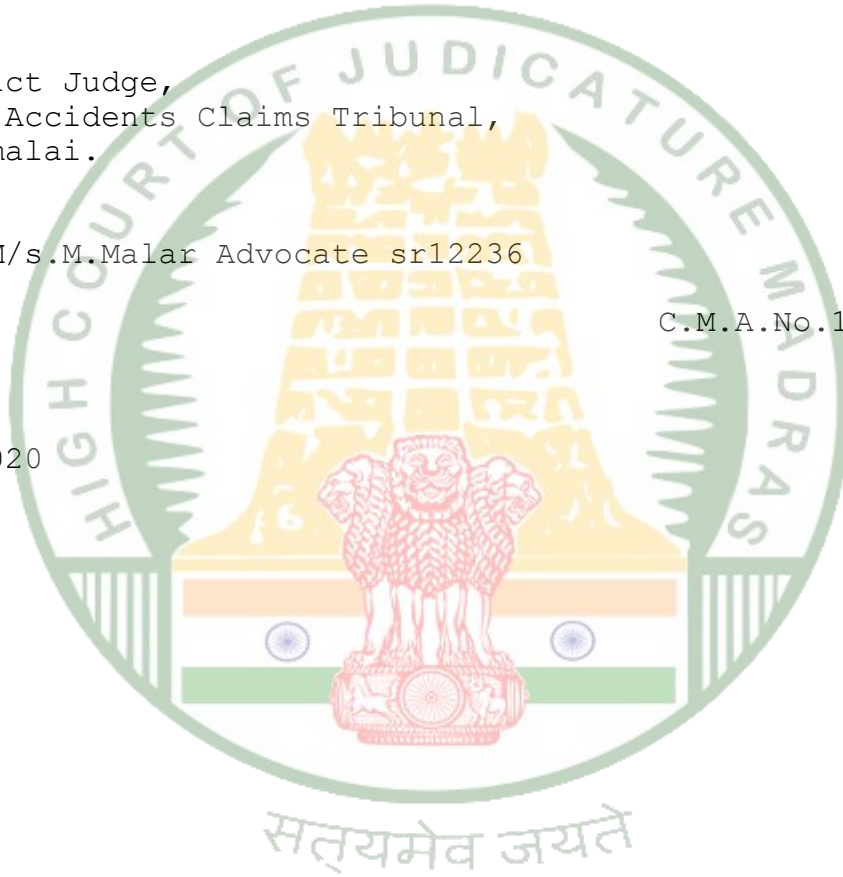
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Sub-Assistant Registrar

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To  
The District Judge,  
The Motor Accidents Claims Tribunal,  
Thiruvananthapuram.

+1 cc to M/s.M.Malar Advocate srl2236

C.M.A.No.1673 of 2011

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