

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3065 of 2013

(Through Video Conferencing)

1.Meenatchi

2.Periyammal

3.Ramayee

4.Mathiyalagi

5.Muthammal

6.Devaraj

7.Raja

.... Appellants/Petitioners

Vs.

1.Sabari Devi

2.Sri Ram General Insurance Co., Ltd.,
E-8, Riico Industrial Area,
Sitapura, Jaipur, Rajasthan 302 022.

.... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.02.2013 made in M.C.O.P.No.82/2012, on the file of the Motor Accident Claims Tribunal (Principal District Court) Ariyalur.

For appellants : Mr.Varun Karthick for
Mr.C.Jagadish

For R1 : No Appearance

For R2 : Mr.S.Dhakshnamoorthy

J U D G M E N T

The claimants are the appellants in this appeal. They are aggrieved by the impugned Judgment and Decree dated 22.02.2013 passed by the Motor Accidents Claims Tribunal, ((Principal District Court), Ariyalur in M.C.O.P.No.82/2012.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,65,000/- as compensation together with interest at 9% per annum from the date of numbering of the claim petition till the date of payment, to the appellants/claimants as against the total claim of Rs.8,00,000/- before the Tribunal. In this appeal, the appellant seeks for enhancement of compensation awarded by another sum of Rs.4,00,000/-.

3. The appellants are the wife, married son and daughters of the deceased Periyasamy who was aged about 60 years at the time of the death/accident.

4. The facts of the case are that on 28.09.2011 at about 12.15 p.m. when the 1st appellant (wife of the deceased) was walking along with her deceased husband Periyasamy, a lorry bearing registration No.TN-49 D 9666, belonging to the 1st respondent insured with the 2nd respondent-Insurance Company, driven by its driver in a rash and negligent manner and knocked down her husband Periyasamy, as a result of which, he sustained fatal injuries and died on the way to hospital.

5. In this Civil Miscellaneous Appeal, the appellants seeking for enhancement of the compensation on the ground that while awarding the aforesaid compensation of Rs.1,65,000/-, the Tribunal has considered the notional income of the deceased Periyasamy as Rs.2,500/- p.m after deduction 1/3rd amount towards personal expenses merely because the deceased was aged about 60 years at the time of death.

6. The learned counsel for the appellants -claimants submitted that the Tribunal ought to have considered the age of deceased as 60 years and not 65 years. He further submits that the Tribunal erred in fixing the multiplier of 5 instead of 9. The appellants submit that they are entitled to enhanced compensation towards loss of consortium, loss of love and affection. The Tribunal has not awarded any compensation towards future prospects and the appellants prayed for setting aside the award of the Tribunal.

7. Per contra, the learned counsel for the 2nd respondent-Insurance Company submits that the Tribunal erred in awarding the compensation by ignoring the fact that the 2nd to 6th

appellants/claimants were married son and daughters and they were not dependents of the deceased Periyasamy. He further submits that the impugned order is well reasoned and requires no interference.

8. I have considered the arguments advanced by the learned counsel for the appellants and the learned counsel for the 2nd respondent-Insurance Company and I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

9. There is a dispute regarding the quantum of compensation awarded by the Tribunal. In my view, the notional income of the deceased as Rs.2,500/- after deduction 1/3rd amount towards personal expenses appears to be very low merely because the deceased was working as agricultural coolie. Considering the fact that the accident is said to have been taken place in the year 2011, the notional income of the deceased can be enhanced to Rs.4,500/- p.m for the purpose of re-quantifying the compensation.

10. The age of the deceased cannot be taken as 60 years considering the fact that the first appellant-wife was aged about 58 years. The fact that the appellants are from rural area, it is unlikely that the age gap between the deceased and the first appellant would have been only two years. The Tribunal therefore ought to have applied the correct multiplier, i.e. 7, considering the age of the deceased as 65 years at the time of his death. As per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12, the correct multiplier to be applied is 7. Therefore, the amount awarded towards loss of income is to be re-quantified.

11. Similarly, the appellants are entitled for a further amount of compensation towards future prospects as per the decision of the Hon'ble supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, Therefore, 10% is to be added towards future prospects. Therefore, an amount of compensation to be awarded towards loss of dependency is re-quantified as follows:-

Monthly income of the deceased	- Rs.4,500
Less: Personal expenses at 1/3 rd	- Rs.1,500/-

	- Rs.3,000/-

Annual income of the deceased (3,000 x 12) - Rs.36,000/-

Add: Future Prospectus at 10% (36,000 x 10) - Rs. 3,600/-

- Rs. 39,600/-

Multiplier 7 (39,600 x 7) Rs.2,77,200/-

Thus, a amount of compensation under the head of loss of dependency is enhanced to Rs.2,77,200/- from Rs.1,50,000/- awarded by the Tribunal.

12. As per the decision of the Hon'ble Supreme Court reported in Magma General Insurance Company Ltd. vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 Online SC 1546, the parental consortium is to be added only in case of young children. The appellants 2 to 6 are the children of the deceased aged about 48 years, 40 years, 38 years, 30 years and 19 years respectively. Since the appellants 2 to 6 are grown up, I am not awarding any amount towards parental consortium.

13. The Tribunal has awarded an amount of Rs.10,000/- towards loss of consortium to the first appellant. It is enhanced to Rs.40,000/-. Since the 7th appellant is the grandson of the deceased Periyasamy through a pre-deceased son, an amount of Rs.40,000/- is awarded towards loss of love and affection.

14. Finally, the amount of compensation awarded by the Tribunal is therefore re-quantified as follows:-

S1 .N o	Heads	Award of the Tribunal	Re-quantified amount by this Court	Status (Enhanced or Reduced or Confirmed or granted)
1	Loss of dependency	*Rs.1,50,000 /-	Rs.2,77,200/ -	Enhanced
2	Funeral expenses	Rs. 5,000/-	Rs. 10,000/-	Enhanced
3	Loss of consortium to the 1 st appellant	Rs. 10,000/-	Rs. 40,000/-	Enhanced
4	Loss of Love and affection to the 7 th appellant	-	Rs. 40,000/-	Granted

Total	Rs.1,65,000/-	Rs.3,67,200/-	Enhanced by another sum of Rs.2,02,200/-
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* 2,500 x 12 x 5 = Rs.1,50,000/- by the Tribunal

15. The 2nd respondent-Insurance Company is therefore directed to deposit the re-quantified amount of compensation of Rs.3,67,200/- together with interest at 7.5% per annum from the date of the claim petition till the date of such deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. The appellants are directed to pay deficit court fee, if any, on the enhanced compensation.

16. The enhanced amount of compensation of Rs.3,67,200/- is proportioned to the appellants as follows:-

Appellants	Loss of dependency (Rs.2,77,200)	Consortium / Love and Affection	Funeral Expenses (Rs.10,000)	Total
1 st appellant	Rs.1,00,000/-	Rs.40,000/-	Rs.10,000/-	Rs.1,50,000/-
7 th appellant	Rs.29,535/-	Rs.40,000/-	-	Rs.69,535/-
2 nd to 6 th appellants	Rs.29,533/- each	-	-	Rs.29,533/- each

17. The appellants/claimants are permitted to withdraw their respective shares together with interest thereon at 7.5%, less any amount already withdrawn by them, by filing suitable applications.

18. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost.

Sd/-
Assistant Registrar (CS V)

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Sub Assistant Registrar

To:-

The Principal District Judge,
Motor Accidents Claims Tribunal,
Ariyalur.

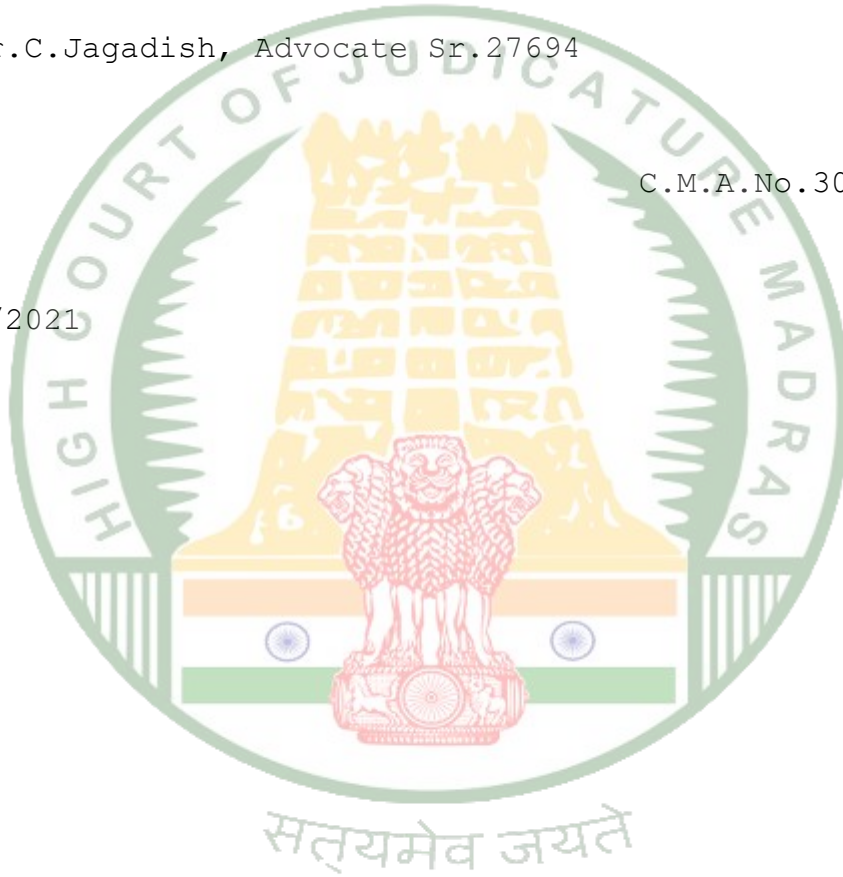
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The Section Officer,
VR Section, High Court,
Madras 600 104.

+1cc to Mr.C.Jagadish, Advocate Sr.27694

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