

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2145 of 2016

United India Insurance Co.Ltd.,
No.70, NSC Bose Road
3rd Floor, Chennai 600 079
through Motor Third Party Claims Hub
No.134, Silingi Buildings
4th Floor, Greams Road
Chennai 600 006

.. Appellant

-vs-

1. Y.Yasmeen
2. S.Sheereen Farhana (Minor)
represented by mother and
next friend Y.Yasmeen
3. M.Gulnar Begam
4. A.Mohammed Ali
5. R.Loganathan

.. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 23.03.2016 made in M.A.C.T.O.P.No.1559 of 2010 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge No.I), Chennai.

For Appellant

:: Mr.P.Sankaranarayanan

JUDGMENT

M/s United India Insurance Company Limited, Chennai has brought this appeal questioning the quantum of compensation of Rs.15,32,500/- along with interest at the rate of 7.5% per annum fixed by the Motor Accident Claims Tribunal

(Special Subordinate Judge No.I), Chennai in M.C.O.P.No.1559 of 2010 dated 23.3.2016 for the death of Mr.Samsudeen, S/o A.Mohammed Ali, aged about 26 years, while serving as Sales Executive in M/s Manasarovar Automobiles, Dealers for Honda Motor Cycles, Chennai, who joined the company just ten days before the accident.

2. Heard the learned counsel for the appellant.

3. On 16.4.2010 at about 8.30 hours, when the husband of the first respondent was riding his Honda Activa motorcycle bearing Registration No.TN 07 BD 7447 from south to north direction opposite to Karapakkam Petrol bunk in Rajiv Gandhi Salai, a lorry bearing Registration No.TCO 8856, driven by its driver in a rash and negligent manner, dashed against the motorcycle, as a result the rider of the motorcycle sustained fatal injuries. Since he died within ten days from the date of joining the company, a First Information Report was registered against the driver of the offending lorry for the offence under Sections 279 and 304(A) of IPC and the said report was marked as Ex.P1. To prove their case, the claimants have also filed a copy of the rough sketch and a copy of the charge sheet laid against the driver of the lorry under Exs.P2 and P10 respectively. Considering the testimony of Mr.P.Mahendran, an eye-witness examined as P.W.2, who has supported the case of P.W.1-Mrs.S.Yasmeen, taking note of the fact that the criminal case records have disclosed that the accident occurred purely due to the

negligence on the part of the driver of the lorry and also finding that the owner of the lorry and the insurance company have not chosen to give any evidence to disprove the same, taking further support from the evidence of the police officer and the officer of Regional Transport Office, who were examined as R.Ws.1 & 2, supporting the case of the claimants, the Tribunal held that the driver of the lorry was negligent and responsible for causing the accident. While considering the liability aspect and the fixation of compensation, since the offending lorry bearing Registration No.TCO 8856 has got an insurance coverage from the appellant insurance company, the Tribunal has rightly saddled the liability on the appellant. In regard to the quantum of compensation which has been assailed before this Court by the insurance company, it has to be seen whether the Tribunal has committed any mistake.

4. Mr.P.Sankaranarayanan, learned counsel for the appellant contended that when Mr.Samsudeen, aged about 26 years, is said to have joined M/s Manasarovar Automobiles, Dealers for Honda Motor Cycles as Sales Executive for a monthly salary of Rs.10,250/-, no evidence whatsoever has been produced, however, the Tribunal has fixed a notional sum of Rs.5,000/- per month. The said approach is totally unfair, he pleaded.

5. This Court is unable to find any justification in his contention. The reason is that the Tribunal, while discussing the salary part of the deceased under the

head 'Income of the deceased', has considered the evidence adduced by Mr.Ramesh, Accountant of M/s Manasarovar Automobiles, who was examined as P.W.3, deposing that the deceased joined their company as Sales Executive on a monthly salary of Rs.12,500/- and without even completing one month, unfortunately, he died within ten days from the date of his joining the company and in support of his evidence, he also produced the salary certificate, Ex.P6, wherein it has been stated that the deceased was paid a sum of Rs.500/- per day during his employment. But ironically, it is not known why the Tribunal has failed to accept Rs.500/- per day towards his salary, ignoring the evidence adduced by P.W.3, the Accountant of M/s Manasarovar Automobiles, Chennai, overlooking both the oral and documentary evidence, while fixing Rs.5,000/- as the notional monthly income of the deceased. Thereupon, considering the age of the deceased, the Tribunal has added 50% of the notional monthly income towards future prospects, which comes to Rs.7,500/-. Since there are four members in the family of the deceased, namely, wife, daughter and his father and mother, it has rightly deducted one-fourth of the notional income towards personal and living expenses, as per the ratio laid down by the Apex Court in **Smt.Sarala Verma and others v. Delhi Transport Corporation and others, (2009) 6 SCC 121**. With regard to the selection of multiplier, it has rightly adopted the multiplier of '17', as the deceased was aged 26 years and arrived at the sum of Rs.11,47,500/- ($\text{Rs.}5625 \times 12 \times 17$) towards the loss of income. Therefore, with regard to the addition of 50% towards future prospects, deduction of one-fourth towards

personal and living expenses and the adoption of multiplier '17', this Court is not able to find any infirmity. With regard to the loss of consortium and loss of love and affection, the Tribunal, taking support from the judgment of the Apex Court in **Rajesh and others v. Rajbir Singh and others, (2013) 9 SCC 54**, has fixed Rs.1,00,000/- each towards loss of consortium and loss of love and affection to the wife and minor daughter of the deceased. However, with regard to the loss of love and affection to the parents of the deceased, a sum of Rs.75,000/- each has been awarded. In addition thereto, a sum of Rs.25,000/- has been given towards funeral and ritual expenses and for loss of estate, a meagre amount of Rs.10,000/- has been fixed. Therefore, this Court is not able to find any merit in the appeal. Accordingly, the civil miscellaneous appeal is dismissed. Consequently, C.M.P.No.15416 of 2016 is also dismissed.

6. The learned counsel for the appellant fairly submitted that the entire award amount along with interest has been deposited to the credit of the M.A.C.T.O.P.No.1559 of 2010 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge No.I), Chennai. Hence the claimants are entitled to withdraw the apportioned amount along with accrued interest by moving appropriate applications before the Tribunal.

Index : yes/no

04.10.2016

ss

To

1. The Special Subordinate Judge No.I
Motor Accident Claims Tribunal
Chennai

T.RAJA, J.

SS

C.M.A.No.2145 of 2016

04.10.2016