

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.08.2020

Pronounced on: 21.08.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.573 of 2016

1.G.Gunasekari
2.G.Nithiya
3.G.Ganesh
4.P.Kamalam

...Appellants /Petitioners

/versus/

1.C.S.Suresh

2.ICICI Lambord General Insurance Co.Ltd.,
Chotta bai Centre,
No.140, Nungambakkam High Road,
Chennai-600 034.

...Respondents/Respondents

**(1st Respondent exparte in Lower Court,
hence notice may be dispensed with)**

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 03.07.2014 made in M.C.O.P.No.2254 of 2009 on the file of Special Sub Judge-I, Motor Accidents Claims Tribunal, Chennai.

For Appellants : Mr.S.Sankaralingam

For R1 : Exparte

For R2 : M/s.R.Sree Vidhya

J U D G M E N T

(The case has been heard through video conference)

On 15/05/2009 at about 18.45 hrs Mr. Gajendran, a village Karnam aged about 55 years earning a monthly salary of Rs.11,322/- was killed in a road accident on the Sardar Patel Road, near Raj Bhavan Main Gate, Guindy while crossing the road pushing his bicycle. FIR was registered against the driver of the Mahendra Van bearing registration No.TN 20 B 7099 for causing death by his rash and negligent driving.

2. The widow, two children and mother filed claim petition against the owner and insurer of the Mahendra van Rs.16,05,000/- was sought as compensation.

3. Motor Accidents Claims Tribunal, Chennai awarded a sum of Rs.5,47,000/- compensation. The break up and reasoning is tabulated under:-

Pecuniary loss: Salary: Rs 6000 pm. Deduction $\frac{3}{4}$ for personal expenses. Multiplier 8	(Rs.6000 x 12 x $\frac{3}{4}$ x 8) = Rs.4,32,000/-
Loss of consortium	Rs.50,000/-
Loss of love and affection	Rs.50,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.5,47,000/-

The claimants being aggrieved by denial of compensation on certain heads and lesser compensation on other heads, had preferred this appeal.

4. The learned counsel for the appellant submitted that, the salary certificate issued by the Tashildar, Mylapore is Ex.P-4. The deceased was working as Karnam earning Rs.11,322/-. Hence the pecuniary loss ought to have been fixed as Rs.11,322/- instead of Rs.6000/-. Further he would contend that additional compensation under the head 'future prospect' has been denied to the claimants.

5. The Tribunal taking note of the pension of Rs.6,000/-pm paid to the wife of the deceased has fixed the loss of income as Rs.6000/- and not given any additional compensation for future prospect recording that the deceased already crossed 55 years and will be retiring within 3 years, so, no scope for any future prospect.

6. This court finds that the reasoning given by the Tribunal for fixing the loss of income at Rs.6000/- is acceptable and correct since, from the income point of view, after the death of Gajendran, his wife is getting the family pension of Rs.6000/- which off sets a part of the income loss. However, the reasoning given by the Tribunal for not considering the future prospect is incorrect. For a salaried government servant covered under the pension scheme, future prospect is not only in terms of promotion and increment, it also included periodical increase in DA and Pension Pay revision. In this connection, it shall be appropriate to take guidance from the Supreme court observation in Pranay Sethi case (2017 (16) SCC 680), wherein the Constitutional Bench has observed,

" When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of

50 to 60 years and there should be no addition thereafter. Similarly, in case of self- employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts."

7. Therefore, it becomes mandatory to add 15% more under the head loss of income and the multiplier 9 instead of 8 has to be applied following Sarala Verma's case as approved by Pranay Sethi case.

8. Like wise, the Hon'ble Supreme Court has also standardized the quantum of award under other non conventional head like loss of consortium, funeral expenses and loss of love and affection. Any amount awarded in excess is to be reduced as per the Supreme court guidelines.

9. On carrying out the necessary modification as per the Pranay Sethi case, the compensation for the claimants shall be as below:-

Pecuniary loss: (Rs 6000 + 900 FP= 6900)x12 x3/4 x 9	(6900 x 12 x $\frac{3}{4}$ x 9) Rs.5,58,900/-
Loss of consortium (wife - first claimant)	Rs. 40,000/-
Loss of love and affection (claimants 2 to 4)	Rs. 45,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 6,58,900/-

10. The award amount along with the proportionate interest of 7.5% shall be shared by the claimants as Below:-

I st claimant (wife) Rs 2,50,000/-; 2nd and 3rd claimants (daughter and son) Rs 1,75,000/- each; and 4th claimant: Rs 58,900/-.

11. The Insurance Company is directed to deposit the award amount Rs.6,58,900/- along with 7.5% interest within 8 weeks from today. On such deposit, the claimants are permitted to withdraw the amount on filing appropriate petition.

12. In the result, the Civil Miscellaneous Appeal is partly allowed with costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

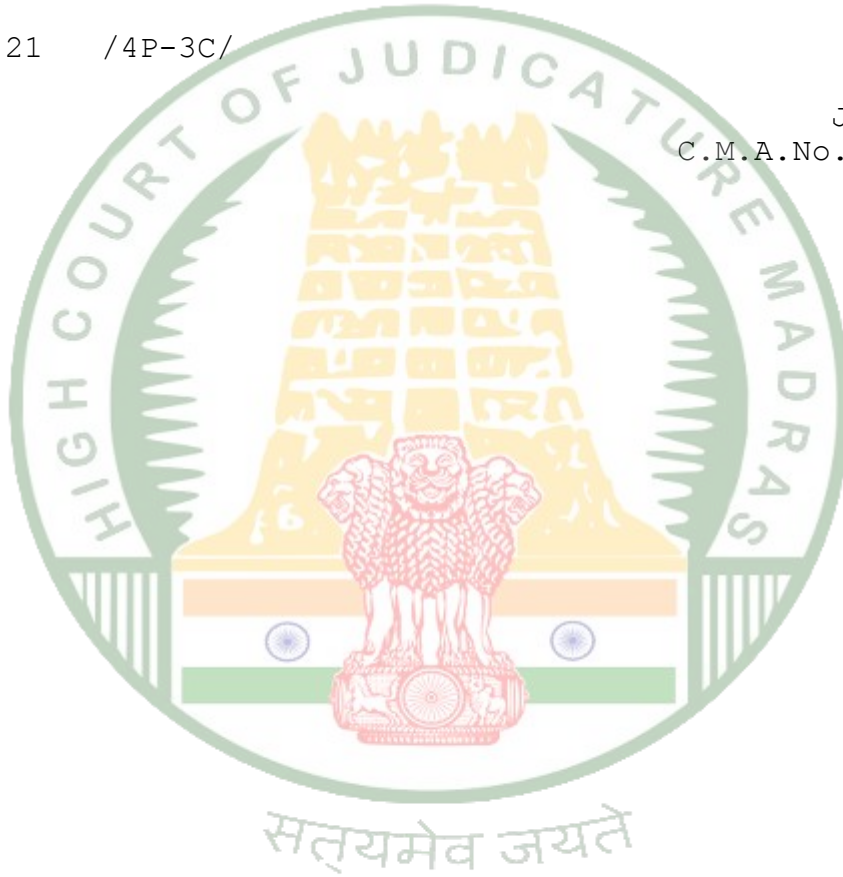
To

The Special Subordinate Judge-I,
Motor Accidents Claims Tribunal,
Chennai.

Copy to : The Section Officer,
VR Section, High Court, Madras.

AKM/03.03.21 /4P-3C/

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