

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2016

CORAM:

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

CIVIL MISCELLANEOUS APPEAL No.1411 of 2014

The Branch Manager,
M/s.Oriental Insurance Co. Ltd.,
Branch Office,
No.22/C, Siva Plaza,
Saradha College Road,
Salem - 636 016. Appellant/2nd Respondent

Vs.

1.V.Shanthi 1st Respondent/Petitioner

2.The Manager,
M/s.Sivasakthi Explosives Company,
No.3/7, Ram Nagar,
Meyyanur, Salem - 636 004. 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.02.2013 passed by the Motor Accidents Claims Tribunal (Principal District Judge), Dharmapuri in M.C.O.P.No.454 of 2012.

For Appellant : Mr.J.Chandran

For 1st Respondent : Mr.M.Selvam

For Respondent 2 : Not Ready

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Challenging the quantum of compensation awarded by the Principal District Judge, Motor Accidents Claims Tribunal, Dharmapuri vide judgment dated 08.02.2013 in M.C.O.P.No.454 of 2012, the Insurance Company has come up with the present appeal.

2. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the 1st respondent/claimant.

3. The case on hand is fatal in nature. Facts leading to the filing of the Claim Petition before the Tribunal would run thus:

(i) On 19.07.2002, about 23.00 hours, the deceased, T.Venkatachalam, was proceeding in his Maruthi Omni Van bearing Registration No.TN 29/E 2743 along with three others from Dharmapuri to Krishnagiri. According to the claimant, the deceased drove the said vehicle slowly and cautiously, observing traffic rules. While so, on Dharmapuri to Krishnagiri NH road at Athorathan Kottai near Adhiyaman Spinning Mills, a Lorry bearing Registration No.TN 27/A-0405, driven by its driver in a rash and negligent manner without observing any road rules, came in the opposite direction and suddenly hit the Maruthi Van driven by the deceased. Due to the impact, the deceased sustained fatal injuries on his vital organs. The Kaveripattinam Police registered a case against the driver of the Lorry in Crime No.918/2002 under Sections 279,337, 338 I.P.C altered into 304(A) I.P.C.

(ii) Immediately after the accident, the deceased Venkatachalam was taken to Government Headquarters Hospital, Dharmapuri. Due to multiple fractures all over the body, he was taken to Sri Gokulam Hospital, Salem and admitted as an inpatient from 20.07.2002 to 22.07.2002 and then admitted in MIOT Hospital, Chennai in IC ward from 23.07.2002 to 04.09.2002 and had undergone seven surgeries for the fracture of dislocation of his right hip, shaft femur right, medial condyle right tibia and left side ribs. Thereafter, he was admitted in Om Sakthi Hospital, Dharmapuri as an inpatient from 05.09.2002 to 18.09.2002. Since the wounds sustained by him did not heal, the deceased was again admitted in MIOT Hospital, Chennai from 19.09.2002 to 31.10.2002. It is the case of the claimant that in spite of intensive treatment given to the deceased spending more than Rs.5,00,000/-, he died on 13.11.2002, around 7.40 a.m.

(iii) According to the claimant, during the course of treatment, she had spent more than Rs.30,000/- towards ambulance charges and about Rs.20,000/- towards attender charges. She averred that at the time of accident, the deceased was aged 44 years and was practising as an Advocate both in Krishnagiri

and Dharmapuri Courts, earning a sum of Rs.20,000/- per month. He was also owning 5 acres of agricultural lands and getting more than Rs.60,000/- per annum. It is further stated that the deceased was the only breadwinner of his family and that the claimant has got no issues. Pleading that she is unable to maintain herself after the death of her husband/deceased and contending that the alleged accident has occurred only due to the recklessness and negligence of the Lorry driver, the claimant filed a Claim Petition before the Tribunal seeking a sum of Rs.50,00,000/- as compensation.

4. The appellant/Insurance Company resisted the Claim Petition before the Tribunal that at the time of accident, (i) the driver of the Lorry had no valid Driving Licence to drive the same and (ii) the Lorry was not insured with their Company. Contending that the amount claimed by the claimant is too high, the Insurance Company sought dismissal of the Claim Petition.

5. Before the Tribunal, in support of the claim, the claimant, viz. Mrs.Shanthi was examined as P.W.1; one Mr.Rajkumar, an eye-witness to the accident was examined as P.W.2; Mr.Balu, Secretary of the Bar Association, Dharmapuri was examined as P.W.3; Mr.N.Rajan, Sheristadar of Sub-court, Dharmapuri was examined as P.W.4. and Exs.P1 to P25 were marked, the details of which are as follows:

Ex.P-1	Treatment Summary of the deceased issued by Sri.Gokulam Hospital, Salem, dated 23.07.2002
Ex.P-2	Medical Certificate of the deceased issued by MIOT Hospital, Chennai, dated 30.10.2002
Ex.P-3	Discharge Summary of the deceased issued by MIOT Hospital, Chennai, dated 31.10.2002
Ex.P-4	Bar Council Enrolment Certificate, dated 27.08.1986
Ex.P-5	B.L. Provisional Certificate of the deceased, dated 14.08.1986
Ex.P-6	Bar Council of Tamil Nadu Receipt, dated 28.08.1986
Ex.P7	B.L. Provisional Certificate of the deceased, dated 14.10.1981
Ex.P8	Driving Licence of the deceased
Ex.P9	Medical Bills issued by MIOT Hospital, dated 04.09.2002 for a sum of Rs.3,24,512.35 ps.
Ex.P10	Xerox copy of Patta dated 08.09.2012

Ex.P-11	Legal Heirship Certificate of the deceased, dated 20.12.2002
Ex.P-12	Original Transfer Certificate issued by Vice Principal, Law College, dated 20.06.1985
Ex.P-13	N.S.S. And Sports Certificate of the deceased
Ex.P-14	Death Certificate of the deceased, dated 03.12.2002
Ex.P-15	Conduct Certificate of the deceased, dated 18.11.1983
Ex.P-16	Bar experience Certificate issued by Bar Association, Dharmapuri, dated 17.09.2012
Ex.P17 Series	Final Settlement of Vehicle Damage Documents, dated 16.09.2002
Ex.P18	Histopathology Report of the deceased, dated 28.02.2003
Ex.P19	True copy of the post-mortem Certificate, dated 13.11.2002
Ex.P20	Carbon copy of F.I.R., dated 20.07.2002
Ex.P-21	Xerox copy of the Section Alteration Report, dated 13.11.2002
Ex.P-22	Xerox copy of the Insurance Policy of the Van, dated 20.04.2002
Ex.P-23	Xerox copy of the Registration Certificate of the Van, dated 02.05.2001
Ex.P-24	Xerox copy of the Insurance Policy of the Lorry, dated 16.11.2001
Ex.P-25	M.C.O.P. Cases filing list from 1992 to 2002 before Sub-Court, Dharmapuri, dated 11.01.2013

On the side of the appellant/Insurance Company, no evidence was examined and no document was marked.

6. The Tribunal, taking note of the oral evidence of P.W.1 and Ex.P20 - F.I.R. and also taking note of the corroborating evidence of P.W.2, an eye-witness to the occurrence, which has been adduced to prove that the Lorry was driven by its driver in a rash and negligent manner, held that the accident took place due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN 27 A 0405 and awarded a sum of Rs.19,83,000/- as compensation to the claimant with interest at 7.5% per annum, from the date of filing of the claim petition till the date of realization, under the following heads:

Loss of Income	Rs. 15,60,000.00
Medical Expenses	Rs. 3,25,000.00
Loss of Consortium	Rs. 10,000.00
Expenses for Relatives	Rs. 20,000.00
Funeral Expenses	Rs. 10,000.00
Pain and Suffering	Rs. 20,000.00
Extra Nutrition	Rs. 8,000.00
Transport expenses	Rs. 30,000.00
Total compensation	Rs. 19,83,000.00

Challenging the quantum of compensation, the Insurance Company has filed the present appeal.

7. Learned counsel for the appellant/Insurance Company mainly contended that the compensation of Rs.19,83,000/- awarded by the Tribunal towards the death of one T.Venkatachalam, in favour of his wife, is highly excessive, in view of the facts and circumstances of the case. Also, it is his contention that no interest should be awarded to the claimant, as they have delayed the proceedings before the Trial Court.

8. On the other hand, learned counsel appearing for the 1st respondent/claimant would contend that the quantum awarded by the Tribunal is on the lesser side, more particularly under the head 'Loss of Consortium'. Hence, he sought dismissal of this Appeal.

9. We have given careful consideration to the submissions made by the learned counsel on either side and gone through the materials available on record.

10. The only question that arises for consideration in this appeal is whether the quantum of compensation awarded by the Tribunal is reasonable or on the higher side. Admittedly, the deceased was a practising Advocate. Though it is claimed that the deceased was earning a sum of Rs.20,000/- per month, the Tribunal fixed his monthly income at Rs.15,000/-. Since the accident took place in the year 2002, we do not find any reason to interfere with the income fixed by the Tribunal. A contention was also raised by the Insurance Company that instead of deducting one-third towards his personal expenses, 50% deduction ought to have been made, as the claimant is the only dependent of the deceased. From the pleadings, it is seen that the wife of the deceased was aged 35 years at the time of accident. Deduction of 50% towards personal expenses is made

only when the deceased is a bachelor. In the case on hand, the deceased is married and certainly he would have got many financial commitments. Hence, considering such aspect, this Court is of the view that one-third deduction from the income of the deceased towards his personal expenses is correct and it need not be interfered. Also, the multiplier of '13' applied to the age of the deceased is correct, as the deceased had completed 45 years at the time of accident. Thus, the compensation of a sum of Rs.15,60,000/- arrived towards "loss of income" (Rs.15,000/- x $\frac{1}{3}$ x 12 x '13') is reasonable and the same is confirmed.

11. As far as compensation under the heads, "Attender charges", "Funeral expenses", "Pain and Suffering" and "Extra nourishment" are concerned, this Court is not inclined to interfere with the same, as they are just and reasonable. Also, we find that a sum of Rs.3,25,000/- awarded towards "Medical Expenses" is supported by required Bills. Hence, the same is confirmed.

12. As regards compensation of a sum of Rs.30,000/- awarded towards "Transportation charges", taking note of the fact that the deceased had undergone seven surgeries, this Court finds it reasonable, as the family members of the deceased would have spent more money in engaging private vehicles to take the deceased to various Hospitals for treatment. Though, a sum of Rs.10,000/- awarded towards "loss of consortium" is very low, since a substantial amount is awarded towards "loss of income", this Court confirms the same.

13. Coming to the interest awarded by the Tribunal at 7.5% per annum, though the appellant/Insurance Company has argued before this Court that the same should not be granted, this Court is of the view that in the absence of any specific plea in the grounds of Appeal and also, as there is no document supporting the said plea, the same cannot be accepted. Accordingly, the interest awarded by the Tribunal at 7.5% per annum is confirmed.

14. Thus, the award passed by the Tribunal in all respects, is confirmed. It is needless to state that if the appellant/Insurance Company has not deposited the entire award amount, it is directed to deposit the same along with accrued interest to the credit of M.C.O.P.No.454 of 2012 on the file of the Principal District Judge, Motor Accidents Claims Tribunal, Dharmapuri, within a period of eight (8) weeks from the date of receipt a copy of this judgment. On such deposit being made, the 1st respondent/claimant is permitted to withdraw the amount, as per the award. It is also made clear that the award amount

shall be paid to the claimant by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company.

15. While parting with, this Court observes that whenever a case pertaining to Motor Vehicles Act is numbered, it should be disposed of within a time frame, say, within a period of 12 months from the date of numbering the petition. Once the matter is taken up for hearing, it shall not be adjourned beyond three working days at any point of time. Pendency of Motor Accidents cases for years together will cause prejudice to the injured claimants/dependents of the deceased and it is certainly painful than the injuries sustained by the claimant or the death of the deceased. Equally, it is also to be noted that the Insurance Company shall not be asked to pay compensation to the claimants through their nose, as in many cases, interest alone runs to several lakhs on account of pendency of matters for years together before the Trial Court/High Court.

16. Registry is directed to send a Circular to all the Courts below dealing with M.C.O.P. cases, directing them to follow the condition stipulated in paragraph No.15, in letter and spirit.

The Civil Miscellaneous Appeal is dismissed with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

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

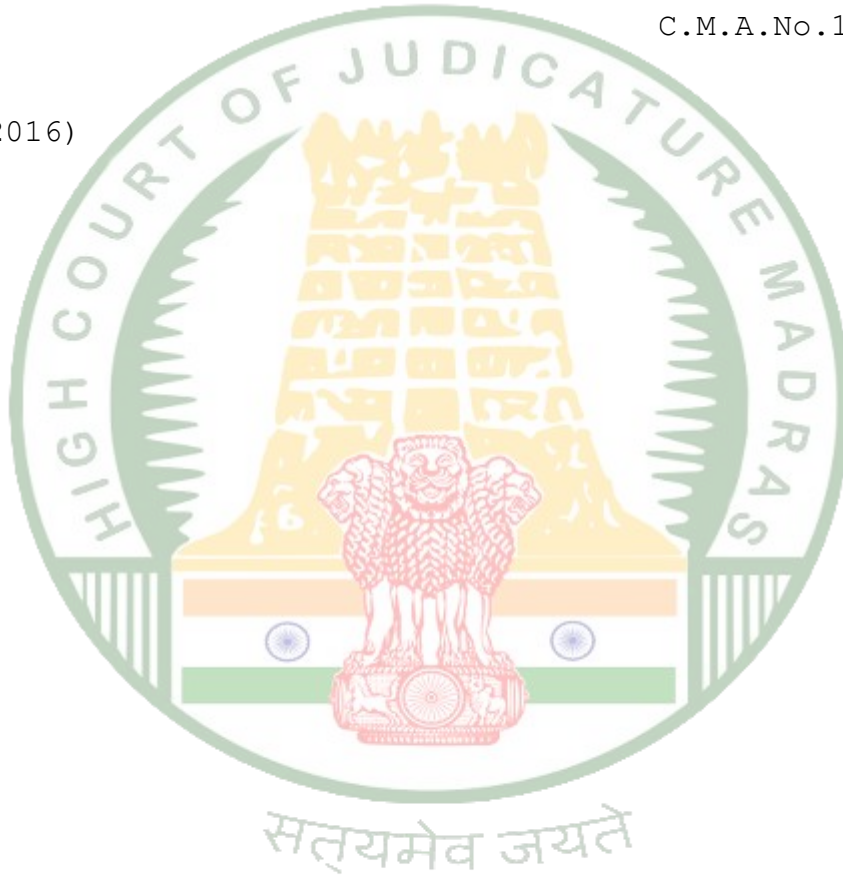
3.The Section Officer,
'F' Section,
High Court, Madras.

4.The Sub Assistant Registrar(AD)
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.15493
+1cc to Mr.M.Selvam, Advocate, S.R.No.15471

C.M.A.No.1411 of 2014

RSI (CO)
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