

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.204 of 2016
and
C.M.P. No. 1738 of 2016

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

Vs.

1. Tmt. Dhanalakshmi1st Respondent/1st Petitioner
2. Thiru. M.Vijayakumar @ Vijay2nd Respondent/2nd Petitioner
3. Thiru S.Sivasankara Moorthy3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decretal order dated 16.04.2014 made in M.C.O.P No.4739 of 2011 on the file of the Motor Accident Claims Tribunal, (Small Causes Court-II), Chennai.

For Appellant : Mr. J.Chandran

For Respondents : Mr. E.Gopi

J U D G M E N T

The Insurance Company has come up with this appeal challenging the quantum of compensation awarded by the Tribunal.

2. On 13.11.2010 at about 1.15 p.m., when the deceased Mohan and one M.Aruldoss were walking along GNT Road Chozhavaram Bye-pass Road, suddenly the third respondent's Mini Van bearing Reg.No.TN-20-AK-7645 came in a rash and neghlight manner and hit against the deceased. Due to the said accident, the said Mohan sustained grievous head injury and immediately, he was admitted in Government General Hospital, Chennai for treatment. On 15.11.2010, he died in the

hospital. The deceased was aged 44 years at the time of accident and was working as a Supervisor in M/s.Vinoth Brick Industries and earning a sum of Rs.12,300/- per month. The Claim Petition has been filed by his wife and son, before the Tribunal, seeking a sum of Rs. 15,00,000/- as compensation.

3. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the evidence of Exs.P6, P13 and P14, found that the deceased worked as an Accountant and fixed his monthly income at Rs.10,000/- and having fixed 30% towards 'loss of future prospects' and adopting the multiplier '14' and after deducting 1/3rd towards his personal expenses, arrived at a sum of Rs.14,56,056/- towards loss of income.

4. After analyzing the available oral and documentary evidences, the Tribunal awarded a sum of Rs.15,91,056/- as compensation, under the following heads:

Sl. No.	Heads	Amount
1	Loss of Income	Rs.14,56,050.00
2	Funeral Expenses	Rs. 25,000.00
3	Loss of Companionship	Rs. 50,000.00
4	Loss of Love and Affection	Rs. 50,000.00
5	Transport Expenses	Rs. 10,000.00
	Total	Rs.15,91,056.00

5. Learned counsel appearing for the appellant/Insurance Company, mainly contended that the Tribunal ought to have deducted 50% towards the personal expenses of the deceased. He further stated that in the absence of sufficient legally admissible evidence of income and age proof, the Tribunal has wrongly fixed the income of the deceased at Rs.10,000/-, which is on higher side. Hence, the Insurance Company has filed this appeal, questioning the quantum of compensation.

6. The learned counsel for the claimants, per contra, contended that the deceased was employed in Vinoth Brick Industries and was earning a sum of Rs.12,300/- per month, but the Tribunal has taken only Rs.10,000/- per month as income. Further, he has stated that the Tribunal has rightly considered the age of the deceased and adopted the multiplier of '14' and awarded a compensation of Rs.15,91,056/- under different heads and has apportioned the compensation to his dependents.

7. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

8. It is not in dispute that the accident occurred on 13.11.2010 and the said Mohan was seriously injured and subsequently, after two days i.e. On 15.11.2010, he died. In the absence of proof of legally admissible evidence of income, the Tribunal has fixed Rs.10,000/- (including batta Rs.100/- per day) which is on the higher side. In view of the said contention, this Court finds it just and proper to reduce the monthly income to Rs.9,000/- from Rs.10,000/- and adding 30% under the head Loss of Future Prospects and after deducting 1/3rd towards personal expenses, the compensation towards loss of income is arrived at Rs.13,10,400/- (Rs.9,000 + 30%=11,700 - 1/3-7,800x12x14). Further, this Court finds that the amount of Rs.25,000/- awarded under the head 'Funeral Expenses' is very high and the same has to be reduced to Rs.20,000/- which also includes transportation expenses and therefore, there is no need to award under a separate head 'Transport Expenses' and the same has to be deleted. The Tribunal has awarded a sum of Rs.50,000/- under the head 'Loss of Companionship' which is very meagre. Hence, this Court finds it just and reasonable to award a sum of Rs.1,00,000/- under the head 'Loss of companionship' instead of Rs.50,000/-. Hence, this Court is not inclined to grant the compensation arrived by the Tribunal and the same is modified as follows :

Sl No	Heads	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.14,56,050.00	Rs.13,10,400.00
2	Funeral Expenses	Rs. 25,000.00	Rs. 20,000.00
3	Loss of Companionship	Rs. 50,000.00	Rs. 1,00,000.00
4	Love and affection	Rs. 50,000.00	Rs. 50,000.00
	Total	Rs.15,91,050.00	Rs.14,80,400.00

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

9. Accordingly, the Civil Miscellaneous Appeal is disposed of as follows:-

(i) The award of the Tribunal is reduced to Rs.14,80,400/- from Rs.15,91,050/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant /Insurance Company is directed to deposit the entire award amount as ordered by this Court, with interest and costs, less the amount already deposited, to the credit of M.C.O.P.No. 4739

of 2011 on the file of the Motor Accidents Claims Tribunal, Small Causes Court-II, Chennai, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimants are permitted to withdraw their respective modified award amount [as apportioned by the Tribunal] on filing necessary application before the Tribunal.

(v) It is also made clear that the modified award amount shall be paid to the respondents/claimants by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To :
The II Judge, Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

1 CC to M/s.E.Gopi, Advocate, sr.25102
1 cc to M/s.J.Chandran, Advocate, sr.25626

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C.M.A.NO.204 of 2016
and

C.M.P. No. 1738 of 2016

rsk co
kra 26.07.2016

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