

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

CORAM

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

C.M.A.Nos.137 and 1060 of 2015

1. S.Lakshmi
2. S.Swathi (Minor)
3. S.Sneha (Minor)
4. A.B.Ammami
(Minors rep. by Appellant
mother(Lakshmi))

.... Appellants in C.M.A.No.137
of 2015 & Respondents 1 to 4
in C.M.A.No.1060 of 2015

Vs.

1. M.Sukumar
(R1 set exparte in
before the Tribunal)

..... First Respondent in
C.M.A.No.137 of 2015
Fifth Respondent
in C.M.A.No.1060/2015

2. M/s.New India Assurance Co. Ltd.,
Sundaram Finance Buildings,
2nd Floor, B.Block, Pattullos Road,
Chennai - 600 002.

Service ad:

The New Insurance Assurance Co.,Ltd.,
Motor Third Party Claims Cell No.45,
Moore Street,
Chennai 600 001.

... 2nd Respondent in
C.M.A.No.137 of 2015 and
Appellant in C.M.A.No.1060/2015

APPEAL filed under Section 173 of the Motor Vehicles Act,
1988 against the judgment and decree dated 28.08.2014 made in
M.C.O.P.No.5237 of 2011 on the file of the Chief Judge, Motor
Accident Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants in C.M.A.No.137/15
& Respondents 1 to 4 in C.M.A.No.1060/15 : Mr.K.Surya Narayanan
For 2nd Respondent in C.M.A.No.137/15
& Appellant in C.M.A.No.1060/15 /Insurance : Mr.J.Chandran

R1 & R5 - Exparte in CMA 137/15 & 1060/15 respectively

C O M M O N J U D G M E N T

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

C.M.A.No.137 of 2015 has been filed by the claimants before the Tribunal and C.M.A.No.1060 of 2015 has been filed by the Insurance Company challenging the award dated 28.08.2014 made in M.C.O.P.No.5237 of 2011 on the file of the Chief Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.

2. It is a case of fatal accident. On 23.10.2011, at about 20.30 hours, while the deceased Sridhar, aged 46 years was going on his motorcycle bearing Registration No.TN-20-BT-6642 at New Avadi Road, a lorry bearing Registration No.TAY 1089 proceeding in the same direction was driven by its driver in a rash and negligent manner and dashed against the motorcycle, as a result, the deceased Sridhar was thrown out and the wheel of the lorry ran over the head of the deceased Sridhar, who died on the spot. The claimants, who are wife, aged 39 years, minor daughters, aged 15 and 10 respectively, and mother, aged 74 years of the deceased have filed a claim for compensation for a sum of Rs.1,50,00,000/-. According to the claimants, the deceased was working as Additional Divisional Engineer at TANGEDCO, Chennai and was earning a sum of Rs.70,000/- per month.

3. In support of the claim, the wife of the deceased Sridhar was examined as P.W.1; one Thirumalmangai, Administrative Supervisor of TANGEDCO, was examined as P.W.2 and one Devaraj, who is stated to be the eye witness to the accident, was examined as P.W.3 and Ex.P-1 to Ex.P-11 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the First Information Report
P2	Copy of rough sketch
P3	Copy of Charge Sheet
P4	Copy of Postmortem certificate
P5	Death Certificate
P6	Legalheir Certificate
P7	Copy of driving licence of deceased
P8	Form 16 of the deceased

Ex.No.	Details
P9	Pay slip of the deceased for the month of September, 2011
P10	Authorisation letter of P.W.2
P11	Pay and employment particulars of the deceased

On behalf of the Insurance Company, One Premkumar was examined as R.W.1; One Moorthy was examined as R.W.2 and one Thangaraju was examined as R.W.3 and Ex.R-1 to Ex.R-7 were marked, the details of which are as follows:-

Ex.No.	Details
R1	Letter of Regional Transport Officer, Chennai
R2	Copy of driving licence of Anbalagan
R3	Authorisation letter of R.W.3
R4	Copy of insurance policy
P5	Death Certificate
P6	Legalheir Certificate
P7	Copy of driving licence of deceased
P8	Form 16 of the deceased
P9	Pay slip of the deceased for the month of September, 2011
P10	Authorisation letter of P.W.2
P11	Pay and employment particulars of the deceased

4. The Tribunal based on the oral evidence of the witnesses, and the F.I.R. and taking into consideration that the deceased Sridhar had a valid driving licence to drive the two wheeler came to conclusion that the driver of the lorry had driven the vehicle in a rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the vehicle was insured with the appellant, to compensate the claimants. Since the driver of the lorry did not possess valid driving licence to drive the type of vehicle involved in the accident, which is contrary to the terms of the policy, the Tribunal directed the insurance company to pay the compensation to the claimants and recover the same from the owner of the vehicle. 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.

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 income (516492 x 3/4 x 13)	Rs.50,35,797/-
2	Loss of Consortium	Rs. 25,000/-
3	Loss of love and affection (10,000x4)	Rs. 40,000/-
4	Loss of Estate	Rs. 10,000/-
5	Funeral Expenses	Rs. 25,000/-
6	Transport Expenses	Rs. 5,000/-
	Total	Rs.51,40,797/-

6. The objection raised by the learned counsel appearing for the appellant/Insurance company is that the Tribunal has not deducted any income tax deduction and the multiplier to be adopted is 12 only instead of 13.

7. The claimants have filed an appeal seeking enhancement of the award. Learned counsel appearing for the appellants/claimants submitted that even though the deceased Sridhar have 11 years of service at the time of accident and there is a scope for further promotion, the Tribunal had not awarded any future prospects. He further submitted that the amount awarded towards loss of consortium and loss of love and affection is very meagre.

8. Learned counsel appearing for the appellant/Insurance Company placing reliance letter of the Chief Engineer dated 18.4.2013 submitted that future promotion would not arise and hence, future prospects could not be granted.

9. Insofar as the quantum of compensation is concerned, the Tribunal considering the salary certificate of the deceased had fixed the income after deducting 20% towards personal expenses and the family pension. Considering the employment of the deceased Sridhar at TANGEDCO, he may be promoted to the next post. We are unable to accept the version of the Chief Engineer, i.e., the Assistant Executive Engineer will have no avenue of promotion. We fail to understand as to how the Chief Engineer would say that the Assistant Executive Engineer will have no promotion which is contrary to service Rules, in any event, if at all there is any avenue of promotion, he would not have become Chief Engineer. Therefore, the future prospects at 30% has to be considered.

10. It is seen that the Tribunal had adopted 13 multiplier. Since the deceased is aged 46 years at the time of accident, the proper multiplier adopted should be 12. After deducting TDS at 30%, the monthly income comes to Rs.62,609/- per month. After deducting 1/4 towards personal expenses, the loss of income comes to $46,957 \times 12 \times 13 = 73,25,292/-$. The Tribunal has granted a sum of Rs.25,000/- towards loss of consortium, which is very meagre. Hence, the same is enhanced to Rs.1,00,000/-. With regard to loss of love and affection, the Tribunal had awarded a sum of Rs.40,000/-, which we feel is very low. Hence, the two minor child are entitled to Rs.1,00,000/- each and the mother of the deceased is entitled to Rs.50,000/-. As far as Funeral and Transport expenses is concerned, the Tribunal has awarded a sum of Rs.30,000/-, which we reduce it to Rs.25,000/-.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs.50,35,797/- (516492x3/4x13)	Rs.73,25,292/- (46957x12x13)
2	Loss of Consortium	Rs. 25,000/-	Rs.1,00,000/-
3	Loss of love and affection (10,000x4)	Rs. 40,000/-	Rs.2,50,000/- (Rs.1.00 lakh each to minors & Rs.50,000/- to mother)
4	Loss of Estate	Rs. 10,000/-	---
5	Funeral Expenses	Rs. 25,000/-	Rs.25,000/- (Funeral and Transport expenses)
6	Transport Expenses	Rs. 5,000/-	--
	Total	Rs.51,40,797/-	Rs.77,00,292/-

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

13. Accordingly, both the Civil Miscellaneous Appeals are disposed of as follows:-

- (i) The award of the Tribunal is enhanced from Rs.51,40,797/-

to Rs.77,00,292/-.

- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) Learned counsel appearing for the appellant submits that as per the order passed by this Court dated 02.06.2015, directing the appellant to deposit 50% of the award amount, the appellant has deposited the same and as per the order of this Court dated 12.08.2015, the wife of the deceased has withdrawn 50% of the deposit amount and the share in respect of the minors have been deposited in the Nationalised Bank. He seeks further time to deposit the balance amount.
- (iv) The appellant is granted eight weeks time to deposit the balance amount ordered by this Court.
- (v) On such deposit being made, the wife of the deceased is entitled to withdraw 25% of the amount lying in deposit; mother of the deceased is entitled to withdraw 25% of the amount lying in deposit and the minors are entitled to the balance 50% of the amount in lying in deposit.
- c) the share of the minors amount shall be deposited in the name of the minor children in the same bank along with the deposit already made for a period of three years under reinvestment scheme, which shall be renewed periodically till the minors attain majority.
- d) the mother of the minor claimants is permitted to withdraw the interest accrued on the minors' deposit once in three months directly from the bank.
- (vi) Except the above modification, the award of the Tribunal in all other aspects stands confirmed.
- (vii) There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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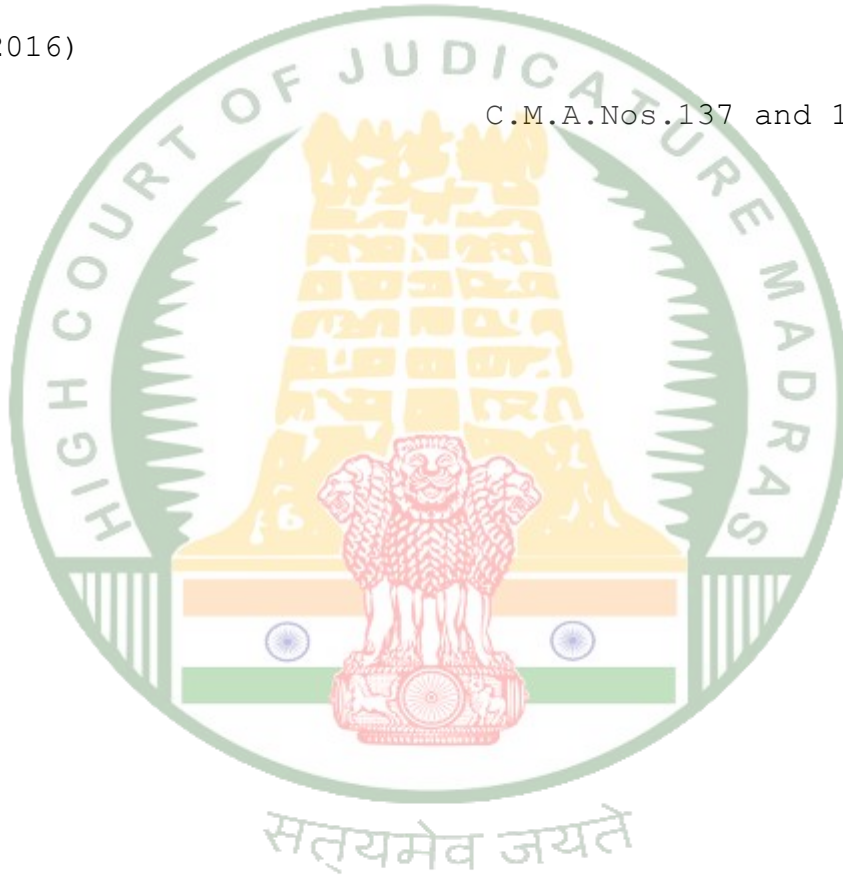
To

The Chief Judge,
Motor Accident Claims Tribunal,
(Court of Small Causes),
Chennai.

+2ccs to Mr.K. Suryanarayanan, Advocate, S.R.No.11550, 11551

JSV(CO)
EU(17/03/2016)

C.M.A.Nos.137 and 1060 of 2015



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