

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.4375 of 2019
& C.M.P.No. 24906 of 2019

National Insurance Company Limited,
Regional Office at 2nd Floor,
CSX Towers, Stock Exchange Building,
684, Trichy Road, Coimbatore – 641 005. ... Appellant

Vs.

1.Nirmaladevi
2.V.Shanmathi Suha
3.Minor Sabarmathi Jeeva
4.Minor Sowjanyaamathi
5.Kamalaveni
6.R.Bommuraj
7.R.Harshavardhan ... Respondents

Prayer : Appeal filed under Section 173 of the Motor Vehicles Act, 1988
against the judgment and decree made in M.C.O.P.No.308 of 2015
dated 25.06.2019 on the file of the Motor Accidents Claims Tribunal,
Special Subordinate Court, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.N.Umapathi for R1 to R5

JUDGMENT
(Delivered by *M.M.SUNDRESH,J*)

This is an appeal filed by the appellant/insurer challenging the quantum awarded by the Tribunal pursuant to the death of the deceased, who died in the accident that occurred on 06.07.2012. The bus insured with the appellant/insurer dashed against the Maruti Omni Van driven by the deceased. Thus, we do not propose to go into the liability part.

2. Respondents 1 to 5 are the claimants. They are the wife, children and the mother of the deceased. Before the Tribunal, in the claim petition, it has been stated that the deceased was the Managing Partner of M/s.Shatex Lubrzole Activated Polymers, Coimbatore. He is a Post Graduate Engineer and was earning a sum of Rs.1,00,000/- per month.

3. Before the Tribunal, the claimants contended that the deceased was actually earning a sum of Rs.2,00,000/- per month. There are certain innovations by him, for which patents have been applied for. We may note that no Income Tax Returns of the deceased have been filed. The income-tax returns of the first claimant have been marked as Ex.X.1.

4. Accordingly, by adopting multiplier '14' and making one-fourth deduction towards the personal expenses, the Tribunal arrived loss of dependency at Rs.1,57,50,000/- by fixing the income of the deceased per month including the future income at Rs.1,56,250/-. Therefore, the income at the time of the death was fixed at Rs.1,25,000/- which is obviously Rs.25,000/- more than the one even mentioned in the claim petition.

5. Towards the conventional head – loss of love and affection, the Tribunal awarded a sum of Rs.35,00,000/- to the claimants 2 to 5, who are the minor children and the mother. However, the Tribunal has rightly awarded Rs.40,000/- towards the loss of consortium to the first claimant. Thus, in total, the Tribunal fixed Rs.1,93,20,000/- as compensation.

6. The learned counsel appearing for the appellant contends that the monthly income fixed by the Tribunal is totally wrong. There is no basis to claim that the deceased was earning Rs.1,25,000/-. No income tax assessment particulars *qua* the deceased have been filed. Even assuming he was working as the Managing Director of the Private Company, there would not be any loss of income as the first claimant substituted him thereafter. The Tribunal has granted an astronomical amount in this regard. It is further submitted that it is unknown to the parlance of compensation law that a sum of Rs.35,00,000/- can be given towards the loss of love and affection. Therefore, this Court may set aside the award by fixing a just compensation or remit it to the Tribunal for fresh consideration.

7. The learned counsel appearing for respondents 1 to 5/claimants submitted that though amount awarded towards the loss of love and affection cannot be sustained, there are sufficient materials to substantiate the loss of income of the deceased. Thus, instead of this Court doing such exercise, the matter may be remanded to the Tribunal, particularly in view of the available materials, though subsequent to the accident to show that the business indeed suffered.

8. In view of the submissions made, we deem it appropriate to remand the matter to the Tribunal for fresh consideration while setting aside the amount awarded towards the loss of love and affection. The Tribunal while passing the award must have kept in mind the law enunciated in the judgments of the Apex Court in *Sarla Verma v. Delhi Transport Corporation and another*, reported in (2009) 6 SCC 121 and *National Insurance Company Ltd. v. Pranay Sethi*, reported in (2017) 16 SCC 680. In fact, the Tribunal took into consideration *Pranay Sethi (supra)* while awarding towards the loss of consortium. However, an unbelievable amount of Rs.35,00,000/- has been awarded by the Tribunal towards the loss of love and affection without any basis or rationale. We do not wish to state much on the way in which the loss of income of the deceased is arrived at, only for this reason, we are remanding the issue for fresh consideration though the award cannot be obviously sustained. सत्यमेव जयते

9. This is not the first award of this Tribunal which we are adjudicating upon. After seeing series of such orders, we directed the Registry to place one of them in the Annual Confidential Report(ACR) of the officer concerned. Even thereafter, we are witnessing several

such orders. We are quite conscious about the law governing action to be taken against an individual officer. Penning down a wrong order *per se* would not be a factor to initiate departmental proceedings. We may note the recent pronouncement of the Apex Court in *Krishna Prasad Verma v. State of Bihar* reported in (2019) 10 SCC 640 on this aspect. However, if an award is passed against the fundamental principles of law and is even contrary to the earlier decision made by the very same Tribunal in similar matters, then it would certainly be a fit case for taking action by initiating departmental proceedings against the judicial officer. We do feel that it is not an innocent error and there is something more to it.

10. In such view of the matter, we direct the Registrar General of this Court to take appropriate steps to initiate departmental proceedings against the Presiding Officer in awarding a sum of Rs.35,00,000/- towards the loss of love and affection. Though in the typed copy of the judgment, the amount awarded for the loss of love and affection is mentioned as Rs.35,000/-, it is nothing but a typographical error as we compared the same with the original, which clearly indicates that claimants 2 to 4 are entitled for Rs.10,00,000/- each as against the fifth claimant being entitled for Rs.5,00,000/-

towards the loss of love and affection. However, the amount awarded under this head – loss of love and affection is quantified at Rs.35,00,000/-. We are quite convinced that awarding of the said amount can neither be termed as inadvertence nor oversight. It does shock our judicial conscience. Thus, while setting aside the amount awarded towards the loss of love and affection, we quantify it at Rs.1,60,000/- (Rs.40,000/- x 4) for claimants 2 to 5.

11. We direct the Registrar General to take appropriate action against the Presiding Officer as indicated above by initiating Departmental Proceedings. Obviously such an action has to be independent one without being influenced by this order.

12. Insofar as the amount awarded towards funeral expenses and loss of estate is concerned, we confirm the award passed by the Tribunal, making it clear, the order of remittal is only pertaining to the loss of income of the deceased payable to the claimants.

13. The Civil Miscellaneous Appeal stands allowed. However, both the parties are given liberty to let in fresh evidence in support of the respective claims. The Tribunal is directed to decide the matter

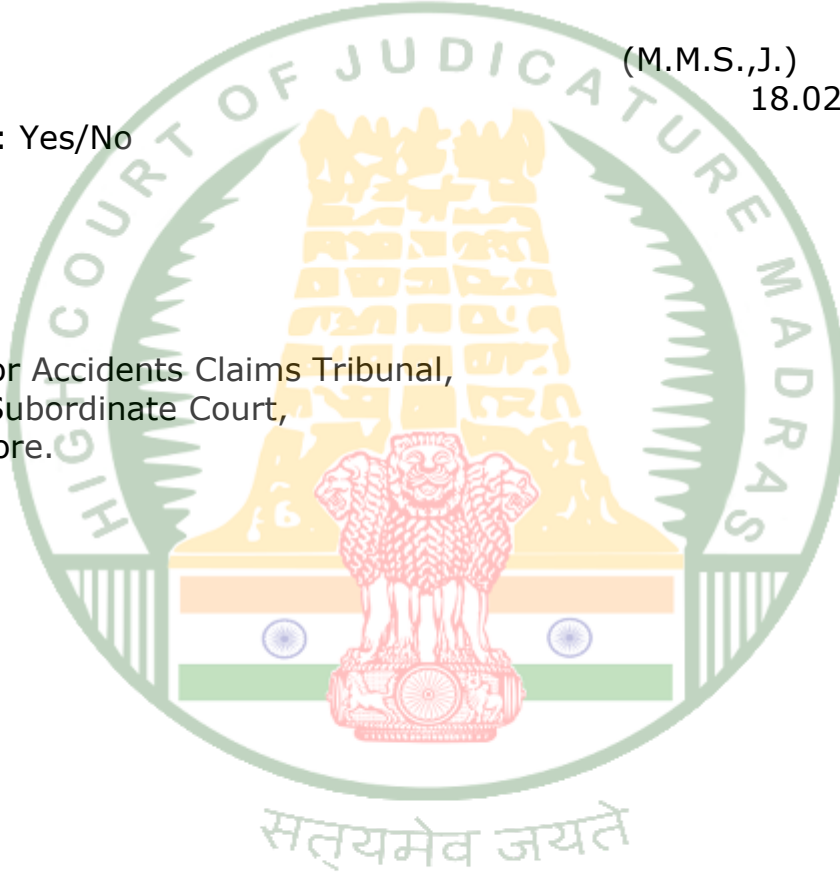
within a period of six months from the date of receipt of a copy of this judgment without being influenced by any of the observations made by this Court. No costs. Consequently, connected miscellaneous petition is closed.

(M.M.S.,J.) (K.R.,J.)
18.02.2020

Index : Yes/No
ssm

To

The Motor Accidents Claims Tribunal,
Special Subordinate Court,
Coimbatore.

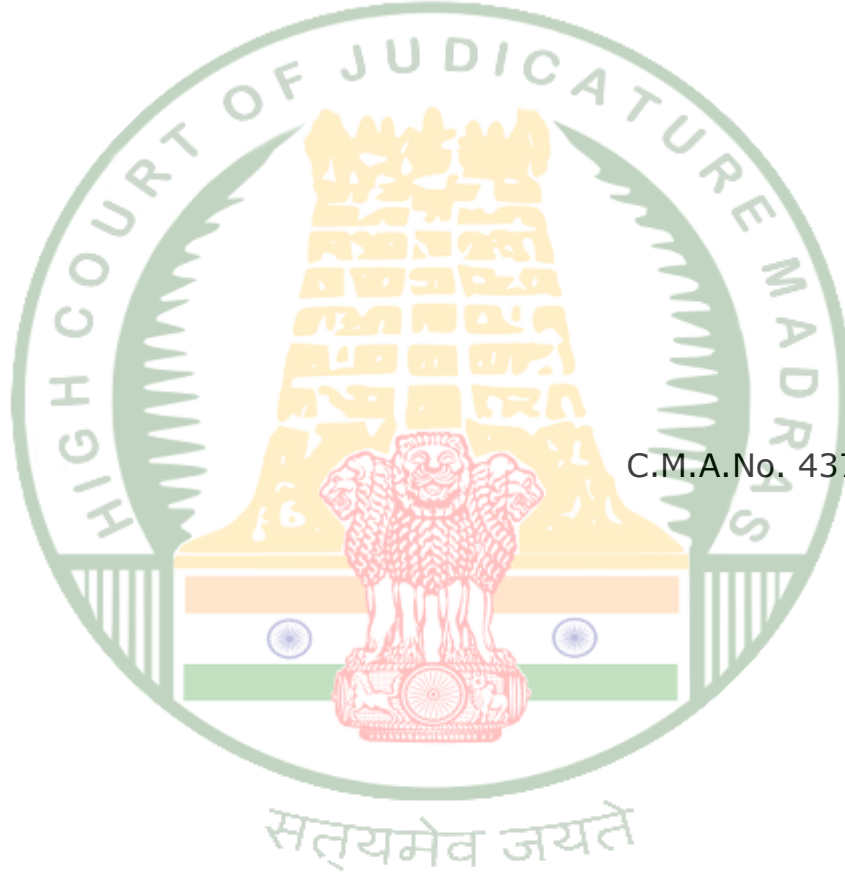


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