

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM

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

C.M.A.No.2550 of 2015
and M.P.No.1 of 2015

The Oriental Insurance Co. Ltd.,
No.216 & 114, Prakasam Salai,
Mannady, Chennai - 600 108. Appellant/2nd Respondent

vs.

1. K.Kannanbabu
2. N.R.Charulatha Respondents/Petitioners
3. B.R.Hariraju Respondents/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 05.02.2015 passed in M.C.O.P.No.4486 of 2013 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.P.Selvaraj - R1 and R2
R3 - No appearance.

JUDGMENT

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

The Oriental Insurance Company is on appeal challenging the award dated 05.02.2015 passed in M.C.O.P.No.4486 of 2013 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

2. It is a case of fatal accident. On 05.06.2013, when the deceased, aged 22 years was riding a Motor cycle bearing Registration No.TN-18-V-4245 from Ambattur to Vanagaram from South to North direction, the first respondent drove his car bearing Registration No.TN-20-BL-5077 in a rash and negligent manner and hit against the deceased, as a result, the deceased sustained fatal injuries and died on the same day. The claimants, who are father, aged 49 years and mother aged 42 years of the deceased have filed a claim for compensation for a

sum of Rs.60,00,000/-. According to the claimants, the deceased was working as Associate Software Engineer in Accenture, Chennai and was earning a sum of Rs.25,000/- per month.

3. In support of the claim, the father of the deceased was examined as P.W.1; one Vivek, said to have witnessed the accident was examined as P.W.2 and one Sivajothi, HR Manager, Accenture Manager was examined as P.W.3 and Ex.P-1 to Ex.P-14 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of FIR in Cr.No.833/PH1/2013 registered at Poonamallee Traffic Invedstigation
P2	Death Report
P3	Death Certificate
P4	Postmortem Certificate
P5	Medical bills
P6	Copy of B.Tech Degree Course Certificate
P7	Appointment Order
P8	Bank Statement
P9	Copy of driving licence of the deceased
P10	Copy of the driving licence of the first respondent
P11	Copy of Insurance Policy
P12	Legal Heir Certificate
P13	Authorisation letter issued to P.W.3
P14	Pay slips of the deceased

On behalf of the Insurance Company, no witnessess were examined and no exihibits were marked before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to conclusion that the third respondent herein was rash and negligence and was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the vehicle belonging to the third respondent herein was insured with the appellant, to compensate the claimants. 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 pecuniary benefits to the dependents of the deceased by adopting multiplier 18	Rs.32,24,448/-
2	Loss of love and affection	Rs. 2,00,000/-
3	Transport expenses	Rs. 10,000/-
4	Funeral expenses	Rs. 25,000/-
5	Loss of Estate	Rs. 2,00,000/-
6	Medical Expenses	Rs. 50,000/-
	Total	Rs.37,09,448/-

6. The only serious objection raised is with regard to the grant of compensation towards Loss of Estate, since the Tribunal fixed the pecuniary loss by adding future prospects.

7. Insofar as the compensation is concerned, based on the evidence of P.W.3 and Ex.P.14, Pay slips, the Tribunal fixed the income of the deceased at Rs.2,38,848/- per annum. The Tribunal following the decision in the case of Rajesh and others V.Rajbir Singh and other reported in 2013 (2) TNMAC page 55 (SC), added 50% of the monthly salary towards loss of future prospects.

8. As the Tribunal has granted loss of future prospects, we feel that the Tribunal has erred in granting compensation towards loss of estate also. Since compensation towards both for loss of estate and loss of future prospects could not be granted, the amount of Rs.2,00,000/- granted towards loss of estate stands deleted.

9. The Tribunal deducted 1/2 towards personal expenses of the deceased. This appears to be justified.

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

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 18	Rs.32,24,448/-	Rs.32,24,448/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
2	Loss of love and affection	Rs. 2,00,000/-	Rs. 2,00,000/-
3	Transport expenses	Rs. 10,000/-	Rs. 10,000/-
4	Funeral expenses	Rs. 25,000/-	Rs. 25,000/-
5	Medical Expenses	Rs. 50,000/-	Rs. 50,000/-
6	Loss of Estate	Rs. 2,00,000/-	-----
	Total	Rs.37,09,448/-	Rs.35,09,448/-

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

12. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is reduced to Rs.35,09,448/- from Rs.37,09,448/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The award amount is apportioned equally between the claimants.
- (iv) This Court by order dated 18.11.2015 directed the appellant insurance company to deposit the entire award amount along with accrued interest and costs. Learned counsel appearing for the appellant submits that entire award amount has been deposited before the Tribunal.
- (v) The claimants are permitted to withdraw the award amount as ordered and apportioned by this Court as above.
- (vi) The appellant insurance company is at liberty to withdraw the excess amount deposited before the Tribunal.
- (vii) There will be no order as to costs in this appeal.

(viii) Consequently, connected miscellaneous petition is closed.
sl

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

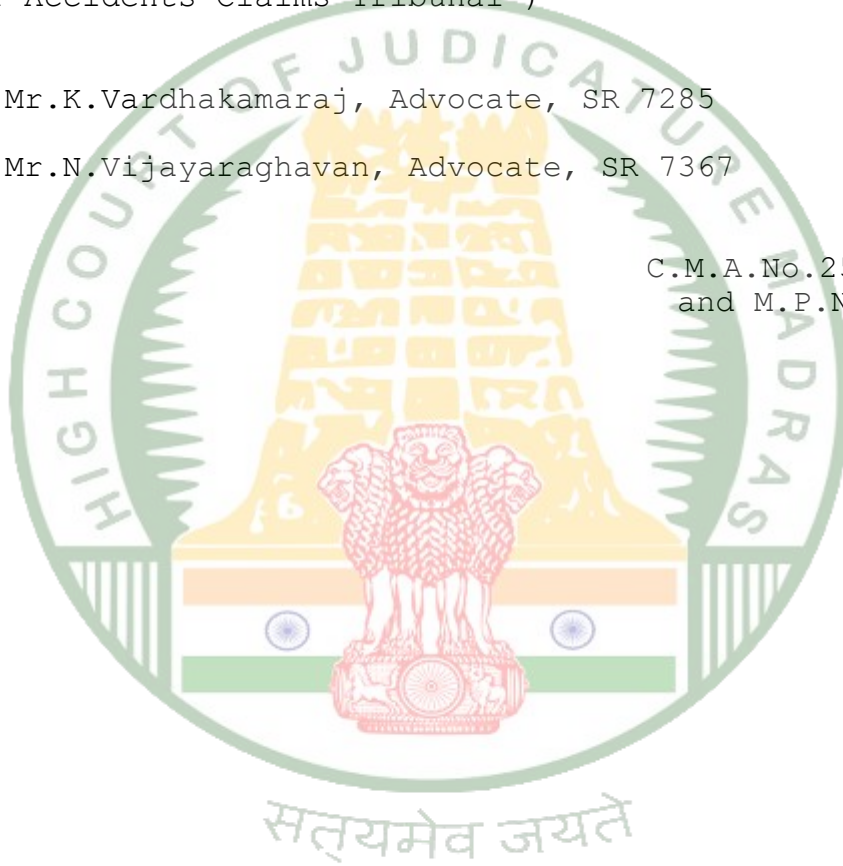
The Registrar,
II Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

+ 1 cc to Mr.K.Vardhakamaraj, Advocate, SR 7285

+ 1 cc to Mr.N.Vijayaraghavan, Advocate, SR 7367

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