

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NOS.2884 & 2885 OF 2019

- 1.Poongodi
- 2.Minor.Dakshin
- 3.Minor Manikandan
(Minors rep by Mother/Guardian Poongodi)
- 4.Palaniyammal
- 5.Arumugam

... Appellants in C.M.A.No.2884 of 2019/
Claimants

- 1.Sellammal
- 2.Perumal

... Appellants in C.M.A.No.2885 of 2019/
Claimants

..Vs..

- 1.Ananthakumar
- 2.Senthilkumar
- 3.HDFC ERGO General Insurance Company Limited
Office situated at Empire Arcade, 356/1,
Omalur Main Road, Opp New Bus Stand,
Salem- 636 004.

...Respondents in both Appeals/
Respondents

(The 1st and 2nd respondents
remained exparte before the
tribunal)

Prayer:

These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation in the common Judgment and Decree dated 14.12.2018 made in MCOP.Nos.611 & 609 of 2017 respectively on the file of the MACT/Special District Court (FAC) at Erode.

For Appellants
in both Appeals : Mr.Ma.P.Thangavel

For Respondent 3 : Mr.Mohan Babu
for M/s.M.B.Gopalan Associates

COMMON JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

These appeals have been filed by the respective claimants seeking enhancement of compensation under the common judgment and decree dated 14.12.2018 passed by the Motor Accident Claims Tribunal/Special District Court (FAC), at Erode in MCOP.Nos.611 and 609 of 2017.

2. Since both these appeals are arising out of the very same accident and a common award, they are disposed of by this common judgment.

Brief facts leading to the filing of these appeals:

3. On 17.07.2017, one Ravikumar was riding his two wheeler bearing registration No.TN33 BC-1165 along with Perumal and Manikandan who were pillion riders and they were proceeding from Erode to Karur main road. Due to the rash and negligent driving by the first respondent/driver of the lorry bearing registration No.TN45 AL-1224 owned by the second respondent and insured with the third respondent, the lorry collided with the two wheeler and the accident had happened which resulted in the death of Perumal and Ravikumar. The Appellants in CMA.No.2884 of 2019 who are the legal representatives of the deceased Perumal preferred a claim petition before the Motor Accident Claims Tribunal in MCOP.No.611 of 2017 seeking a compensation of Rs.60,80,000/- which was restricted by the claimants to Rs.20,00,000/- under the claim petition. Similarly, the Appellants in CMA.No.2885 of 2019 who are the legal representatives of the deceased Ravikumar preferred a claim petition before the Motor Accident Claims Tribunal in MCOP.No.609 of 2017 seeking a compensation of Rs.55,80,000/- which was restricted by the claimants to Rs.15,00,000/- under the claim petition.

4. In both the cases, the claimants have pleaded that both the deceased were Masons and they were each earning a monthly income of Rs.20,000/- at the time of the accident. At the time of death, Perumal was aged 29 years and Ravikumar was aged 27 years.

5. The Motor Accident Claims Tribunal, Special District Court (FAC), Erode by its common judgment and decree dated 14.12.2018 has passed the following common award in the respective claim petitions:

(I) MCOP.No.611 of 2017

Sl.No.	Heads	Amount awarded by the Tribunal
1	Loss of dependency (Rs.6250+2500 = 8750 x 12 x 17 x $\frac{1}{4}$)	13,56,600/-
2	Loss of Love & Affection	1,00,000/-
3.	Loss of Consortium	40,000/-
4.	Funeral Expenses	15,000/-
5.	Transport	10,000/-
	Total	15,21,600/-

(II) MCOP.No.609 of 2017

Sl.No.	Heads	Amount awarded by the Tribunal
1	Loss of dependency (Rs.6250+3125 = 9375 x 12 x 17 x $\frac{1}{2}$)	8,92,500/-
2	Loss of Love & Affection	50,000/-
3	Funeral Expenses	15,000/-
4.	Transport	10,000/-
	Total	9,67,500/-

6. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeals have been filed by the respective claimants seeking enhancement of compensation.

7. Heard Mr. Ma.P.Thangavel, learned counsel appearing for the Appellants and Mr. Mohan Babu, learned counsel for the third respondent in both the appeals. The respondents 1 and 2 have remained ex parte both before the Tribunal as well as this Court.

Discussion:

8. In both the appeals, the fixation of notional income of the respective deceased namely Perumal and Ravi Kumar by the Tribunal at Rs.6,250/- per month is challenged. According to the

Appellants, the accident happened in the year 2017 and therefore, the Tribunal ought to have assessed the monthly notional income at a much higher sum, considering the cost inflation index. Further it is the contention of the Appellants that the Tribunal ought to have also awarded a much higher sum under the heads (a) loss of Love and Affection and (b) Transportation charges. Further it is the case of the Appellants that the Tribunal ought to have awarded some amount of compensation towards loss of estate.

9. This Court has perused and examined the impugned award as well as the evidence available on record.

10. Admittedly, the accident which caused the death of Perumal as well as Ravikumar happened in the year 2017 and to be precise, it is on 17.07.2017. A clear finding has been given by the Tribunal under the impugned award that only due to the rash and negligent driving by the first respondent/driver of the lorry which is owned by the second respondent and insured with the third respondent, the accident had happened.

11. Before the Tribunal, on the side of the Appellants, 12 documents were marked as Ex.P1 to Ex.P12 and three witnesses including an eyewitness was also examined and on the side of the respondents, neither any witness was examined nor any document was marked as exhibit.

12. The finding of the Tribunal that only due to the rash and negligent driving by the driver of the lorry, the accident had happened which resulted in the death of Perumal and Ravikumar has not been challenged by the respondents and therefore, the said finding has now attained finality.

13. Before the Tribunal, the respective claimants had categorically pleaded that both the deceased were working as Masons and earning a monthly income of Rs.20,000/- at the time of the accident. However, the Tribunal has assessed the notional monthly income of each of the deceased only at Rs.6,250/-. As seen from the evidence available on record, the avocation of the deceased at the time of the accident have also not been disputed by the respondents. The accident having happened in the year 2017 and that too, when no contra evidence has been produced by the respondents to disprove the claim of the Appellants that the respective deceased was a mason at the time of accident, the Tribunal ought to have assessed the notional monthly income of the respective deceased Perumal and Ravikumar at a much higher sum. The Tribunal has not considered the cost inflation index for the year 2017, being the year of the accident while assessing the monthly notional income of the respective deceased. In the year 2017, a Mason would have earned at least

Rs.500/- per day and under normal circumstances, he would have worked at least 24 days in a month. Therefore, we are of the considered view that a sum of Rs.12,000/- per month ought to have been assessed as the notional income of the deceased Perumal and Ravikumar and not Rs.6,250/- as assessed by the Tribunal is palpably low.

14. The Tribunal has not awarded any amount towards loss of estate to the claimants both in MCOP.Nos.611 & 609 of 2017. We are of the considered view that a sum of Rs.15,000/- ought to have been awarded towards loss of estate in CMA.No.2884 of 2019 and CMA.No.2885 of 2019 as per the Constitution Bench Judgment of the Hon'ble Supreme Court of India in the case of National Insurance Co. Ltd., vs. Pranay Sethi reported in (2017) 16 SCC 680.

15. Excepting for the above modifications, we do not find any infirmity in the assessment of the compensation awarded by the Tribunal under various other heads. In the result, the compensation awarded to the respective Appellants in MCOP.Nos.611 & 609 of 2017 respectively are enhanced in the following manner:

CMA.No.2884 of 2019

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of dependency	13,56,600/- (Rs.6250+2500 = 8750 x 12 x 17 x ¼)	25,70,400/- (12,000+4800=16,800 x 12 x 17 x ¼)
Loss of Love & Affection	1,00,000/-	1,80,000/-
Loss of Consortium	40,000/-	40,000/-
Funeral Expenses	15,000/-	15,000/-
Transport	10,000/-	10,000/-
Loss of Estate	.	15,000/-
Total	15,21,600/-	28,30,400/-

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of dependency of	8,92,500/- (Rs.6250+3125 = 9375 x 12 x 17 x ½)	17,13,600/- (12,000+4800=16,800 x 12 x 17 x ½)
Loss of Love & Affection	50,000/-	50,000/-
Loss of Estate	Nil	15,000
Funeral Expenses	15,000/-	15,000/-
Transport	10,000/-	10,000/-
Total	9,67,500/-	18,03,600/-

Conclusion:

16. For the foregoing reasons, both the appeals are partly allowed by enhancing the award amount and the interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The third respondent is directed to deposit the entire award amount as per the order of this court before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.611 and 609 of 2017 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the share of the 1st, 4th and 5th Appellants in CMA.No.2884 of 2019 and the Appellants in CMA.No.2885 of 2019 as per the ratio of apportionment made under the impugned order through RTGS within a period of one week and the shares of the Appellants 2 and 3 in CMA.No.2884 of 2019 shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit till they attain majority as per the ratio of apportionment made under the impugned order and the first Appellant in CMA.No.2884 of 2019 is permitted to withdraw the interest accrued once in six months. No costs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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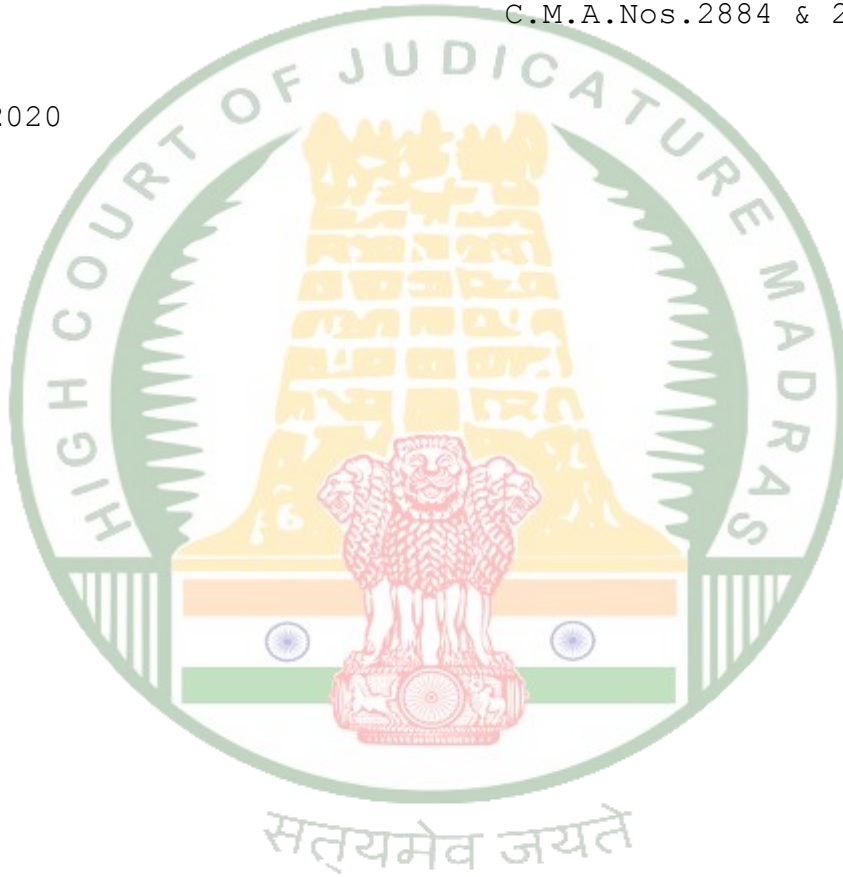
1. The Motor Accident Claims Tribunal,
Special District Court (FAC) at Erode.
2. The Section Officer,
VR Section, High Court,
Chennai.

+lcc to M/s.M.B.Gopalan Associates, Advocate, S.R.No.76628

+lcc to Mr.Ma.P.Thangavel, Advocate, S.R.No.76338

C.M.A.Nos.2884 & 2885 of 2019

VBA (CO)
CS/05/06/2020



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