

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :26.02.2019

Judgment Pronounced on :16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2543 of 2011

1.Nagalakshmi
2.Alagarraja (Minor)
3.Minor Vignesh (Minor)
(the minor appellants 2 & 3 are represented
by their mother and next friend, the first appellant)
Appellants ...

Vs.

1.A.B.T.Parcel Service,
rep.by its Managing Director,
Coimbatore.
2.K.Raja
3.A.Manickam
4.The New India Assurance Company Ltd.,
No.102, Yercod Main Road,
Alagapuram, Salem
5.Gowrimanickam
6.United India Insurance Company Ltd.,
Pollachi
7.Janaki Ammal
Respondents ...

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 24.01.2002 in M.C.O.P.No.42 of 2000 on the file of the Motor Accident Claims Tribunal, Villupuram.

For Appellants	: Mr.S.Krishnasamy
For R1 & R7	: No appearance
For R4	: Mr.G.Udayasankar
For R6	: Mr.P.Sankara Narayanan
For 2,3&5	: Exparte before the Tribunal

J U D G M E N T

The claimants are the appellants herein seeking enhancement of compensation.

2. The brief case of the appellant/claimant is as follows:

On 07.07.1994 at about 12.00 a.m, when the deceased Ashok Pandian was proceeding lorry bearing Registration TAS 1122 towards Salem from Ulundurpet in a high speed and the vehicle bearing Registration Number TN 37B 6375 driven by the 3rd respondent's driver was proceeding in normal speed towards Madras from Attur. When the vehicles were nearing Vellaiyur in the Salem Main Road, the lorry bearing Registration No.TAS 1122 dashed against the lorry bearing Registration No.TN 37 B 6375 and as a result, its driver sustained grievous injuries including head injuries. The injured was admitted initially to the G.H., Ulundurpet and the deceased was later shifted to the G.H., Madras. Due to the said impact, the deceased fell down. In the accident, the deceased Ashok Pandian sustained multiple injuries all over his body and the deceased was declared dead by the Doctor on 10.07.1994.

3. Based upon the oral and documentary evidence, the Tribunal has held that the accident has taken place due to the driving of the driver of the offending lorry belonging to the third respondent before the Tribunal which was insured with the fourth respondent (Tribunal) and accordingly, awarded a compensation of Rs.2,56,800/- together with interest at the rate of 9% per annum to the appellants/claimants. Having 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. On the point of rash and negligence due to the driver of the third respondent's vehicle which was insured with the fourth respondent, there was no dispute.

5. On the point of quantum, both the parties are heard.

6. On behalf of the claimants P.W.1, the widow of the deceased and P.W.2 were examined and Exhibits P1 to P9 were marked and on behalf of the respondents, no one documents were adduced.

7. It is a specific case of P.W.1, the first claimant who is the widow of the deceased (her husband) was working as a Driver

in the A.B.T Parcel Service and was earned Rs.2,000/- per mensem and also received Rs.70/- per day as a batta and the driving licence of the deceased was marked as Exhibit P4.

8. The factum of the accident and the nature of the employment of the deceased in the A.B.T Parcel Service-the first respondent herein is not dispute as the same was duly reflected under Exhibit P1 F.I.R which came into existence immediately after the accident.

9. Taking note of the fact that the A.B.T Parcel Service is one of the reputed Company who care for the employment for both on the payment as well as the batta payment, this Court is of the view on that the date of the accident 07.07.94, Rs.2000/- as claimed by P.W.1 appears to be reasonable and Rs.70/- per day as a batta is also reasonable.

10. Considering the age of the deceased at the time of the accident being 32, the monthly income of the deceased is fixed at Rs.2000+Rs.1500 batta and accordingly, Rs.3,500/-. Future prospectus (40%) Rs.1,400/- and hence, monthly income is arrived at Rs.3,500+Rs.1,400/-=Rs.4,900/- after 1/3rd deduction towards 'loss of income' is awarded Rs.6,58,560/- [4900x30/100=Rs.1470=Rs.4900-Rs.1470/-=Rs.3,430/- x12x16=Rs.6,58,560/-)

11. Taking into consideration the fact that the first claimant is a widow of the deceased and the other two claimants are the children of the deceased, they are entitled for Rs.40,000/- towards loss of consortium and the claimants/petitioners2&3 are entitled for loss of love and affection Rs.40,000/-each and the mother of the deceased-4th claimant is entitled for loss of love and affection Rs.30,000/- and funeral expenses at Rs.15,000/- and loss to estate at Rs.15,000/-.

12. Accordingly, the award of the Tribunal in M.C.O.P.No.42 of 2000 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income	Rs. 2,44,800/-	Rs.6,58,560/-
2.	Loss of consortium	Rs. 10,000/-	Rs. 40,000/-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
3.	Loss of funeral expenses	Rs. 2,000/-	Rs. 15,000/-
4.	Loss of estate	----	Rs. 15,000/-
5.	Loss of love and affection (children)	----	Rs. 80,000/- (Rs.40,000/- each)
6.	Loss of love and affection (mother)	-----	Rs. 30,000/-
	Total	Rs. 2,56,800/-	Rs. 8,38,560/-

The compensation awarded by the Tribunal is enhanced from Rs.2,56,800/- to Rs.8,38,560/- which shall carry interest at the rate of 7.5% per annum.

13. 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.2,56,800/- to Rs.8,38,560/-

(iii) The fourth respondent herein-New India Assurance Company is directed to deposit the compensation of Rs.8,38,560/- (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. 42 of 2000, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Villupuram within a period of twelve weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first appellant/claimant/wife is permitted to withdraw her share of the amount and apportionment of award amount as ordered by the Tribunal. The appellants/claimants shall pay necessary additional court fee, if any, on the enhanced compensation.

(v) As far as the share of the minor claimants 2 and 3 are concerned, the same shall be invested in any Nationalised Bank in an interest bearing fixed deposit and the interest thereon shall be withdrawn by the first claimant for the welfare of the

minors and the said deposit shall be renewed periodically till they attain majority. Apportionment award amount as ordered by the Tribunal is kept intact.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Additional District Judge cum Chief Judicial Magistrate,
Villupuram

2. The Section Officer,
V.R.Section, High Court, Chennai.

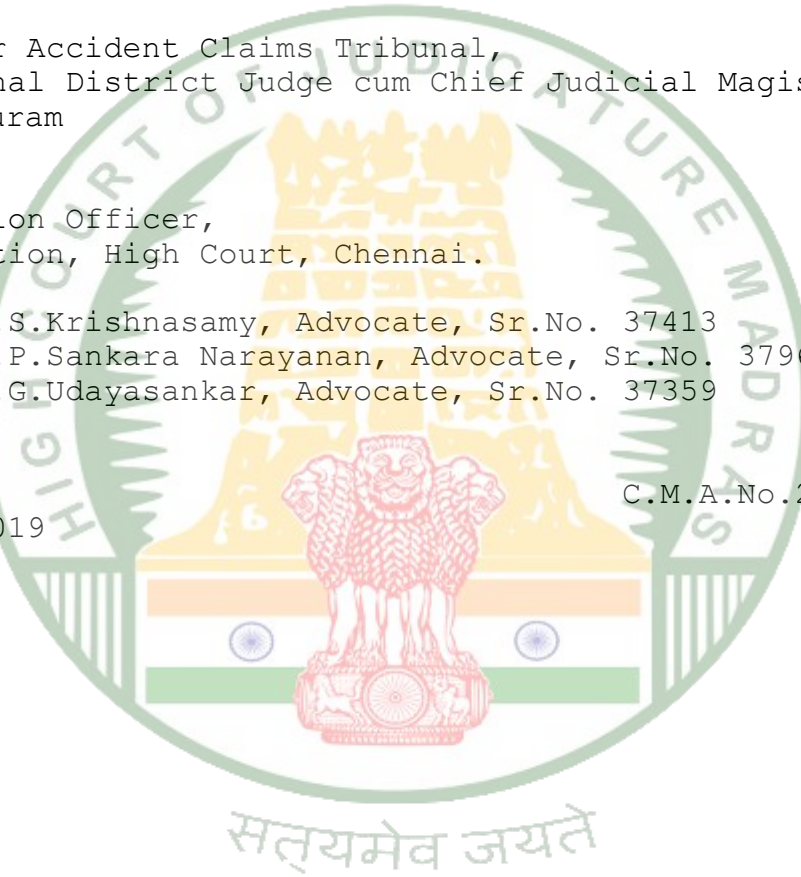
+1 cc to Mr.S.Krishnasamy, Advocate, Sr.No. 37413

+1 cc to Mr.P.Sankara Narayanan, Advocate, Sr.No. 37965

+1 cc to Mr.G.Udayasankar, Advocate, Sr.No. 37359

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CSL/03.07.2019



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