

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.16 of 2016

and

C.M.P.No.65 of 2016

M/s.New India Assurance Co.Ltd.,
No.45, 2nd Line Beach
Moore Street,
Chennai-600 001

... Appellant/2nd Respondent

Vs.

1. Ilayavani ... 1st Respondent/1st Petitioner

2. Minor Aathithiya

3. Minor Dhakshani

(Minors 2 and 3 are represented by their
mother and next friend Ilayavani)

4. Jaya ... Respondents 2 to 4/Petitioners 2 to 4

5. Saravanan ... 5th Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, 1988 against the award and decree dated
07.02.2015 passed in M.C.O.P.No.2470 of 2010 on the file of the
Motor Accidents Claims Tribunal (Special Sub Judge No.II),
Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Ms.Ramya V.Rao for R1 to R4.

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The New India Assurance Company is on appeal challenging the
award dated 07.02.2015 passed in M.C.O.P.No.2470 of 2010 on
the file of the Motor Accidents Claims Tribunal (Special Sub
Judge No.I to deal with MCOP Cases), Chennai.

2. It is a case of fatal accident. On 05.04.2009, when the deceased-Thangaraj, aged 31 years was riding a Motor cycle bearing Registration No.TN-21-AH-1224 at E.C.R.Road, Vaayalur near Chelliamman Koil, Kanchi District, proceeding from Vaayalur towards Kunnathur, a Lorry bearing Reg.No.TN-31-AB-0421 proceeding from Chennai towards Pondicherry, driven in a rash and negligent manner, hit the deceased Motor Cycle. In the impact, the deceased-Thangaraj was thrown away and died at the spot. The claimants, who are wife, minor son, minor daughter and mother of the deceased have filed a claim for compensation for a sum of Rs.25,00,000/-. According to the claimants, the deceased was working as Mason cum Supervisor under Tech Sharp Engineers (P) Limited and was earning a sum of Rs.15,000/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1; one S.Saminathan was examined as P.W.2 and one Vaidyanathan, Project Engineer of Tech Sharp Engineers(P) Limited was examined as P.W.3 and Ex.P-1 to Ex.P-7 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Xerox copy of the FIR
P2	Carbon copy of the Post mortem Certificate
P3	Death Report
P4	Death Certificate
P5	Legal Heirship certificate
P6	Salary certificate
P7	Driving Licence of the deceased

On behalf of the Insurance Company, no witness was examined and no exhibit was marked before the Tribunal except for the Court Document viz., Ex.X.1-Xerox copy of the driving licence of P.W.3.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to conclusion that the accident occurred only due to the rash and negligent driving of the driver of the Lorry bearing Reg.No.TN-31-AB-0421 and consequently, liability was fixed on the appellant/Insurance Company and 5th respondent herein, to compensate the claimants jointly and severally. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal. However, the learned

counsel for the appellant submits that the owner of the vehicle even though served, remained exparte before the Tribunal and also before this Court, hence, he sought for pay and recovery direction.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of dependency to the family	Rs. 17,28,000/-
2	Loss of consortium to the 1 st petitioner	Rs. 1,00,000/-
3	Loss of love and affection to the petitioners 2 and 3 at Rs.1,00,000/-	Rs. 2,00,000/-
4	Loss of love and affection to the 4 th petitioner	Rs. 57,000/-
5	Funeral and Ritual expenses	Rs. 25,000/-
	Total	Rs. 21,10,000/-

6. The only plea raised by the learned counsel for the appellant is that the annual income of the deceased fixed by the Tribunal was on the higher side. It is seen that the monthly income of the deceased was fixed by the Tribunal at Rs.12,000/-; annual income was Rs.12,000 x 12 = Rs.1,44,000/-; thereafter 1/4th viz., Rs.36,000/- was deducted towards Personal and Living expenses. The Tribunal, based on the decision reported in Sarla Verma Vs. Delhi Transport Corporation [2009 (2) TNMAC 1 (SC) and by applying multiplier of 16, calculated the loss of dependency to the family of the deceased at Rs.1,08,000/- x 16=Rs.17,28,000/-. We find the plea raised by the learned counsel for the appellant for reduction of pecuniary loss to the dependents is not justified.

7. We find that there being no amount was granted towards future prospects, the quantum of compensation granted under other conventional heads are also just and proper.

8. Accordingly, the compensation awarded by the Tribunal viz., Rs.21,10,000/- stands confirmed. As far as the other plea taken by the learned counsel for the appellant that the owner of the offending vehicle remained exparte both before the Tribunal and this Court, we direct the appellant/Insurance Company to pay the compensation to the claimants and recover the same from the owner of the vehicle.

9. There is no serious objection in respect of the interest granted at 7.5% per annum.

10. Accordingly, the Civil Miscellaneous Appeal is disposed of on the following terms:-

- (i) The award of the Tribunal with compensation of Rs.21,10,000/- is confirmed.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) Appellant is directed to pay the compensation to the claimants and recover the same from the owner of the vehicle.
- (iv) The award amount is apportioned as per the order of the Tribunal.
- (v) This Court by order dated 11.01.2016 directed the appellant insurance company to deposit the entire award amount along with accrued interest and costs.
- (vi) The claimants 1 and 4 are permitted to withdraw the award amount along with accrued interest as apportioned by the Tribunal and as far as the minors' share are concerned, the direction of the Tribunal towards investment in a nationalized bank shall remain without any modification.
- (vii) There will be no order as to costs in this appeal.
- (viii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Motor Accident Claims Tribunal,
(Special Sub - Judge No.II),
Chennai.

Copy To : The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.17516

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.17843

C.M.A.No.16 of 2016

AK(CO)

CA(10/05/2016)