

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2421 of 2018

1.V.Rathika

2.Minor Ruthramoorthy

3.Minor Vetrivelan

(Minors 2 and 3 represented by their mother
guardian and next friend Mrs.V.Rathika)

... Appellants/Claimants

Vs

1.P.Anbazhagan

2.The United India Insurance Company Limited,
No.48, Arcot Road,
Saligramam, Chennai - 93,
Branch office at Tiruvallur.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the Judgment and Decree
dated 25.01.2018 made in M.A.C.T.O.P.No.78 of 2017 on the file
of the Motor Accident Claims Tribunal, Special District Court,
Tiruvallur.

For Appellants : Mr.F.Terry Chellaraja
for M.Malar

For Respondents : Mr.D.Baskaran for R2.
R1 : Exparte

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimants
aggrieved over the quantum of compensation of Rs.11,49,520/-
awarded for the death of one Mr.S.Venkatachalam, 50 years old,
working as labourer in R.M.Precision Engineering Company,
allegedly earning about Rs.20,000/- per month in the accident
occurred on 26.06.2017, when he was riding his motorcycle from
Chennai to Bangalore National Highway at Kuthambakkam, a lorry
belonging to the 1st respondent insured with the 2nd
respondent driven rashly and negligently, hit behind the
motorcycle causing accident. Therefore, the claim petition.

2.The tribunal found that the accident occurred
because of the rash and negligent driving of the lorry and
fixed the liability on the owner of the lorry to be paid by
the 2nd respondent/insurance company. Not satisfied with the
quantum of compensation, the claimants are before this Court.

3. Heard Mr.F.Terry Chellaraja, learned Counsel for the appellants and Mr.D.Baskaran, learned Counsel for the 2nd respondent.

4. The only question which has to be decided is with regard to the quantum of compensation as there is no appeal by the insurance company regarding the finding of the tribunal on negligence. Therefore, the finding of negligence has already attained finality.

5. It is submitted by Mr.F.Terry Chellaraja, learned Counsel for the appellants that it was proved before the Tribunal that the victim was working as labourer in R.M.Precision Engineering company as stated in Ex.P.1 viz., FIR and Ex.P.3 viz., Death report and he was earning about Rs.20,000/- per month. However, the tribunal determined the monthly income only at Rs.8,500/- per month.

6. Though Mr.D.Baskaran, learned Counsel for the 2nd respondent would submit that Rs.8,500/- determined by the tribunal is fair and reasonable, the said amount cannot be correct as the Hon'ble Supreme Court in Nita and Others V. Divisional Manager, MSRTC, Kolapur reported in 2015 1 TN MAC 161 determined the monthly income of a carpenter at Rs.12,000/- in the accident which occurred in 2011. However, in this case, the accident occurred in the year 2017. Moreover, it is very difficult to get a labourer for less than Rs.650/- per day and if he would work at least for 25 days, the monthly income would be Rs.15,000/-. Hence, Rs.15,000/- is taken as monthly income.

7. The age of the deceased is '50' as proved by Ex.P.2 viz., Post-Mortem Report and hence, 25% is added towards future prospects. If 25% is added, the monthly income would be Rs.15,000/- + 25% (Rs.3,750/-) = Rs.18,750/-.

8. The size of the family is 3 and therefore, 1/3 has to be deducted towards personal expenses. If 1/3 is deducted, the loss of income would be Rs.18,750 - 1/3 = Rs.12,500/-. As the age of the deceased is 50, the appropriate multiplier is '13' as per "Sarla Verma's case" ((2009 (6) SCC 121) and hence, the loss of income would be Rs.12,500/- x 12 x 13 = Rs.19,50,000/-.

9. Rs.40,000/- awarded towards loss of consortium, Rs.15,000/- awarded towards funeral expenses, Rs.10,000/- awarded towards transportation are all confirmed. No amount has been awarded towards loss of estate and a sum of Rs.15,000/- is awarded towards loss of estate. As far as the loss of love and affection is concerned, Rs.2,00,000/- has been awarded to the minors 2 and 3 who were aged about 17 years and 14 years. This Court considers it on the higher side and the same is reduced to Rs.1,00,000/-. Therefore, the sum of Rs.11,49,520/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of income	19,50,000/-
2.	Loss of Love and affection	1,00,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of consortium	40,000/-
5.	Transportation	10,000/-
6.	Loss of estate	10,000/-
	Rounded off	21,30,000/-

10.Hence, the total compensation payable in this case is Rs.21,30,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. Out of the compensation amount, The 1st appellant is entitled to Rs.10,00,000/- and the 2nd & 3rd appellants/minors are entitled to Rs.5,65,000/- each. Additional Court fee, if any, shall be paid by the appellants within a period of two weeks from the date of receipt of the copy of this order. If the requisite court-fee is not paid by the claimants, the Tribunal is directed to deduct the requisite court fee from the compensation amount awarded to the claimants and thereafter, transfer the remaining award amount to the respective claimants' account.

11.The 2nd respondent/insurance company 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 within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the share of the 1st appellant through RTGS within a period of one week and the shares of the 2nd and 3rd appellants/minors shall be deposited in any one of the Nationalized Banks in interest bearing Fixed Deposit till they attain majority.

12. Accordingly, this appeal is partly allowed by enhancing the award of the Tribunal from Rs.11,49,520/- to Rs.21,30,000/-. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Special District Judge,
Motor Accident Claims Tribunal,
Tiruvallur.

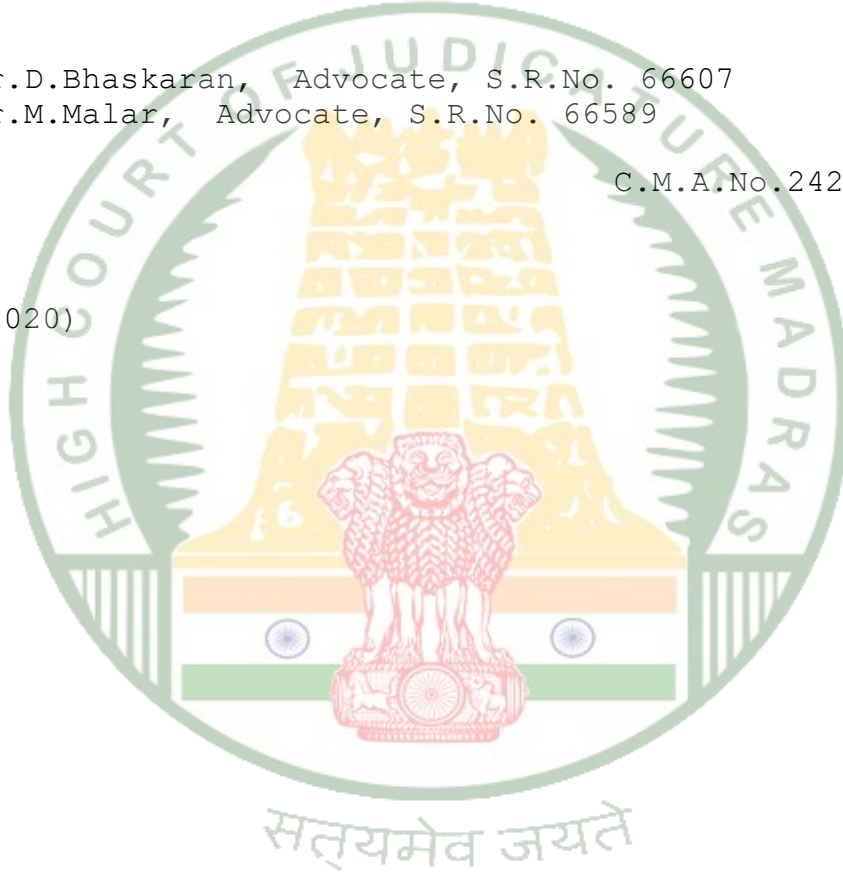
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The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 66607
+1cc to Mr.M.Malar, Advocate, S.R.No. 66589

C.M.A.No.2421 of 2018

SV (CO)
GN (04/03/2020)



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