

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1822 of 2013

1. K.Gandhimathi

2. M.Kothandam Appellants/Petitioners

Vs

1. M.Srinivasan
(Remained exparte before the Trial Court)

2. National Insurance Co.Ltd.,
Motor Third Party Cell,
No.751, Anna Salai, 2nd Floor,
Chennai - 600 002. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and decree dated 08.02.2013 in MACT.O.P.No. 1522 of 2006 on the file of the Motor Accidents Claims Tribunal (II Judge, Small Causes Court), Chennai.

For Appellants : Mr.R.Kalai Arasan

For Respondents : Mr.M.Krishnamoorthy
for R2
R1-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 08.02.2013 made in M.C.O.P.No.1522 of 2006 on the file of the II Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

2. The appellants are the claimants in M.A.C.T.O.P.No.1522 of 2006, on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the deceased, who met with an accident that took place on 18.02.2006.

On 18.02.2006 at 21.45 hours, when the deceased viz., Mr.K.Loganathan, was riding Motor cycle bearing Regn.No.TN-07-AC-8301 from Tharamani to Velacherry along 100 feet road, opposite to Sai Kiruppa Apartments, a deer strayed on the road and hit against the Motor Cycle, due to which the Motor cyclist lost balance, at that time the first respondent's Lorry bearing Regn.No.TN-07-B-1989 came from opposite direction in a rash and negligent manner and hit over the deceased and the deer thereby the deceased died on the way to the hospital. The accident occurred only due to the rash and negligent driving of the first respondent. Hence, the appellant had filed a claim petition before the Tribunal, claiming a sum of Rs.12,00,000/- as compensation.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the Lorry belonging to the first respondent and directed the respondents 1 and 2, being the owner and insurer of the vehicle respectively to jointly and severally pay a sum of Rs.5,69,340/- as compensation to the appellants.

5. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal.

6. The learned counsel appearing for the appellants contended that the deceased was a A/C Mechanic and was earning a sum of Rs.4,800/- per month & Rs.1,600/- as conveyance. As per Sarala Varma case, the Tribunal fixed the wage benefits at 30% and fixed the notional income as Rs.8,320/- per month and granted a sum of Rs.5,49,120/- towards loss of income. The deceased was aged about 23 years at the time of accident. There are two dependants of the deceased and therefore, the Tribunal ought to have deducted only 1/3 of the earning towards personal expenses and balance 2/3rd ought to have been taken as contribution to the family. The learned counsel further submitted that the proper multiplier to be adopted in the instant case is "18" as per the decision of the Hon'ble Supreme Court reported in 2009 5 L.W. page 561 Smt.Sarala Varma & others Vs Delhi Transport Corporation and others amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that Multiplier must be as per the age of parents and deduction for personal expenses must be 50% and not 1/3rd as in normal cases, since the deceased was bachelor. Therefore, the Tribunal has rightly deducted 50% towards loss of income of the deceased and the appellants are not entitled to any enhancement towards loss of income. The amounts awarded by the Tribunal under different heads are not meagre and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

9. It is the contention of the appellants that the deceased was working as A/C Mechanic and was earning a sum of Rs.4,800/- per month & 1,600/- as conveyance. Therefore, the Tribunal fixed monthly income of the deceased at Rs.8,320/- and the annual income comes to Rs.8,320X 12 = 99,840/-. Since the deceased was a bachelor, 50% deduction was made. So the income is Rs.49,920/-. The above findings of the Tribunal are just and proper. However, the Tribunal adopted multiplier "11", which is wrong. As per Sarla Varma case, multiplier of 18 is to be adopted instead of 11, since the age of the deceased was 24 years at the time of accident. Therefore, this Court is inclined to adopt multiplier "18". In view of the above, the compensation awarded by the Tribunal towards loss of income is modified to Rs.8,98,560/- (Rs.49,920 X 18). All the other heads awarded by the Tribunal are adequate and they are hereby confirmed. The compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Income	5,49,120/-	8,98,560/-
2.	Funeral Expenses	10,000/-	10,000/-
3.	Loss of love and affection	2,00,000/-	2,00,000/-
	Total	Rs.7,59,120/-	Rs.11,08,560/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,59,120/- is hereby enhanced to Rs.11,08,560/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. As per the order of the Tribunal, it is decided that the deceased also contributed to the negligence to the extent of 25% and hence, the second respondent/Insurance Company is liable to pay compensation only to the extent of 75%. The respondents 1 and 2 are jointly and severally directed to deposit the enhanced award amount now determined by this Court only to the extent of 75%, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1522 of 2006 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with

proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

kmm

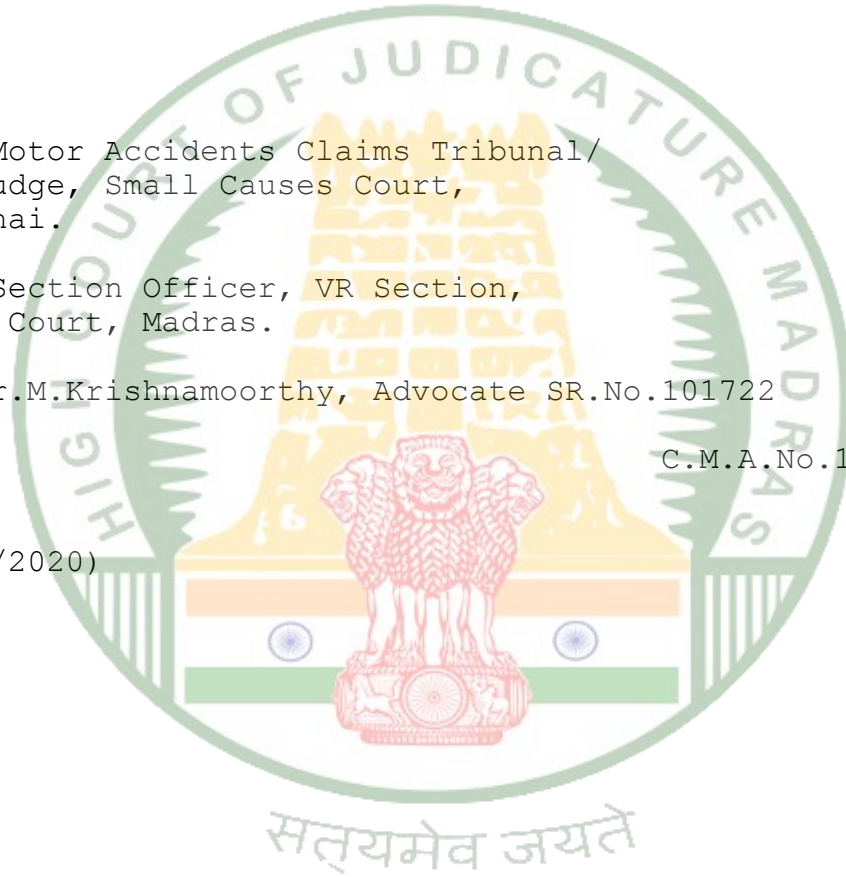
To

1. The Motor Accidents Claims Tribunal/
II Judge, Small Causes Court,
Chennai.
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.101722

C.M.A.No.1822 of 2013

AK (CO)
GMY (19/11/2020)



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