

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2135 of 2016

The Oriental Insurance Co.Ltd.,
C/o Motor Third Party Claims Hub
"Oriental House" II Floor
No.115, Prakasam Salai
Broadway, Chennai 600 001 .. Appellant/2nd Respondent

-vs-

1. Mrs.R.Kamsala
2. V.Radhakrishnan
3. Minor R.Priyanka
rep.by F & NF V.Radhakrishnan
4. N.Chandrasekaran
(4th Respondent was set ex parte in
the lower Court. Hence, notice is dispensed with)
.. Respondents 1 to 3/Petitioners 1 to 3

Memorandum of Grounds of Civil Miscellaneous Appeal under
Section 173 of the Motor Vehicles Act, 1988 against the award
and decree dated 04.04.2016 made in M.C.O.P.No.1627 of 2013 on
the file of the Motor Accident Claims Tribunal, II Judge, Court
of Small Causes, Chennai.

For Appellant :: Mr.R.Sivakumar

For Respondents :: Mr.T.G.Balachandran for
R1 to R3 / Caveators

JUDGMENT

Aggrieved by the impugned award passed by the Motor Accident
Claims Tribunal, II Judge, Court of Small Causes, Chennai in
M.C.O.P.No.1627 of 2013 dated 4.4.2016 awarding a sum of
Rs.13,28,000/-, as against the claim of Rs.15,00,000/-, for the
loss of life of the breadwinner of the claimants' family, the
present appeal has been filed by the Insurance Company
questioning the quantum of compensation.

2. Learned counsel for the appellant insurance company submitted that when the deceased, aged about 19 years, was projected as a self-employed doing centering work and earning a sum of Rs.500/- per day, the Tribunal has wrongly fixed Rs.6,500/- as his notional monthly income. Moreover, under the head of loss of love and affection, Rs.1,00,000/- each has been awarded to the parents of the deceased, as a result an unreasonable compensation has been fixed by the Tribunal. Therefore, he sought for modification in the quantum of compensation.

3. Although the learned counsel for the appellant heavily assailed the impugned award granting a sum of Rs.2,00,000/- under the head of loss of love and affection, the learned counsel for the respondents/caveators, placing on record the judgment of a Division Bench of this Court in the case of New India Assurance Co.Ltd., Chennai v. Govindammal and others, 2016 (1) TN MAC 145 (DB) granting a sum of Rs.2,00,000/- towards loss of love and affection, justified the impugned award on this aspect also.

4. Heard both sides.

5. The unfortunate case of the claimants would show that when the son of the first and second respondents was proceeding as a passenger in an auto-rickshaw bearing Registration No.TN 05 S 3708 on 16.2.2013 at about 4.30 hours, when the auto-rickshaw came nearer to Rajiv Gandhi Salai junction signal, a Tauvera van bearing Registration No.TN 18 F 8701, driven by its driver in a rash and negligent manner, hit the auto-rickshaw resulting in fatal injuries to the deceased. After registration of First Information Report on the file of J3 Guindy Police Station, South Chennai District against the driver of the offending vehicle, a claim petition was filed taking a ground that the deceased was doing centering work and earning a minimum of Rs.500/- per day. However, the Tribunal, as per the well settled legal position holding that in the absence of any documentary proof to show the occupation and the monthly income of the deceased, thought it fit to fix the notional monthly income at Rs.6,500/- considering the manner of accident, as it was established beyond doubt that the driver of the Tauvera van was wrongly proceeding from south to north and hit the auto-rickshaw resulting in the accident. The Tribunal also took into account the First Information Report registered in Crime No.141/S3/2013 on the file of K3 Guindy Police Station, South Chennai for the offence under Sections 279, 337(2), 338, 304(A) of IPC against the driver of the offending vehicle, which was corroborated by the evidence of P.W.2-Mr.Aswinth, an eye-witness and has rightly come to the conclusion that the accident occurred only due to the negligence on the part of the offending vehicle i.e.,

Tauvera van. Therefore, when a clear finding has been rendered as to who is responsible for the accident and who is liable for the payment of compensation, the only issue needs to be considered by this Court is whether the monthly income has been rightly fixed by the Tribunal.

6. As mentioned above, when this Court, following the judgment of the Apex Court, has clearly held that in the absence of any acceptable evidence, either oral or documentary, to prove the monthly income of the deceased, Rs.6,500/- can be taken as the notional monthly income, this Court is not able to find fault with the finding rendered by the Tribunal to arrive at the sum of Rs.6,500/- as the notional monthly income of the deceased. With regard to the addition of 50% towards future prospects, again the Tribunal, rightly following the ruling of the Apex Court in Sarala Verma's case, 2009 (2) TN MAC 1(SC), considering the fact that the deceased was a bachelor, aged about 19 years, 50% of his actual salary has to be added to the actual income, arrived at the sum of Rs.9,750/- as the income of the deceased to his family. After arriving at the said sum, again following the ratio in Sarala Verma's case, it has rightly deducted 50% thereof, as the deceased was a bachelor, towards his personal and living expenses and finally arrived at the sum of Rs.4,875/- for the purpose of arriving at the pecuniary loss. Again, since the deceased was aged about 19 years, the right multiplier '18' has been taken. Ultimately, the Tribunal has arrived at the sum of Rs.10,53,000/- towards pecuniary loss i.e., $\text{Rs.}4875 \times 12 \times 18 = \text{Rs.}10,53,000/-$. Therefore, this Court does not find any infirmity in the approach adopted by the Tribunal to arrive at the pecuniary loss.

7. With regard to the award of Rs.1,00,000/- each to the parents of the deceased under the head of loss of love and affection, as rightly contended by the learned counsel for the respondents/claimants, while testing the award of Rs.3,00,000/- given by the Tribunal for the loss of love and affection, the Hon'ble Division Bench of this Court in the case of New India Assurance Co.Ltd., Chennai v. Govindammal and others, 2016 (1) TN MAC 145 (DB), has restricted the sum to Rs.2,00,000/- considering the nature of award under the head of loss of love and affection and since the sisters and brothers of the deceased in that case lost the guidance and support of the deceased, the Division Bench adjusted the balance sum of Rs.1,00,000/- for loss of estate. In fact, the very same Division Bench, in a subsequent judgment in the case of Kulanthaiyammal and others v. S.Padmanaban and another, 2016 (1) TN MAC 173 (DB), has held that the award of Rs.2,00,000/- by the Tribunal under the head of loss of love and affection to the parents who have lost their son, aged about 24 years, cannot be said to be excessive. In the case on hand, the claimants have lost their son, aged about 19 years, in the unfortunate accident. Therefore, this Court,

respectfully bound by the aforesaid Division Bench judgments, is not inclined to interfere with the grant of Rs.1,00,000/- each by the Tribunal to the parents of the deceased towards loss of love and affection. Similarly, considering the fact that the claimants have lost their breadwinner, the Tribunal has awarded a sum of Rs.50,000/- towards loss of estate, which is very reasonable and justified. Again the award of Rs.25,000/- by the Tribunal towards funeral expenses cannot be said to be excessive in this case. Hence, this Court is not able to find any infirmity with the impugned award, as a just and reasonable compensation of Rs.13,28,000/- with interest at the rate of 7.5% per annum has been awarded to the claimants. Accordingly, rejecting the contentions of the learned counsel for the appellant, the civil miscellaneous appeal is dismissed. Consequently, C.M.P.No.15396 of 2016 is also dismissed. No costs.

8. It is stated by the learned counsel for the appellant that only the statutory amount of Rs.25,000/- has been deposited. Therefore, the appellant is directed to deposit the entire balance award amount along with interest thereon to the credit of the M.C.O.P.No.1627 of 2013 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order and on such deposit, it is for the claimants to withdraw the apportioned amount along with accrued interest by moving appropriate applications before the Tribunal.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The II Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai.

2.The Section Officer,
VR Section, High Court, Madras-104.

+1cc to M/S.R.Sivakumar, Advocate Sr.55021

+1cc to M/S.T.G.Balachandran, Advocate sr.55160

C.M.A.No.2135 of 2016

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srg 01/11/2016