

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3335 of 2012

- 1.Shankar
- 2.Parameshwari
- 3.Mageshwari
- 4.Lakshmi
- 5.Sarasu
- 6.Minor Devi

Minor rep.by Guardian and
her brother the first appellant

.... Appellants/Petitioners

Versus

- 1.Murugan

.... Respondent 1/Respondent 1

- 2.The Divisional Manager,
The New India Assurance Co.Ltd.,
No.75, Krishnan street,
Tiruvannamalai.

.... Respondent 2/Respondent 2

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award dated 29.12.2005 made in M.C.O.P.No.1130 of 2003, on the file of the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For Respondents: Exparte- R1
Mr.P.G.Padmanabhan (for R2)

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal District Judge, Thiruvannamalai, in and by award dated 29.12.2005 made in M.C.O.P.No.1130 of 2003, the claimants have filed the present appeal for enhancement of the compensation amount.

2.Since this appeal has been filed challenging the quantum of compensation alone, I am not dealing with the other aspects of the award passed by the Tribunal.

3.The appellants herein/claimants are the son and daughters of the deceased one Chandra respectively. With regard to the quantum of compensation, it is the case of the claimants that the deceased was working as a coolie and earning a sum of Rs.5,000/- per month. The deceased was aged 60 years at that time of accident.

4.In order to prove the income of the deceased, on the side of the claimants, 1st claimant/ son has examined himself as P.W.1, besides examining one Kuppan as P.W.2, who is occurrence witness, and six documents were marked as Ex.P1 to P6. On the side of the respondents, one K.S.Ganesan was examined as RW.1 and one document Ex.R1/Investigation report was marked.

5.The first respondent remained as ex-parte before the Tribunal.

6.Before the Tribunal, considering the oral and documentary evidence and the deposition of PW.1, it is stated that the deceased (Chandra) was doing coolie work but he did not mention that what kind of work that she was doing at that time of accident. Hence, since no documentary evidence was produced by the claimants, the Tribunal has fixed only a sum of Rs.75/- per day and calculated the monthly income of the deceased at Rs.2,250/- (Rs.75 x 30) and annual income at Rs.27,000/-. Thereafter, by deducting 1/3rd amount towards personal expenses of the deceased, the Tribunal has fixed a sum of Rs.18,000/- as contribution to the family. Thereafter, by applying the multiplier 8, based on the age of the deceased, who was 60 years old at the time of accident, the Tribunal has awarded a sum of Rs.1,44,000/- towards loss of income.

7.Now, it is the submission of the learned counsel for the appellants/claimants that the sum of Rs.2,250/- fixed by the Tribunal as monthly income is extremely on the lower side and that the monthly income of the deceased ought to have been fixed at Rs.5,000/- considering the cost of living. Further, the deduction of 1/3rd amount made by the Tribunal towards personal expenses is not proper. The proper deduction is 1/5th amount, because there are six dependants to the deceased. Thus, the learned counsel for the appellants/claimants submitted that the compensation amount has to be enhanced.

8.But, the learned counsel for the Insurance company has submitted that in the absence of any evidence, a sum of Rs.2,250/- fixed by the Tribunal as monthly income, cannot be said to be on the lower side. Further, he denied the age,

avocation and income of the deceased. Thus, he prays for dismissal of claim petition.

9.I have heard the submissions made on either side and perused the materials available on record.

10.Considering the facts and circumstances of the case, this Court is of the opinion that considering the cost of living, the sum of Rs.2,250/- fixed by the Tribunal as monthly income of the deceased is on the lower side. Hence, a notional income of Rs.3,000/- per month is hereby fixed as monthly income of the deceased. If 10% amount is added towards future prospects, the total comes to Rs.3,300/-. By deducting 1/5th amount towards personal expenses, the monthly contribution to the family works out to Rs.2,640/- (3,300 - 660). By applying multiplier '9' as per oft-quoted Judgement of Sarla Verma case, the loss of income to the family is quantified at Rs.2,85,120/- (Rs.2640 x 12 x 9). The claimants 1 to 6 being the legal heirs of the deceased are entitled to get compensation under the head of loss of love and affection at the rate of Rs.15,000/- each. Apart from this, the claimants are also entitled to a sum of Rs.15,000/- towards loss of estate. Further, a sum of Rs.15,000/- is awarded towards funeral expenses. In all, the compensation awarded by the Tribunal is enhanced from Rs.1,56,000/- to Rs.4,05,120/-, the break-up details are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs.1,44,000/-	Rs.2,85,120/-
Love and Affection (for six legal heirs)	Rs.10,000/-	Rs.90,000/-
Funeral expenses	Rs.2,000/-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Total	Rs.1,56,000/-	Rs.4,05,120/-

11.It is represented by the learned counsel appearing for the Insurance Company that the entire award amount as awarded by the Tribunal has already been deposited as directed by the Tribunal.

(i) This Court directs the Insurance Company to pay the balance enhanced amount, as ordered by this Court, with interest at the rate of 7.5% from the date of appeal and the date of deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the claimants are permitted to withdraw the same, by making necessary application before the Tribunal.

(iii) The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

klt

To

1.The District Judge,
The Motor Accidents Claims Tribunal,
Thiruvannamalai.

2.The Section Officer,
V.R. Section,
High Court, Madras - 104.

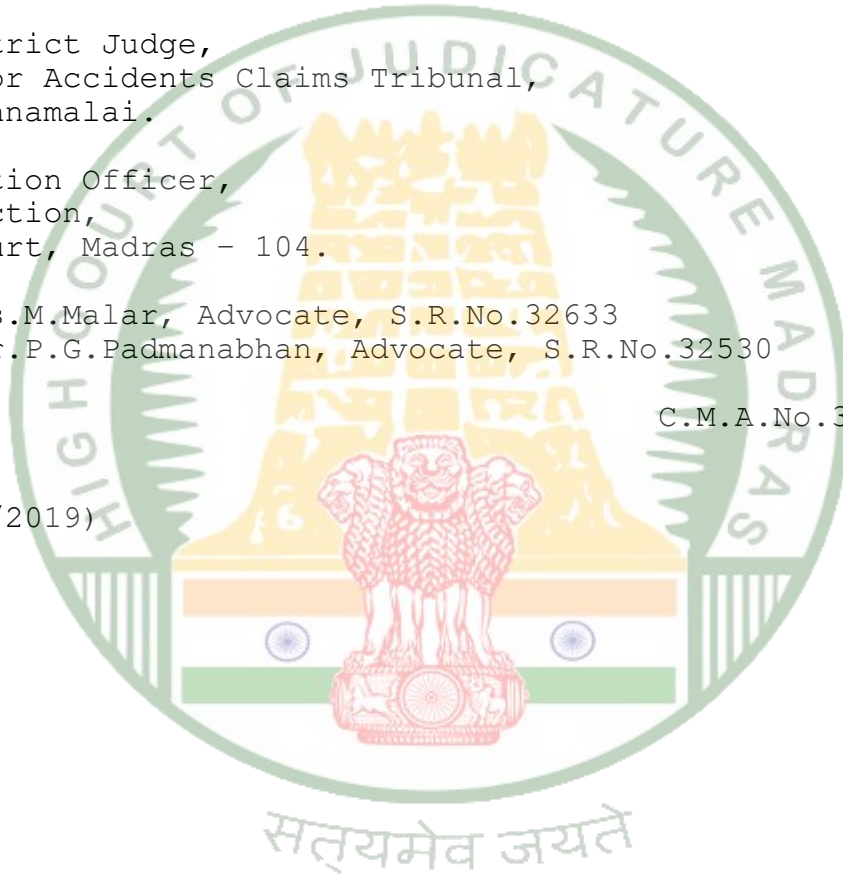
+1cc to Ms.M.Malar, Advocate, S.R.No.32633

+1cc to Mr.P.G.Padmanabhan, Advocate, S.R.No.32530

C.M.A.No.3335 of 2012

EV(CO)

RRS (04/07/2019)



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