

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1627 of 2019

1.D.Vijayalakshmi  
2.Minor Vinod Kumar  
2.Minor Vinodhini  
4.Minor Vigneshwaran  
5.R.Visalam @ Visalatchi .... Appellants /Petitioners  
(minors rep. By their guardian and  
mother D.Vijayalakshmi, 1<sup>st</sup> appellant)

Vs.

1.P.Viswanathan  
2.The Managing Director, M/S.Pondicherry Tourism  
Transport Development Corporation Ltd.,  
Pondicherry.  
3.The New India Assurance Co. Ltd.,  
rep. By its Divisional manager,  
Pondicherry. ... Respondents  
(R1 and R2 remained absent and set exparte  
by the lower Court and hence, they are given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 19.02.2001, made in M.C.O.P.No.20 of 2000, on the file of the Motor Accident Claims Tribunal, Karaikal.

For Appellants : Mr.R.Vasudevan

For R3 : Ms.R.Sumathi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award dated 19.02.2001, made in M.C.O.P.No.20 of 2000, on the file of the Motor Accident Claims Tribunal, Karaikal.

2.By consent of both parties, the appeal is taken up for final disposal at the admission stage itself.

3.The appellants/claimants filed M.C.O.P.No.20 of 2000, on the file of the Motor Accident Claims Tribunal, Karaikal, claiming a sum of Rs.14,71,500/- as compensation for the death of R.Dhanabal, who died in the accident that took place on 03.11.1999.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1<sup>st</sup> respondent, driver of the bus belonging to the 2<sup>nd</sup> respondent-Transport Corporation and directed the 3<sup>rd</sup> respondent-Insurance Company to pay a sum of Rs.4,41,696/- as compensation to the appellants.

5.Not being satisfied with the amount granted by the Tribunal in the award dated 19.02.2001, made in M.C.O.P.No.20 of 2000, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the deceased was aged 36 years at the time of accident and was working as a Secretary, Agriculture, Co-operative Bank and earning a sum of Rs.5,500/- per month. The Tribunal failed to grant any amount towards future prospects. The deceased was also earning a sum of Rs.25,000/- per annum by way of lease-hold income of agricultural lands apart from his job. The Tribunal erred in applying the multiplier of '11', instead of '15'. The Tribunal failed to grant any amount towards funeral expenses, loss of educational prospects for the minor appellants, marital prospects and loss of love and affection. The amount granted by the Tribunal towards loss of consortium is very meagre and prayed for enhancement of the same.

7.Per contra, the learned counsel appearing for the 3<sup>rd</sup> respondent-Insurance Company contended that the deceased was aged 36 years at the time of accident and the Tribunal has applied the correct multiplier of '11' and awarded just compensation. The appellants have not made any case for enhancement of the compensation. In any event, the amounts awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the 3<sup>rd</sup> respondent and perused the materials available on record.

9.From the award of the Tribunal, it is seen that the Tribunal failed to grant any amount towards future prospects of the deceased. The appellants contended that the deceased was working as a Secretary, Agriculture, Co-operative Bank and earning a sum of Rs.5,500/- per month and produced Ex.P5-salary certificate to substantiate the same. The deceased was aged 36

years at the time of accident. The appellants are entitled to 30% enhancement towards future prospects. Hence, deducting 1/4<sup>th</sup> towards the personal expenses of the deceased and applying the correct multiplier of '14', the amount granted towards loss of income is modified to Rs.9,00,900/- {[Rs.5,500/- + Rs.1650/- (30% of Rs.5,500/-)] x 12 x 14 x 3/4}. The Tribunal has awarded meagre amount towards loss of consortium. The 1<sup>st</sup> appellant is entitled to Rs.40,000/- towards the same. The Tribunal failed to grant any amount towards funeral expenses and loss of estate. Hence, a sum of Rs.15,000/- each is granted towards the said heads. Thus, the compensation awarded by the Tribunal is modified as follows:

| S.No | Description        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|--------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.   | Loss of income     | 4,21,696/-                      | 9,00,900/-                        | enhanced                               |
| 2.   | Loss of consortium | 20,000/-                        | 40,000/-                          | Enhanced                               |
| 3.   | Loss of estate     | -                               | 15,000/-                          | Granted                                |
| 4.   | Funeral expenses   | -                               | 15,000/-                          | Granted                                |
|      | Total              | 4,41,696/-                      | 9,70,900/-                        | Enhanced by Rs.5,29,204/-              |

10. In the result, the appeal is allowed and award granted by the Tribunal at Rs.4,41,696/- is enhanced to Rs.9,70,900/- along with interest and costs. The 3<sup>rd</sup> respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs, 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.20 of 2000. On such deposit, the appellants 1 & 5/claimants 1 & 5 are permitted to withdraw their shares of the enhanced award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The shares of the minor appellants 2 to 4 / claimants 2 to 4 are directed to be deposited in any one of the Nationalized Bank till the minors attain majority. The 1<sup>st</sup>

appellant/mother of the minor appellants is permitted to withdraw interest accrued once in three months for the welfare of the minor appellants 2 to 4. The appellants are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

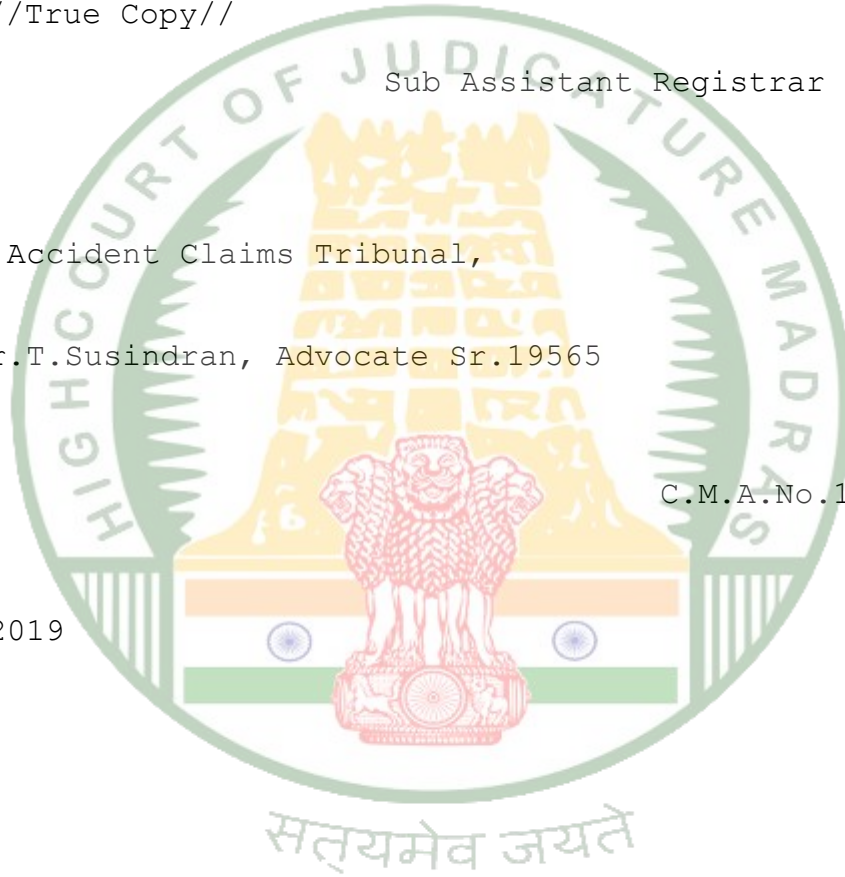
To

The Motor Accident Claims Tribunal,  
Karaikal.

+1cc to Mr.T.Susindran, Advocate Sr.19565

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