

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1564 of 2011
(Through Video Conferencing)

1. Lalitha
2. Geetha

... Appellants/Petitioners

Vs.

1. P.Lakshmanan
2. The Reliance General Insurance
Company Ltd.,
Heavitree, Unit No.1,
3rd floor, No.23,
Spur Tank Road,
Chetpet, Chennai - 600 031.

(1st respondent was set exparte
Hence Notice in the CMA may be
Dispensed with)

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded in the Judgment and Decree dated 07.07.2009 made in M.C.O.P.No.169 of 2007, on the file of the Motor Accidents Claims Tribunal/Additional District Judge/Fast Track Court No.1, Erode.

For Appellants : Mr.Ramaraj
for Mr.R.Marudhachalamurthy

For R1 : set exparte

For R2 : Ms.Bhuvana Sundari

JUDGMENT

The claimants are the appellants in this appeal. They have sought for enhancement of compensation awarded by the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court-I, Erode) in M.C.O.P.No.169 of 2007.

2. The appellants/claimants are the daughters of the deceased Dhanalakshmi who was aged about 46 years when she met with an accident. The accident is said to have taken place when the deceased Dhanalakshmi was travelling as a pillion rider on TVS-50 Moped vehicle driven by her husband. Both the husband and wife died, as a result of which, two M.C.O.Ps namely M.C.O.P.Nos.166 & 169 of 2007 were filed before the Claims Tribunal.

3. In M.C.O.P.No.166 of 2007, the Tribunal has awarded a sum of Rs.4,05,000/- as compensation for the death of the father of the appellants/claimants herein. As far as in M.C.O.P.No.169 of 2007 is concerned, the Tribunal has awarded a sum of Rs.1,37,000/- under the following heads:-

(i) Loss of Income	=	Rs.1,30,000/-
(ii) Funeral expenses	=	Rs. 2,000/-
(iii) Loss of Love, Affection & Support	=	Rs. 5,000/-

		Rs.1,37,000/-

While arriving on the aforesaid compensation of Rs.1,37,000/-, the Tribunal has taken notional income of the deceased Dhanalakshmi i.e., mother of the appellants/claimants as Rs.15,000/- p.a and after deducting 1/3rd amount towards personal expenses has applied the multiplier of 13 and arrived at the aforesaid compensation of Rs.1,37,000/-.

4. This appeal is contested by the second respondent Insurance Company stating that the appellants/claimants are married daughters of the deceased and therefore they are not the legal representatives and therefore they are not entitled to compensation. This defence of the learned counsel for the second respondent Insurance Company is countered by citing a recent decision of the Hon'ble Supreme Court rendered in the case of National Insurance Company Limited Vs Birender and others, 2020 SCC OnLine SC 28, wherein, the Hon'ble Supreme Court referred to a decision in the case of Custodian of Branches of BANCO National Ultramarino Vs Nalini Bai Naique [1989 Supp (2) SCC 275] and held as follows:-

16. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned

legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs. 1,00,000/- and Rs. 1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.

5. The Court discussed the law relating to the rights of the children on account of the death of the mother. It held that they are entitled to compensation. Even otherwise, the Hon'ble Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, (1987) 3 SCC 234, held that the compensation is to be awarded to legal representatives. The Court in paragraph No.11 held that "A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. A legal representative in a given case need not necessarily be a wife, husband, parent and child. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by Section 110-A and Section 110-B of the Motor Vehicles Act and to that extent the provisions of that Act do supersede the provisions of the Fatal Accidents Act, 1955 insofar as motor vehicles accidents are concerned.

6. Again in paragraph 13, the Court held as follows:-
13.....Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done

in accordance with well-known principles of law.

7. Though the above views were expressed in the context of Sections 110-A to 110-F of the Motor Vehicles Act, 1939, these provisions are pari materia with provisions of the Motor Vehicles Act, 1988.

8. Therefore, I am of the view, the appellants/claimants are entitled to compensation. The second respondent Insurance Company has not filed any appeal against the orders passed either in M.C.O.P No.166 of 2007 or in M.C.O.P.No.169 of 2007.

9. The appellants/claimants are the dependents of their parents notwithstanding the fact that both appellants/claimants were married at the time of the accident and death of their parents. Having decided the above issue, the supplementatry issue that remains to be considered is whether the Tribunal was justified in considering a notional income of Rs.15,000/- of the deceased mother to arrive the compensation.

10. The accident took place on 21.08.2006. It was the case of the appellants/claimants that their deceased mother Dhanalakshmi was working as an employee in a power loom and was earning a sum of Rs.4,000/-. On the other hand, the Tribunal has considered a notional income of the deceased as Rs.15,000/- ie., 1,250/- per month in absence of any compelling evidence.

11. In my view, the notional income of Rs.1,250/- per month appears to be too low. The Hon'ble Supreme Court in the case of Syed Sadiq Vs. United India Insurance Co. Ltd., (2014) 2 SCC 735, has considered the notional income of a vegetable vendor as Rs.6,500/-.

12. In this case, since the appellants/claimants have themselves restricted the income of the deceased as Rs.4,000/- per month. I am inclined to consider the notional income of the deceased as Rs.3,000/- per month in absence of any evidences to substantiate the same.

13. As per the decision of the Hon'ble Suprme Court in Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130, in paragraph No.21.2, the parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training". Since the appellants are grown up married daughters of the deceased, the parental consortium cannot be granted. However, the amount awarded towards loss of love and affection is partially enhanced.

14. The Tribunal has also not awarded the future prospects. Therefore, the future prospectus is granted at 25% of the income of the deceased. The amount awarded towards funeral expenses also appears to be very low. Therefore, the same is increased to Rs.15,000/-.

15. Therefore, the compensation of Rs.1,37,000/- awarded by the Tribunal is enhanced to Rs.4,25,000 /- by adding another sum of Rs.2,88,000/- under the following heads:-

Sl .N o.	Heads of Compensation	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Income	Rs.1,30,00 0/-	* Rs.3,90,000 /-	Enhanced
2	Funeral Expenses	Rs.2,000/-	Rs.15,000/-	Enhanced
3	Loss of Love, Affection & Support	Rs.5,000/-	Rs.20,000/-	Enhanced
Total		Rs.1,37,00 0/-	Rs.4,25,000 /-	Enhanced by another sum of Rs.2,88,000 /-

*(3000 + 25/100 - 1/3 x 12 x 13)

16. Therefore, second respondent Insurance Company is directed to deposit the enhanced amount of compensation of Rs.2,88,000/- (4,25,000 - 1,37,000) together with interest at 7.5% p.a from the date the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

17. If the second respondent Insurance Company has not deposited the entire amount of compensation awarded by the Tribunal, it is also directed to deposit the same together with interest and proportionate costs as directed by the Tribunal, less if any amount already deposited, within the aforesaid period.

18. On such deposits, the appellants/claimants are entitled to withdraw the same together with interest thereon and costs equally, less if any amount already withdrawn, by filing suitable application before the Tribunal.

19. Accordingly, this Civil Miscellaneous Appeal stands partly allowed. No cost.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

arb / jen

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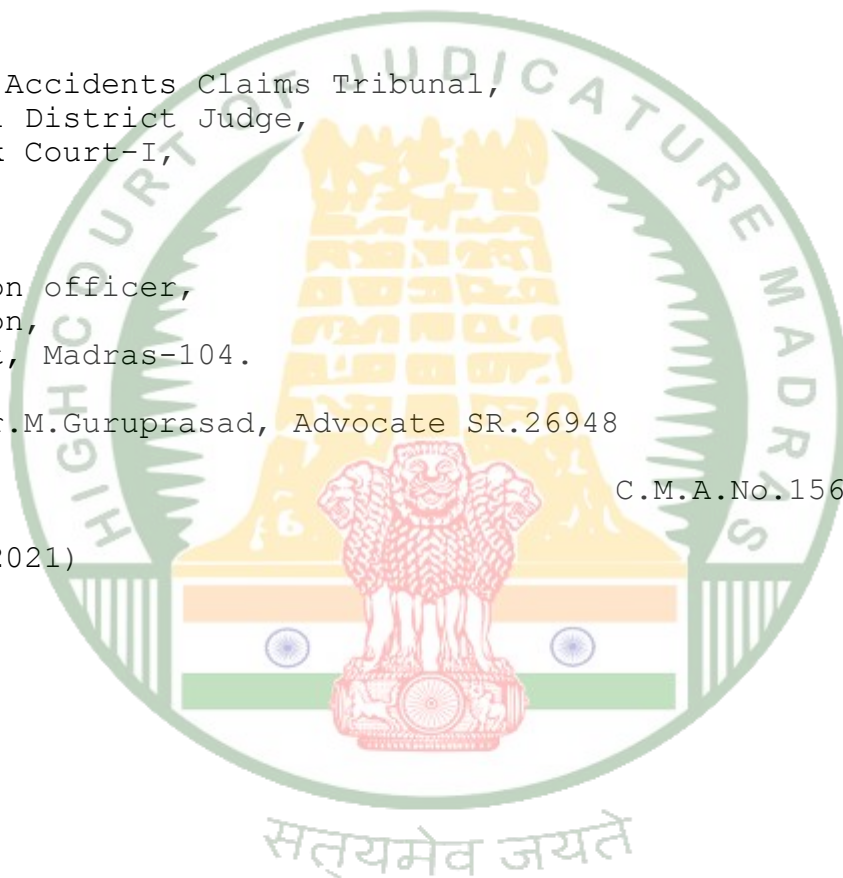
The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court-I,
Erode.

Copy to:
The Section officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.M.Guruprasad, Advocate SR.26948

C.M.A.No.1564 of 2011

SAI (CO)
CB(05/01/2021)



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