

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1076 of 2016

1.Murugan

2.Manikandan

(dismissed in Trial Court)

.. Appellants/Petitioner

Versus

1.P.Sivakumar

2.The Oriental Insurance Co. Ltd.,

2nd Floor, S.V.Complex,

No.179, Eswaran Kovil Street,

Pondicherry-1.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25.09.2014 made in M.C.O.P.No.7550/2013 on the file of the Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants : Mr.S.Selvakumar

For Respondents: Mr.J.Chandran for R2

J U D G M E N T

The Civil Miscellaneous Appeal has been filed, challenging the correctness of the impugned award dated 25.09.2014 made in M.C.O.P.No.7550/2013 on the file of the Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

2.It is the case of the claimants that on 02.10.2013 at about 07.30 hours, while the first claimant, being a husband of the deceased, was riding the two wheeler, bearing Registration No.PY-01-BR-7191 along with the deceased as a pillion rider from Panayapuram to Thirukanoor, a private bus bearing registration No.PY-01-AW-6399, driven by its driver in a rash and negligent manner, dashed against the deceased and thereby the deceased sustained grievous injuries and died on the same day. According to the claimants, the accident was happened due to the rash and negligent driving of the driver of the bus.

3.It is seen that the learned Tribunal, considering the evidence adduced by P.W.1/husband of the deceased, who deposed that his wife was aged about 30 years at the time of accident and she was a vegetable vendor and was earning a sum of Rs.700/- per day, has fixed Rs.4,500/- as notional monthly income of the deceased, in the absence of any proof for avocation and income. Learned Tribunal, while calculating the loss of pecuniary benefits, has deducted 50% of the income towards personal expenses of the deceased and arrived at a sum of Rs.4,32,000/- under the above head by adopting the multiplier '16', as per the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC.

4.It is further seen that a sum of Rs.25,000/- has been awarded towards loss of consortium, Rs.20,000/- has been awarded towards loss of love and affection and a sum of Rs.25,000/- and Rs.5,000/- towards funeral expenses and Transport expenses respectively have been awarded by the learned Tribunal. Considering Ex.P4/legal heir certificate, which showing the first claimant alone as legal heir of the deceased and also considering the evidence adduced by the first claimant that the second claimant is the son of his first wife, the learned Tribunal has held that the second claimant is not entitled to get compensation for the death of the deceased and the first claimant, being a husband of the deceased, alone is entitled to get the compensation.

5.Now though in view of the consent given by the first claimant and the second respondent/Insurance Company agreeing to fix Rs.50,000/- towards loss of consortium and Rs.30,000/- towards loss of love and affection, this Court is inclined to modify the said amount, as per the ratio laid down by the Hon'ble Apex Court in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC). Accordingly, this Court is inclined to fix a sum of Rs.1,00,000/- each towards loss of consortium and loss of love and affection and the same are fixed. The civil miscellaneous appeal is disposed of for an award of Rs.9,98,000/- payable with interest at the rate of 7.5% per annum, under the following heads, instead of Rs.5,07,000/- ordered by the Tribunal.

Loss of pecuniary benefits	Rs.7,68,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-
Funeral expenses	Rs. 25,000/-
Transport expenses	Rs. 5,000/-

Total	Rs.9,98,000/-

6. Therefore, the Insurance Company is directed to deposit the enhanced modified amount i.e. Rs.9,98,000/- with interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first claimant/husband is permitted to withdraw the said modified amount, by moving appropriate application before the learned Tribunal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S. Selvakumar, Advocate, S.R.No.58048

PPA(CO)
EU(09/11/2016)

C.M.A. No.1076 of 2016

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