

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM

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

Civil Miscellaneous Miscellaneous Appeal No.345 of 2015

M/s. New India Assurance Co. Ltd.,
No.45, Moore Street,
3rd Party Cell,
Chennai 600 001 ... Appellant/II Respondent

vs.

1.S.Juliet ...1st respondent/1st
petitioner
2.Minor Jasna ...2nd Respondent/2nd petitioner
(Minor rep. by his mother and
next friend Juliet)

M.S.Clement
(3rd petitioner died on 8.9.2012
memo filed along with DC record
dated 21.11.2012)

3. C.Jessy ...3rd respondent/4th petitioner
4. Jayapathy ...4th respondent/1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, 1988 against the Judgment and decree dated
13.03.2013 passed in M.C.O.P.No.692 of 2011 on the file of the
Motor Accidents Claims Tribunal (III Additional District and
Sessions Judge), Poonamallee.

For appellant : Mr.J.Chandran
For respondents : Ms.K.Varadhakumari (R1-3)
R4-no appearance

JUDGEMENT

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

This Civil Miscellaneous Appeal is filed by the Insurance
Company seeking reduction in compensation granted by Judgment
and decree dated 13.03.2013 passed in M.C.O.P.No.692 of 2011 on
the file of the Motor Accidents Claims Tribunal (III Additional
District and Sessions Judge), Poonamallee.

2. It is a case of fatal. The brief facts of the case of the claimants is that on 24.07.2011, at about 10.40 hours, while the deceased Joyson Clement was riding a Motorcycle bearing Registration No.TN-05-AD-9678 on Mount Poonamallee High Road from west to east in front of Jayanthi Theatre Entrance and at that time, the Ashok Leyland Tanker Lorry bearing Registration No.TN 22 CA 2999, which belongs to the 4th respondent was driven by its rider in a rash and negligent manner, came behind the deceased and hit the deceased and thereby caused the accident. Due to this accident, the deceased sustained head injury and died on the spot. The claimants who are the wife, daughter and parents have filed a claim petition before the Motor Accidents Claims Tribunal, Sub Court, Poonamallee, in M.C.O.P.No.692 of 2011, claiming compensation to the tune of Rs.40,00,000/-. Pending consideration, the father of the deceased/3rd claimant died.

3. In support of the claim petition, the wife of the deceased was examined as P.W.1 and one Kennedy, an eye witness was examined as P.W.2 and one Prabakaran was examined as P.W.3. Documents Ex.P1 to P11 were marked, the details of which are as follows:-

Ex.No.	Details
P1	FIR
P2	Death Certificate
P3	Postmortem certificate
P4	Legal heir certificate
P5	Driving licence of the deceased
P6	I.D. card of the deceased
P7	Authorisation letter
P8	letter of offer of employment
P9	Pay slips of the deceased
P10	Annual increment order
P11	Attendance register.

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 4th respondent remained ex-parte.

4. The Tribunal, based on oral and documentary evidence on record, held that the accident was due to the rash and negligent driving on the part of the rider of the offending vehicle and therefore, the appellant Insurance Company is liable to compensate the claimants.

5. As far as the quantum of compensation is concerned, the Tribunal granted the following amount as compensation with interest at the rate of 7.5% p.a.

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of dependency(2,39,200 x 18)	Rs.43,05,600/-
2	Funeral expenses	Rs. 10,000/-
3	Loss of love and affection	Rs. 15,000/-
4	Loss of consortium	Rs. 10,000/-
	Total	Rs.43,40,600/-

Challenging the same, the Insurance Company has come before this Court.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. On a perusal of the Judgment of the Tribunal, it reveals that the Tribunal has adopted 18 multiplier on the basis of the age of the deceased as per the II schedule of Section 163-A of the Motor Vehicles Act. However, as per the decision of the Apex Court, the correct multiplier would be 17. Further, according to the learned counsel for the Insurance Company, the income arrived at by the Tribunal includes a sum of Rs.85,000/- towards conveyance allowance, which ought to have been deducted. We find force in the argument of the learned counsel for the Insurance Company. Thus, from the annual income of Rs.3,58,800/- arrived at by the Tribunal, by deducting a sum of Rs.15,880/- being 10% towards income tax in a sum of Rs.1,58,800/- (3,58,800-2,00,000 standard deduction) and by deducting 1/3rd towards personal expenses and by adopting 17 multiplier, the loss of income would be Rs.38,86,421/- and after deducting a sum of Rs.85,000/- towards conveyance allowance, the loss of income would be Rs.38,01,421/-

8. As far as award of compensation under the heading funeral expenses is concerned, we are inclined to give a sum of Rs.15,000/- instead of a sum of Rs.10,000/-.

9. Since the dependants are wife and a minor child and the mother of the deceased, we are inclined to increase the loss of consortium to the widow from Rs.10,000/- to Rs.1,00,000/-.

10. The Tribunal has awarded a sum of Rs.15,000/- towards loss of love and affection to the parents and the minor daughter of the deceased, which, in our opinion is very meagre. Hence, in our opinion, if a sum of Rs.1,00,000/- is granted under this heading, it would be just and proper.

11. Thus the award of the tribunal is modified as follows:-

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this court
1	Loss of dependency	Rs.43,05,600/-	Rs.38,01,421/-
2	Funeral expenses	Rs. 10,000/-	Rs. 15,000/-
3	love and affection	Rs. 15,000/-	Rs. 1,00,000/-
4	loss of consortium	Rs. 10,000/-	Rs. 1,00,000/-
	Total	Rs.43,40,600/-	Rs.40,16,421/-

Since there is no dispute with regard to interest, the interest granted by the Tribunal at 7.5% is confirmed.

11. In the result, the civil miscellaneous appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced to Rs.40,16,421/- from Rs.43,40,600/-

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) Since the appellant/Insurance Company has already deposited 75% of the award amount to the credit of M.C.O.P.No.692 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Poonamallee, and the two major claimants were permitted to withdraw a sum of Rs.5,00,000/- each, the appellant/Insurance Company is directed to deposit the balance award amount, if any, to the credit of M.C.O.P.No.692 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Poonamallee, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the major claimants are permitted to withdraw their balance respective share amount on filing necessary applications before the Tribunal.

(v) The share of the minor shall continue to be in the investment scheme till

attaining majority. The interest accrued on the deposit of the share apportioned to the minor is permitted to be withdrawn by the mother/1st respondent, once in three months.

(vi) The excess court fee if any paid shall be refunded as per law.

There will be no order as to costs in this appeal.

Sd/-

Asst. Registrar(CS-III)

/true copy/

Sub Asst. Registrar.

rg

To

The Motor Accidents Claims Tribunal,
(III Additional District and Sessions Judge),
Poonamallee.

+ 1 cc to Mr.Varadha Kamaraj, Advocate SR 13490

Copy To: The Section Officer, VR Section,
High Court, Madras.

CMA No. 345 of 2015

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