

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.2881 of 2011

The New India Assurance Co. Ltd.,
No.46, Moore Street, 5th Floor,
Chennai.

... Appellant/2nd respondent

Vs.

1.Prabhu
2.Sasikala

... 1&2 Respondents/Petitioners

3.N.R.Tamilselvi

...3rd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988 against the judgment and decree dated 07.04.2011 made in M.A.C.T.O.P.No.3497 of 2010 on the file of the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Ms.P.T.Salim Fathima for R1 & R2
R3-Exparte

JUDGMENT

The appeal has been preferred by the appellant-Assurance Company against the award of Rs.9,95,000/- for the death of one Sooriya Devaraj, aged about 25 years, working in a company as AC and Refrigerator Aechanic, in the accident which occurred on 12.10.2008, when he was riding his motorcycle, which was hit by a car belonging to the third respondent, insured with the appellant, rash and negligently. Therefore, claim petition was filed. On contest, the Tribunal found that a car was driven rash and negligently and fastened the liability on the appellant-Insurance company and directed them to pay a sum of Rs.9,95,000/-. The said award is being challenged on the ground of quantum.

2. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant would submit that Rs.8,000/- fixed by the Tribunal as monthly income is on the higher side. He further submitted that Exs.P.30 to P32, the academic testimonials and Ex.P.33, Salary Certificate of the deceased, which were not proved by examining the author of the document. Therefore, he would submit that in the

absence of examination of author of Ex.P.33 no credence can be given to the salary certificate. Hence, he seeks to reduce the monthly salary fixed by the Tribunal at Rs.8,000/-. He further pointed out that the deceased was a bachelor, aged about 25 years and therefore, 50% was required to be deducted, whereas the Tribunal deducted 1/3rd towards personal expenses. Hence, he seeks to deduct 50% towards personal expenses.

3. On the other hand, the learned counsel appearing for the respondent would support the award of the Tribunal.

4. Heard the parties and perused the records. It is evident that Ex.P.33 was not proved by examining the author of the document and therefore, as rightly pointed out by the learned counsel appearing for the appellant, no credence can be given to that. However, considering the fact that the accident occurred on 12.10.2008, it will be safe to follow the judgment of the Honourable Supreme Court in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459 wherein for a vegetable vendor, who got injury in the accident occurred on 14.02.2008, in the absence of any proof regarding income Rs.6,500/- was determined as monthly income. Accordingly, this Court determines the monthly income of the deceased at Rs.6,500/-.

5. The Honourable Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, for the persons below the age of 40 years, 50% of the income should be added as future prospects. If done so, the monthly income of the deceased would be Rs.6,500+50%=9,750/-.

6. As rightly pointed out by the learned counsel appearing for the appellant, the deceased was a bachelor and therefore, 50% seems to be deducted towards personal expenses. After deduction towards personal expenses, the contribution of the deceased to the family would be Rs.4875/-. (Rs.9750/2)

7. As the Tribunal following the age of the mother adopted the multiplier, whereas as per the judgment of the Honourable Supreme Court in Amrit Bhanu Shali & Others Vs. National Insurance Company limited and others reported in IV (2012) ACC 248 (SC) and M.Mansoor and another Vs. United India Insurance Company Limited reported in 2013 (2) TN MAC 481, multiplier 18 is adopted as the deceased was aged about 25 years. The loss of income is calculated as follows:

$$6,500+50\%-50\% \times 12 \times 18 = 10,53,000/-$$

8. Since the appellant lost their only son, who would look after the parents in the right age is lost. The Tribunal awarded a sum of Rs.25,000/- towards love and affection, which is too low and the same is hereby enhanced to Rs.50,000/-. The Tribunal awarded

Rs.10,000/- towards loss of estate, which is just and reasonable and hence, the same is confirmed. Rs.5,000/- awarded towards funeral expenses is enhanced to Rs.25,000/-. Since, no amount was awarded towards transportation, this Court awards a sum of Rs.10,000/-. Totally, this Court awards a sum of Rs.11,48,000/- as compensation and rounded off to Rs.11,50,000/-. The rate of interest at 7.5% p.a. awarded by the Tribunal remains unaltered.

9. Even though the Insurance Company filed the appeal aggrieved over the award of Rs.9,95,000/-, re-appreciating of evidence under Order 47 Rule 33 of the Code of Civil Procedure, this Court enhances the compensation to Rs.11,50,000/-, even in the absence of appeal/cross appeal by the claimants. In an endeavour to award adequate and just compensation, this Court enhances the amount for which, this Court has got power and jurisdiction. In view of the above, this Civil Miscellaneous Appeal is disposed of. No costs.

10. The appellant-Assurance Company already deposited a sum of Rs.6 Lakhs along with interest and costs and some portion of the amount has been withdrawn by the respondents/claimants. In view of that the appellant-Assurance Company is directed to deposit the balance amount along with interest and costs, as per the order passed by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 and 2/claimants are permitted to withdraw 50% of their respective shares. The balance 50% of the amount shall be deposited in Indian Bank, High Court Branch, in interest bearing Fixed Deposit for a period of three years and thereafter, they can withdraw the entire amount.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

1. The V Judge, Motor Accidents Claims Tribunal,
(Court of Small Causes), Chennai.

2. The Section Officer, Account Section, High Court, Madras.

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

+ 1 cc to Mr.M. Krishnamoorthy, Advocate Sr.1578

+ 1 cc to Mr.M. Swamikkannu, Advocate SR.1467

C.M.A.NO.2881 of 2011

KV(CO)

Eu 24.02.15