

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A.No.4192 of 2019

1.S.Rathika
W/o.Late Senthil

2.Minor S.Dhanusri
D/o.Late Senthil

3.Minor S.Keertivasan
S/o.Late Senthil

4.R.Saroja
W/o.Rajagopal

5.P.Rajagopal
S/o.Ponnu

(Minors both are represented by
their mother 1st petitioner as guardian)

... Appellants/Petitioners

Vs

1.M.Abdul Latheif
S/o.Mohamed Ghouse

2.The Oriental Insurance Company Ltd.,,
Sub Govindam Building,
Emperial Road, Cuddalore.

... Respondents/Respondents

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2019 in M.C.O.P.No.3982 of 2014 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Cuddalore.

For Appellants : Ms.Ramya V Rao

For Respondents: Mr.R.Sivakumar [R2]

JUDGMENT

[Judgment was delivered by R.SUBBIAH, J]

Not being satisfied with the quantum of compensation awarded by the Tribunal, the present Civil Miscellaneous Appeal has been filed by the claimants as against the award dated 15.03.2019 passed in M.C.O.P.No.3982 of 2014 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Cuddalore.

2.The short facts of the case are as follows:

Appellants are legal heirs of the deceased Senthil. On 17.09.2014 at about 06.45 a.m., while the deceased was riding his motorcycle bearing Registration No.TN-51-L-6046 from North to South direction, a bus bearing Registration No.TN-51-K-2777 came in a rash and negligent manner and dashed against the motorcycle, as a result of which the deceased met his instantaneous death. First respondent is the owner of the bus and second respondent is the insurer thereof. Appellants moved the Tribunal seeking compensation in a sum of Rs.75,00,000/-.

3. On appreciation of the evidence and materials on record, the Tribunal, under order dated 15.03.2019, awarded a sum of Rs.12,04,000/- as compensation. Seeking enhancement of compensation, the present appeal has been filed.

4. With regard to the quantum of compensation, learned counsel for appellants/claimants submits that the deceased was a building contractor and earning a sum of Rs.50,000/- p.m. However, the Tribunal has fixed only a sum of Rs.6,000/- as monthly income, added 40% towards future prospects, applied multiplier '15' and after deducting 1/4th towards personal expenses, arrived at a sum of Rs.11,34,000/- towards compensation under the head 'pecuniary loss'. The grievance of appellants/claimants is that the sum of Rs.6,000/- fixed by the Tribunal towards monthly income is on the lower side and hence, the same is to be enhanced.

5. On the other hand, learned counsel for second respondent/insurance company vehemently opposed stating that though in the claim petition, it has been stated that deceased was working as building contractor, in cross-examination, PW-1 has admitted that deceased/her husband was a mason by avocation. In such circumstances, the fixation of Rs.6,000/- as monthly income by the Tribunal is reasonable and hence, there is no need to further enhance the amount. Submitting as above, learned counsel for second respondent/insurance company prays for dismissal of the present appeal.

6. Keeping in mind the submissions made on either side, this Court has carefully perused the entire materials available on record.

7. We find that in order to prove the income of the deceased, the wife of the deceased was examined as PW-1 and the salary particulars issued by Engineers of Maruthi Builders was marked as Ex.P5 to establish that the deceased was earning a sum of Rs.50,000/- p.m. We find that during cross-examination PW-1 herself admitted that the deceased/her husband was a mason. In such circumstances, we are not inclined to accept the submission that the deceased was a building contractor and was earning Rs.50,000/- p.m. However, considering the fact that the accident has occurred in the year 2014 and taking note of the cost of living prevailing at that point of time, we are of the view that fixation of Rs.10,000/- towards monthly income is just and reasonable. Accordingly, the monthly income of the deceased is fixed at Rs.10,000/-. The deceased was aged 37 at the time of accident and hence, the proper multiplier would be '15'. Accordingly, the amount payable under the head 'pecuniary loss' would be Rs.18,90,000/- $((10,000 + 4,000) * 12 * 15 = 25,20,000 - 6,30,000$ (1/4th deduction) = Rs.18,90,000)). Further, a sum of Rs.80,000/- is awarded towards loss of love and affection.

8. Except the above modification, the amount awarded under other heads remains unaltered. In view of the above modification, the total award amount of Rs.12,04,000/- is hereby enhanced to Rs.20,40,000/-. The break up detail of the said modified amount is as follows:

(a) Pecuniary Loss	:	Rs. 18,90,000/-
(b) Loss of consortium	:	Rs. 40,000/-
(c) Loss of love and affection:	Rs.	80,000/-
(d) Loss of Estate	Rs.	15,000/-
(e) Funeral Expenses	:	Rs. 15,000/-

Total : Rs.20,40,000/-

9. The second respondent insurance company is hereby directed to deposit the modified amount after deducting the amount, if any deposited, with interest at the rate of 8% p.a. within a period of eight weeks from the date of receipt of this judgment. Deposit of sums payable to the minors and withdrawal of interest thereon once in six months towards meeting their needs shall be effected as directed by the Tribunal. Appellants 1, 4 and 5/claimants shall be entitled to withdraw the sums payable to them on due application as apportioned by the Tribunal.

The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

gm

To

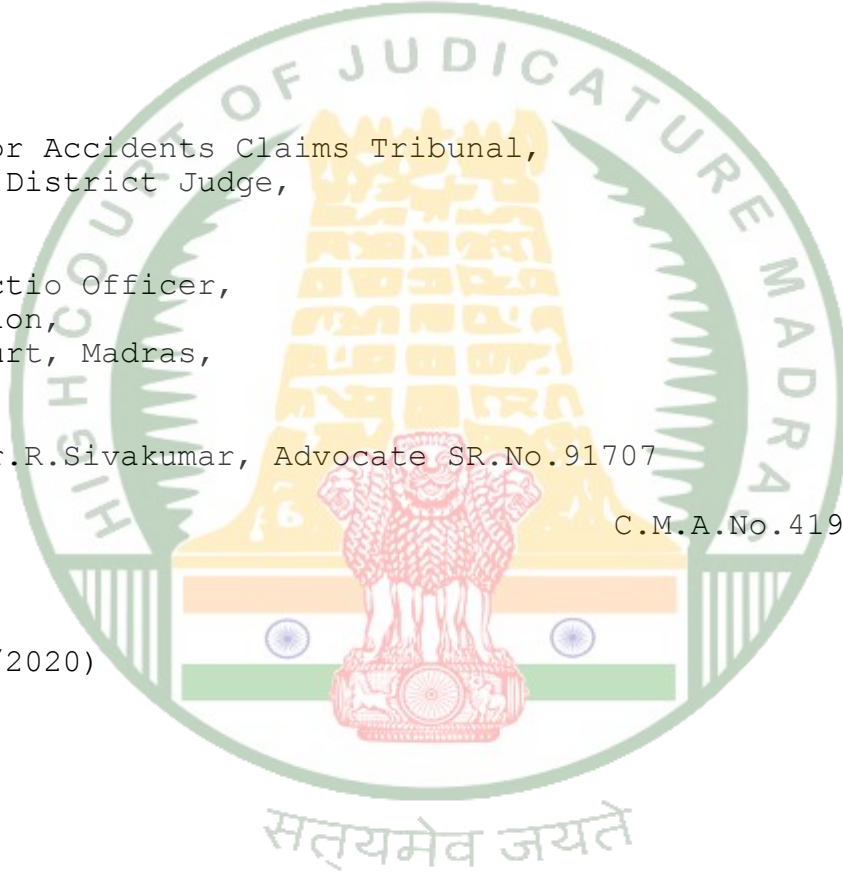
1. The Motor Accidents Claims Tribunal,
Principal District Judge,
Cuddalore.

2. The Section Officer,
VR Section,
High Court, Madras,
Chennai.

+1cc to Mr. R. Sivakumar, Advocate SR.No. 91707

C.M.A.No. 4192 of 2019

NMI (CO)
GMY (09/03/2020)



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