

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.04.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

C.M.A. NO. 305 OF 2015

AND

M.P. NO. 1 OF 2015

United India Insurance Co. Ltd.
No.70, N.S.C. Bose Road
Sowcarpet, Chennai - 79. ... Appellant

- Vs -

1. K.Ganagavalli
2. Minor K.Muralidharan
3. Minor K.Gowthamani
4. T.V.Sugan
5. Thiyagarajan ... Respondents
(RR-2 & 3 rep. by mother
and natural guardian R-1)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2014, passed by the Motor Accident Claims Tribunal, (II Court of Small Causes), Chennai, made in MCOP No.5409 of 2012.

For Appellant : Mr. S.Arun Kumar

For Respondents: Mr. K.Malaikannu for RR-1 to 3
Not ready in Notice for R4 & R5

JUDGMENT

(DELIVERED BY HULUVADI G.RAMESH, J.)

The appellant/insurer of the vehicle has filed the appeal challenging the award dated 27.06.2014, passed by the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai, made in MCOP No.5409 of 2012.

2. It is a case of fatal accident. On 12.05.2012, at about 6.35 p.m., when the deceased Kumar, aged about 42 years, was riding his Motorcycle bearing Regn. No.TN-10-X-1495 on the T.H. Road from Tiruvotriyur, the lorry, bearing Regn. No.TDX-3015 belonging to the fifth respondent herein, driven by its driver in a rash and negligent manner, hit the motorcycle from behind due to which the deceased suffered grievous injuries and died on the spot. A case was registered against the driver of the lorry.

3. The deceased, on the date of accident, was self-employed working an electrical contractor for various leading construction companies and it is stated that he was earning more than Rs.35,000/= per month. The respondents, viz., the wife, minor children and father of the deceased have filed the claim petition claiming a sum of Rs.50,00,000/= as compensation.

4. In support of the claim, the first claimant, viz., the wife of the deceased was examined as P.W.1 and one Karthik, eye witness to the occurrence was examined as P.W.2 and Exs.P-1 to P-19 were marked. On the side of the appellant/insurer, neither any oral evidence was adduced nor any documentary evidence was marked.

5. The Tribunal based on the oral evidence of the P.W.1 and also taking note of the corroborating evidence in the form of the evidence of P.W.2, eye witnesses to the occurrence, which has been adduced to prove that the lorry was driven in a rash and negligent manner, coupled with the other documentary evidence and further there being no evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the lorry, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the lorry, therefore, the liability was fixed on the 5th respondent, the owner of the vehicle and the appellant herein, and consequently, the appellant/insurer was directed to compensate the claimants. In all the Tribunal awarded a compensation of Rs.42,60,500/= with interest at the rate of 7.5% p.a. from the date of claim petition till date of payment/deposit with appropriate apportionment of the same between the claimants. Aggrieved by the said award, the appellant/insurer of the vehicle is before this Court by filing this appeal.

6. Learned counsel appearing for the appellant/insurance company submitted that the Tribunal had taken into account the

income of the deceased at Rs.25,000/= per month and had awarded the above amount, whereas there is no satisfactory proof adduced by the claimants to prove the monthly income of the deceased. The bank balance, on which reliance has been placed upon by the Tribunal to arrive at the monthly income of the deceased cannot be sustained as the same cannot be substantive proof of monthly income earned by the deceased.

7. Per contra, learned counsel appearing for the claimants submit that the deposit in the bank account, which is substantial in nature, was towards the electrical contract works undertaken by the deceased, which the Tribunal has appreciated in proper perspective to fix the monthly income of the deceased and award the compensation as above and, therefore, no interference is warranted with the well considered findings of the Tribunal.

8. Heard the learned counsel appearing for the appellant/insurance company and the learned counsel appearing for the claimants and also perused the materials available on record.

9. The Tribunal, on considering the amount of Rs.9 Lakhs that was available in bank deposit over the preceding 12 months period prior to the death of the deceased, arrived at the monthly income of the deceased at Rs.25,000/= and accordingly arrived at the compensation. However, no proof as to the income earned by the deceased has been filed by the claimants to substantiate the monthly income earned by the deceased. Though the deceased seems to be an income tax assessee, for which the PAN card and TDS certificate has been produced, however, no income tax returns of the preceding years have been filed to substantiate the income earned by the deceased. Though very many certificates have been produced to vouch for the avocation of the deceased, yet, no concrete proof supporting his income has been filed. It is settled law that compensation should be based on cogent materials and in the absence of any valid proof to establish the income of the deceased, the submission of the claimants that the deceased was earning Rs.35,000/= per month and, therefore, they are entitled to a compensation of Rs.50,00,000/= is not sustainable. Equally so, the income fixed by the Tribunal at Rs.25,000/= per month based on which the Tribunal has arrived at the compensation of Rs.42,60,500/= is also not sustainable. On a consideration of the entire gamut of facts and the nature of avocation of the deceased, and in the absence of any substantive proof to show the income earned by the deceased, this Court is of the considered opinion that the income of the deceased could be safely fixed at Rs.15,000/=.

10. Accordingly, this Court fixes the income earned by the deceased at Rs.15,000/= per month and adding 30% towards future prospects and adopting the multiplier of 14, the loss of income to the family comes to Rs.24,57,000/=. Accordingly, the loss of income awarded by the Tribunal is modified to Rs.24,57,000/=. The compensation awarded under the head "Loss of Estate" is modified to Rs.1,70,000/=. Compensation awarded by the Tribunal on the other heads are confirmed. Accordingly, the award passed by the Tribunal is modified as hereunder:-

	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Income	Rs.40,95,500/=	Rs.24,57,000/=
Loss of consortium	Rs.1,00,000/=	Rs.1,00,000/=
Loss of Love & Affection	Rs.2,50,000/=	Rs.2,50,000/=
Funeral Expenses	Rs.25,000/=	Rs.25,000/=
Loss of Estate	Rs.2,00,000/=	Rs.1,70,000/=
Total Compensation	Rs.42,60,500/=	Rs.30,02,000/=

11. In the result, this Civil Miscellaneous Appeal is partly allowed with the above modification. This Court, while granting stay, directed the appellant to deposit 75% of the award amount along with interest to the credit of MCOP No.5409/2012 and the 1st claimant/wife was permitted to withdraw a sum of Rs.14,50,000/= and the 4th claimant/father was permitted to withdraw a sum of Rs.50,000/= with proportionate interest. In the above circumstances, the 1st claimant/wife is permitted to withdraw the balance portion of the amount apportioned to her by the Tribunal along with accrued interest and the share insofar as claimants 2 and 3, viz., the children of the deceased, shall be kept in deposit in any nationalised bank till they attain majority and the 1st claimant is permitted to withdraw the accrued interest on such deposit till such time claimants 2 and 3 attain majority. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

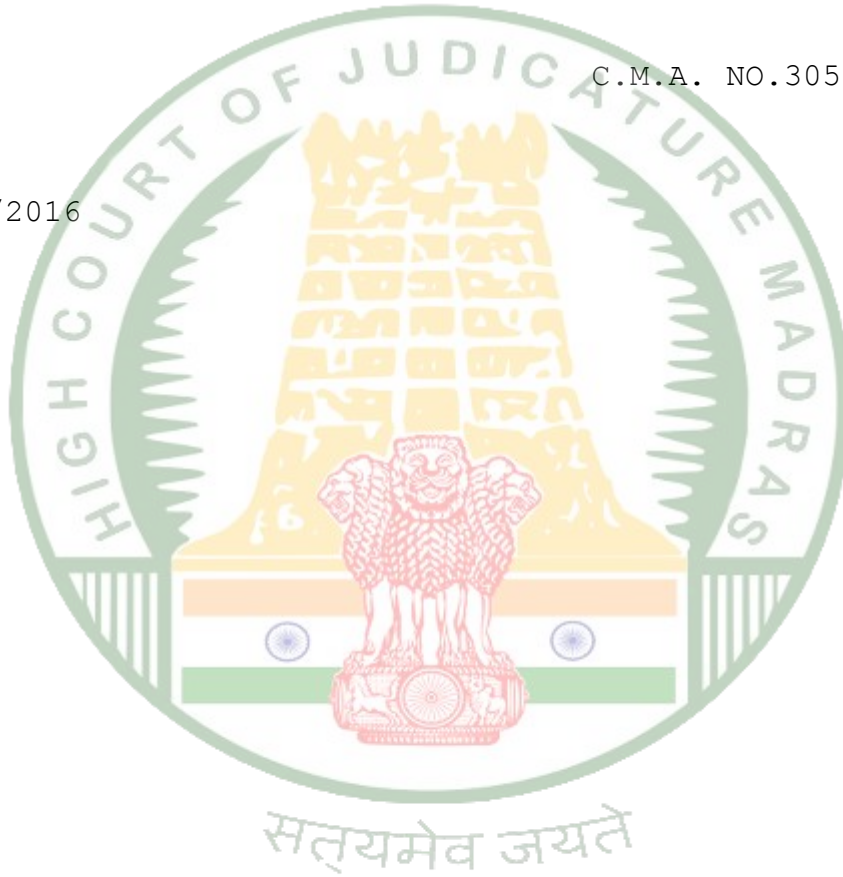
To

The II Judge,
Court of Small Causes.
(Motor Accident Claims Tribunal),
Chennai.

+1cc to Mr.S.Arunkumar, Advocate Sr.23765
+2cc to Mr.K.Malaikannu, Advocate sr.23805

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