

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1685 of 2013

1. Panchayi
 2. Bhoopalan
 3. Alamelu
 4. Anjamani
 5. Renuka
- Appellants/Petitioner

Vs.

1. M/s.Jamuna Transport Corporation Ltd.,
No.11, Bollok Street,
Calcutta, West Bengal.
 2. The Divisional Manager,
National Insurance Co. Limited,
No.19, Officers Line, Vellore.
 3. Sugitha
 4. The Divisional Manager,
The New India Assurance Co. Limited,
No.46, Big Street, Thiruvannamalai.
- Respondents/Respondents

(R1 & R3 remained exparte before Tribunal)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 26.07.2010 made in M.A.C.T.O.P.No.524 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Sub Judge), Thiruvannamalai.

For Appellants : Mr.Terry Chellaraja

For R2 : Mr.Michael Visuvasam

For R4 : Mr.D.Bhaskaran

R1 & R3 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 26.07.2010 made in M.A.C.T.O.P.No.524 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Sub Judge), Thiruvannamalai.

2. The brief facts of the case is that on 19.10.2006 at 11.30 p.m., one Ramasami was traveling as Coolie in the third respondent's lorry bearing Registration No.TN-02-D-3723 on Trichy to Ulundurpet Road, near Butterfly Matric Hs School, Sheik Hussainpet, Villupuram District. At that time, the first respondent's container lorry bearing Registration No.HR-38-E-7602 came in the opposite direction in a rash and negligent manner and dashed against the third respondent's lorry. As a result, the Ramasami died in the spot. At the time of accident, he was aged about 50, and before the accident, he was working as Coolie under the third respondent and was earning Rs.6,000/- per month. Since he died in the accident, the appellants who are the legal heirs of the deceased filed a petition before the Motor Accident Claims Tribunal (Additional Sub Judge), Thiruvannamalai, claiming Rs.10,00,000/- as compensation under various heads.

3. Denying the allegations, the second respondent who is the insurer of the first respondent's lorry filed a counter affidavit before the Tribunal stating that the accident was occurred only due to the rash and negligent driving of the third respondent's driver and not due to the negligence of the first respondent's driver. Further, it has been stated that the driver of the first respondent had no effective and valid driving licence on the date of accident and therefore they are not liable to pay any compensation to the claimants. Moreover, it has been stated that the alleged age, occupation and income of the deceased are not true and the amount of compensation claimed is highly excessive.

4. The fourth respondent who is the insurer of the third respondent's lorry also filed a counter affidavit before the Tribunal stating that the third respondent's lorry had no insurance at the time of accident and the claimants have to strictly prove that the third respondent's lorry was insured at the time of accident. Further, it has been stated that the driver of the third respondent had no effective and valid driving licence on the date of accident and the claimants have to strictly prove that the third respondent's driver had effective and valid driving licence on the date of accident. Moreover, it has been stated that the claimants are entitled to claim compensation only against the second respondent whose vehicle was responsible for the accident and not against them.

5. During the trial, on the side of the appellants/claimants, the first appellant was examined herself as PW1, the second appellant was examined himself as PW2 and Exs.P1 to P6 were marked. On the side of the second respondent, one Thirumathi.Kemeela Manjula was examined as RW1, one Thiru.Govindaraj was examined as RW2 and Exs.R1 to R3 were marked. On the side of the fourth respondent, one Thiru.Saravanan was examined as RW1 and no document was marked.

6. The Motor Accident Claims Tribunal (Additional Sub Judge), Thiruvannamalai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded Rs.4,93,000/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income (3000x12x13)	4,68,000
2.	Loss of Consortium	10,000
3.	Loss of Love and Affection	10,000
4.	Funeral Expenses	5,000
	Total	4,93,000

7. Aggrieved by the award, the appellants/claimants have filed this appeal before this Court stating that the deceased had worked as Coolie under the third respondent and earned about Rs.6,000/- per month. But the Tribunal has fixed the income of the deceased as Rs.3,000/- per month and awarded meager amount under the head of loss of income, and also the sum awarded under the other heads is also very meager.

8. Heard the learned counsel for the appellants and the learned counsel for the respondents 2 & 4, and perused the materials available on record.

9. On perusal of the award dated 26.07.2010 passed by the Motor Accident Claims Tribunal (Additional Sub Judge), Thiruvannamalai, it is observed that the Tribunal after fixing the income at Rs.6,000/- per month has wrongly deducted 50% of the income for personal expenses of the deceased. As per the case reported in 2009 ACJ 1298 [Sarla Verma and others vs Delhi Transport Corporation and another], if the number of dependents in the family are 4 to 6, $1/4^{th}$ of the income should be deducted for personal expenses of the deceased. In this case, the number of dependents are 5. But the Tribunal has wrongly deducted 50% of the income for personal expenses of the deceased instead of deducting $1/4^{th}$ and this Court is inclined to modify the same. Accordingly, the monthly income of the deceased is fixed at

Rs.4,500/- and a sum of Rs.7,02,000/- (4,500 x 12 x 13) is awarded for Loss of Income. The sum of Rs.10,000/- awarded under the head of Loss of Consortium is found to be meager and the same is hereby enhanced at Rs.25,000/-. The sum awarded under the other heads i.e. Rs.10,000/- for Loss of Love and Affection and Rs.5,000/- for Funeral Expenses is reasonably awarded by the Tribunal and therefore this Court is not inclined to interfere with the same.

10. In view of the observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of Income	4,68,000	7,02,000	Enhanced
2.	Loss of Consortium	10,000	25,000	Enhanced
3.	Loss of Love and Affection	10,000	10,000	Confirmed
4.	Funeral Expenses	5,000	5,000	Confirmed
	Total	4,93,000	7,42,000	Enhanced by 2,49,000

11. Accordingly, the second respondent insurance company is directed to deposit the said amount of Rs.7,42,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

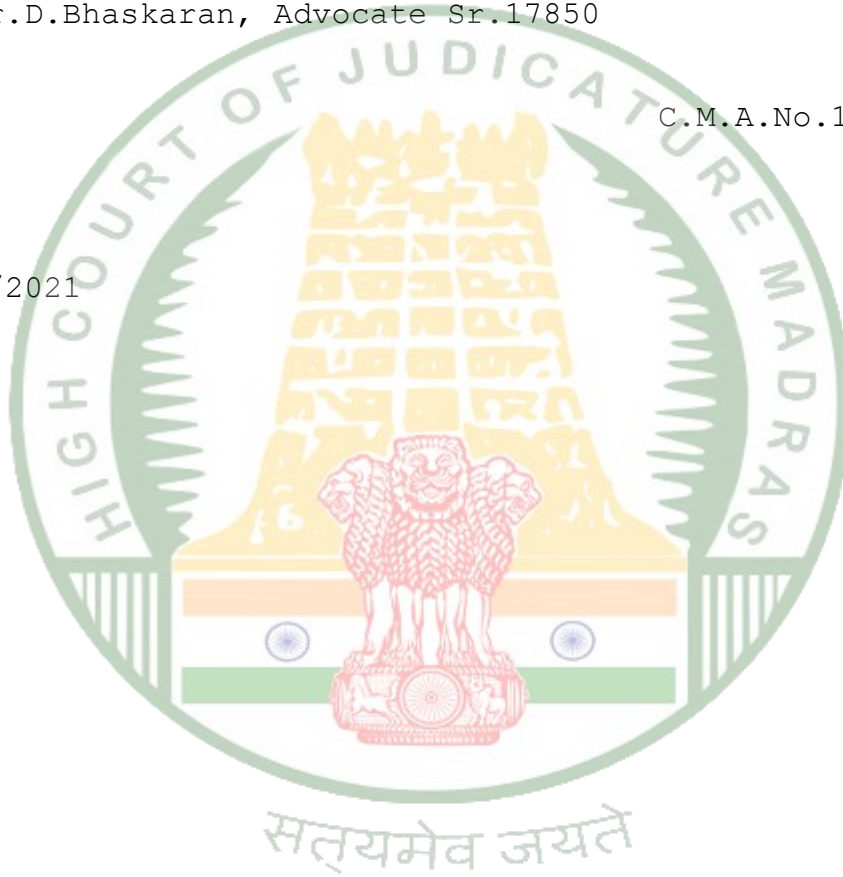
raja
To

1. The Motor Accident Claims Tribunal (Additional Sub Judge),
Thiruvannamalai.
2. The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.F.Terry Chellaraja, Advocate Sr.18104
+lcc to Mr.J.Michael Visuvasam, Advocate Sr.18352
+lcc to Mr.D.Bhaskaran, Advocate Sr.17850

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