

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.315 of 2015

The Divisional Manager
M/s.New India Assurance Co.Ltd.,
Bharathi Road
Cuddalore

...Appellant/Respondent-II

Vs

1.Arokiyadoss (died) ...Respondent/Petitioner-I

2.Abel Rajan ...Respondent-I/Petitioner II

3.Arjunan ...Respondent-II/Respondent I

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 19.11.2013 passed in M.C.O.P.No.777 of 2011 on the file of the Motor Accidents Claims Tribunal (1st Additional Subordinate Judge) Cuddalore.

For Appellant : Ms.N.Gnanasoundari for
Mr.J.Chandran

For Respondents : M/s.Sreethi Law firm
Mr.R.Sreedhar for R1

JUDGMENT

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

The New India Assurance Company is on appeal challenging the award dated 19.11.2013 passed in M.C.O.P.No.777 of 2011 on the file of the Motor Accidents Claims Tribunal (1st Additional Subordinate Judge), Cuddalore.

2. On 20.02.2011, when Arokiyadoss was riding the Hero Honda Passion Motor Cycle bearing Reg.No.TN 04 V 4387 along with a pillion rider near Cuddalore to Panruti Main Road, the second respondent/Arjunan's vehicle Ford Fiesta Car bearing Reg.No.Py-1-BA-7779 dashed against Arokiyadoss and as a result, he

sustained fracture and multiple grievous injuries. For the permanent disability he suffered, Arokiyadoss originally filed a claim petition before the Motor Accidents Claims Tribunal, Cuddalore, claiming Rs.20,00,000/-, at which time, he was 23 years old and was working as Cashier, Bawda Bank and was earning Rs.12,000/- per month. However, subsequently, he died on 12.04.2012 and the Tribunal recorded the fact that the death of the injured is a result of injuries suffered by him in the road accident.

3. This claim was disposed by a common award along with M.C.O.P.No.778 of 2011. In support of the claim, before the Tribunal, the father of the deceased was examined as P.W.1. The claimant in other claim was examined as P.W.2. The doctors who treated the injured claimant was examined as P.W.3 and 4. Exs.P.1 to P.28 were marked, the details of which are as follows:-

Ex.P.1.-20.02.2011-Xerox copy of First Information Report.
Ex.P.2-21.02.2011-Xerox copy of Motor Vehicle Inspector's Report.
Ex.P.3-25.02.2011-Xerox copy of Accident Register of P.W.1
Ex.P.4-20.02.2011-Referral Slip of P.W.1
Ex.P.5-02.03.2011-Discharge summary of P.W.1.
Ex.P.6- Doctor's prescriptions of P.W.1
Ex.P.7-Medical Bills for Rs.12,826.40 of P.W.1.
Ex.P.8-Doctor's prescriptions
Ex.P.9-08.03.2011-Trip sheet for Rs.1000/-
Ex.P.10-Xerox copy of Registration Certificate of 1st respondent's car.
Ex.P.11-Xerox copy of Insurance Policy of 2nd respondent's car.
Ex.P.12-Xerox copy of driving licence of the 1st respondent's car driver.
Ex.P.13-15.07.2011-Xerox copy of charge sheet.
Ex.P.14-06.08.2012-Disability certificate
Ex.P.15-X-Ray.
Ex.P.16-23.10.2012-Discharge summary of P.W.1.
Ex.P.17-Medical Bill & Doctor's prescriptions for Rs.25,389/- of P.W.1.
Ex.P.18-20.02.2011-Xerox copy of Accident Register of deceased Arokiadoss.
Ex.P.19-18.04.2011-Xerox copy of discharge summary of deceased Arokiadoss.
Ex.P.20-21.03.2012-Aravind eye hospital treatment record of deceased Arokiadoss.
Ex.P.21-12.04.2011-death certificate of deceased Arokiadoss.
Ex.P.22-28.07.2012-xerox copy of legal heir certificate of deceased Arokiadoss.
Ex.P.23-May 2010-B.C.A.Hall ticket of deceased (distance education).
Ex.P.24-Medical bill for Rs.1,35,960.05.

Ex.P.25-10.02.2011-Xerox copy of salary certificate of deceased Arokiadoss.

Ex.P.26-16.07.2010-Xerox copy of appointment order of the deceased Arokiadoss.

Ex.P.27-12.04.2012-Xerox copy of Death summary and discharge summary and case sheet copy.

Ex.P.28-15.02.2012-Xerox copy of OPD Chit of deceased Arokiadoss.

4. On behalf of the appellant/Insurance Company, no witness was examined and no document was marked.

5. The Tribunal, on an analysis of evidence and the materials placed before it, held that the accident had occurred solely due to the rash and negligent driving of the 2nd respondent's car driver herein and awarded compensation, fastening liability to pay compensation on the appellant\insurance company. Aggrieved against the said award, the appeal is filed by the appellant/Insurance company.

6. The Tribunal based on the evidence let in before it, granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.N o.	Head	Amount granted by the Tribunal
1	Loss of income during the treatment period	Rs. 1,26,000/-
2	Loss of Income (Rs.9000x1/3=6,000x12x18)	Rs.12,96,000/-
2	For Extra Nourishment for 14 months period	Rs. 15,000/-
3	For damage to clothing and article	Rs. 2,000/-
4	Medical expenses as per Ex.P.24	Rs.1,35,960/-
5	Attendant Charges	Rs. 15,000/-
6	Pain and suffering	Rs. 25,000/-
7	Loss of love and affection	Rs. 50,000/-
8	Funeral expenses	Rs. 25,000/-
9	For Transport to Hospital	Rs. 10,000/-
	Total	Rs.16,99,960/-

7. The finding of negligence on the part of the car driver of the second respondent herein who is responsible for the accident and consequential liability fixed on the appellant/insurance company to compensate the claimant is not

seriously disputed and such finding is confirmed. The appeal is canvassed mainly challenging the quantum of compensation.

8. The foremost serious objection raised by the learned counsel for the appellant is with regard to the grant of compensation towards loss of income by the Tribunal, by taking Rs.6,000/- as contribution of the deceased/Arokiyadoss to his family on the total income of Rs.9,000/- fixed by the tribunal. The learned counsel for the appellant also contended that the amount granted by the Tribunal towards Pain and Suffering is also on the higher side.

9. Heard the learned counsel for the first respondent/claimant on the submissions of the learned counsel for the appellant.

10. Taking into consideration the above submissions that the contribution of the deceased to his family has been taken on the higher side, accepting the same, this court fix it as Rs.4,000/- . Accordingly, the loss of income is calculated at Rs.4000 x 12 x 18 =Rs.8,64,000/-. Accordingly, the loss of income during the period of treatment (14 months) is calculated as Rs.56,000/- (Rs.4000/- x 14). Further, the amount of Rs.25,000/- granted by the Tribunal towards Pain and Suffering is deleted.

11. There is no serious objection in respect of the other amounts granted or the interest granted at 7.5% per annum. This court is also of the view that the amounts awarded by the Tribunal on the other heads are just and reasonable.

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

Sl. No.	Head	Amount granted by the Tribunal	Amount modified by this court
1	Loss of income during the treatment period	Rs.1,26,000/-	Rs. 56,000/-
2	For transport to Hospital	Rs.10,000/-	Rs. 10,000/-
3	Loss of Income (Rs.4000x12x18)	Rs.12,96,000/- (Rs.9000 x 1/3 =6000 x12x18)	Rs. 8,64,000/-
4	For Extra Nourishment for 14 months period	Rs.15,000/-	Rs. 15,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount modified by this court
5	For damage to clothing and article	Rs.2,000/-	Rs. 2,000/-
6	Medical expenses as per Ex.P.24	Rs.1,35,960/-	Rs.1,35,960/-
7	Attendant Charges	Rs.15,000/-	Rs. 15,000/-
8	Pain and suffering	Rs.25,000/-	----
9	Loss of love and affection	Rs.50,000/-	Rs. 50,000/-
10	Funeral expenses	Rs.25,000/-	Rs. 25,000/-
	Total	Rs.16,99,960/-	Rs.11,72,960/-

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

- (i) The award of the Tribunal is reduced to Rs.11,72,960/- from Rs.16,99,960/-.
- (ii) The claimant/1st respondent/Abel Rajan herein is permitted to withdraw the award amount as ordered by this Court as above.
- (iii) The appellant insurance company is at liberty to withdraw the excess amount deposited before the Tribunal.
- (iv) There will be no order as to costs in this appeal.
- (v) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

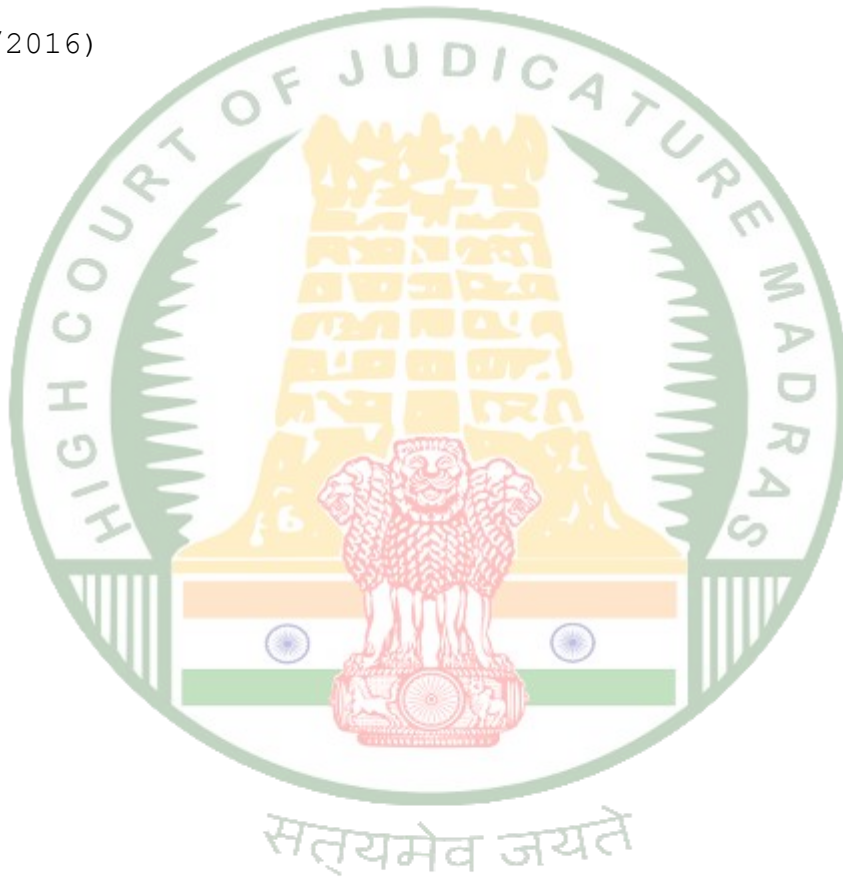
1.The Motor Accidents Claims Tribunal,
1st Additional Subordinate Judge,
Cuddalore.

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

+1cc to Mr.R.Sreedhar, Advocate Sr.12696
+1cc to Mr.J.Chandren, Advocate sr.12375

C.M.A.No.315 of 2015

tej (CO)
srg (11/05/2016)



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