

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

CORAM

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

C.M.A.No.950 of 2015 and C.M.A.No.2183 of 2015
and C.M.P.No.2451 of 2016 in C.M.A.No.2183 of 2016
and M.P.No.1 of 2015 in C.M.A.No.2183 of 2015

C.M.A.No.950 of 2015

1. R.Sundar

2. Prabhavathy ..Appellants/Petitioners

vs

1. A.Jamal

2. M/s. New India Assurance Co.Ltd.,
Motor Claims Third Party Cell,
No.45, Moore Street,
Chennai - 600 001. ..Respondents/Respondents.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 12.12.2014 made in M.C.O.P.No.537 of 2013 on the file of II Judge, Motor Accident Claims Tribunal, (Court of Small Causes) Chennai.

For Appellants : Mr.K.Suryanarayanan

For Respondents : Mr.M.B.Gopalan for R2
R1-set exparte in the trial Court

C.M.A.No.2183 of 2015

M/s. New India Assurance Co.Ltd.,
Motor Claims Third Party Cell,
No.45, Moore Street,
Chennai - 600 001.

..Appellant/2nd Respondent

-vs-

1. R.Sundar,
S/o Rajabather

2. Prabhavathy,
W/o R.Sundar

.. Respondents 1 & 2/Petitioners.

3. A.Jamal

..3rd Respondents/1st Respondent.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 12.12.2014 made in M.C.O.P.No.537 of 2013 on the file of II Judge, Motor Accident Claims Tribunal, (Court of Small Causes) Chennai.

For Appellant : Mr.M.B.Gopalan

For Respondents : Mr.K.Suryanarayanan for R1 and R2
R3-set exparte in the trial Court

COMMON JUDGMENT

(Judgment of the Court was delivered by HULUVADI G.
RAMESH, J.)

Both the appeals have been filed against the judgment and decree dated 12.12.2014 made in M.C.O.P.No.537 of 2013 on the file of II Judge, Motor Accident Claims Tribunal, (Court of Small Causes) Chennai.

2. While C.M.A.No.950 of 2015 is filed by the claimants seeking enhancement of compensation, C.M.A.No.2183 of 2015 is filed by the Insurer praying for reduction of compensation granted by the Tribunal. Both the appeals are taken up together for final disposal.

3. These two appeals arise out of the accident that had occurred on 10.11.2012 at 3.45 p.m. The deceased, while proceedings on his motor cycle bearing registration No.TN-02-AU-0405, near Retteri signal junction at Kollathur, the tanker Lorry, bearing Registration No.TN-03-D-9499, driven in a rash and negligent manner, came from behind and dashed against the motor cycle of the deceased and thereby, the deceased was thrown out of the motor cycle and the wheel of the lorry ran over the deceased, thereby the deceased sustained multiple grievous injuries and died on the spot.

4. The claimants/ parents of the deceased have filed a claim petition in MCOP.No.537 of 2013 seeking compensation of Rs.2,00,00,000/-. In support of the claim, the father of the deceased examined himself as P.W.1, one Mohanraj, stated to be an eye witness to the accident was examined as P.W.2 and one Sriram Ramasame Ravi, who was working as Junior Executive, H.R.,

C.T.S (Cognizant Technology Solution) and co-worker of the deceased was examined as P.W.3 and Exhibits P1 to P14 were marked. On behalf of the owner and insurer of the vehicle, one S.Elango, Sub-Inspector of Police, Traffic Investigation (Admin.) was examined as R.W.1 and Mr.V.Loganathan, Driver of the lorry was examined as R.W.2 and Exhibits R1 to R4 were marked before the Tribunal.

5. The Tribunal, after taking note of the oral and documentary evidence held that the accident had happened only due to the rash and negligent driving by the driver of the lorry and fastened the liability on the owner and insurer of the lorry/ 1st and 2nd respondent therein and consequently, the insurer was directed to pay the compensation.

6. Accordingly, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.N o.	Head	Amount granted by the Tribunal
1	Pecuniary Loss	Rs. 64,78,785/-
3	Funeral expenses	Rs. 25,000/-
4	Loss of estate	Rs.1,00,000/-
5	Loss of love and affection	Rs.2,00,000/-
	Total	Rs.68,03,785/-

7. Heard the learned counsel for the claimants and the learned counsel appearing for the Insurance Company.

8. According to the learned counsel appearing for the claimants, the income of the deceased ought to have taken on the higher side as the deceased was only 27 years at the time of accident and was working in Cognizant Technology Solution and was earning a good salary. The parents have claimed a sum of Rs.2,00,00,000/- but the Tribunal has awarded only Rs.68,03,785/- which has to be enhanced.

9. On the other hand learned counsel appearing for the Insurer contended that the income of the deceased was taken on the higher side without proof of income. The total compensation claimed is Rs.2,00,00,000/-. The Tribunal, after hearing the parties has taken the income of the deceased as Rs.47,050/- per month and added 50% towards future prospects and deducted the amount towards his personal expenses and after deducting 10% towards income tax, has awarded a total sum of Rs.64,78,785/- towards loss of dependency which is on the higher side. Hence, the compensation awarded by the Tribunal has to be reduced.

10. Having regard to the nature of avocation and the income received, we are of the view that fixing the compensation at Rs.61,00,000/- would meet the ends of justice. The Tribunal, after hearing the parties has taken the income of the deceased as Rs.47,050/- per month. The Tribunal, added 50% towards future prospects which comes to Rs.70,575/- and deducted 1/2 of his income towards his personal expenses since the deceased was unmarried and applying the multiplier of 17 (i.e., 35,287.5 x 12 x 17), arrived at the compensation at Rs.71,98,650. After deducting 10% towards income tax, the Tribunal calculated the pecuniary loss at Rs.64,78,785/-. However, we are of the view that deduction of 20% towards income tax would be justified. Therefore, deducting 20% towards income tax, the loss of dependency of depend it comes to Rs.57,58,920/-. There is no serious objection in respect of the other amounts granted or the interest granted at 7.5 % per annum. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Pecuniary loss	Rs.64,78,785/-	Rs.57,58,920/-
2	Loss of love and affection	Rs. 2,00,000/-	Rs. 2,00,000/-
4	Funeral expenses	Rs. 25,000/-	Rs.25,000/-
5	Loss of Estate	Rs. 1,00,000/-	Rs. 1,00,000/-
	Total	Rs.68,03,785/-	Rs.60,83,920/- (Rounded off to Rs.61,00,000/-)

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

12. Accordingly, C.M.A.No.950 of 2015 is dismissed and C.M.A.No.2183 of 2015 is allowed in part as follows:-

- (i) The award of the Tribunal is reduced to Rs.61,00,000/- from Rs.68,03,785/-.
- (ii) Out of the award amount modified by this Court, the first claimant/ father of the deceased is entitled to a sum of Rs.27,00,000/- and the second claimant/mother of the deceased is entitled to a sum of Rs.34,00,000/-.

- (iii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iv) The appellant/Insurer is directed to deposit the award amount granted by this Court along with accrued interest and costs within a period of three months from the date of receipt of a copy of this order.
- (v) On such deposit being made, the claimants are permitted to withdraw the award amount as per the apportionment ordered by this Court.
- (vi) There will be no order as to costs in this appeal.
- (vii) Consequently, connected miscellaneous petitions are closed.
- vsi

-s/d-
Assistant Registrar(VI)

True Copy

Sub-Assistant Registrar

To

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

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc to Mr.M.Vijaya Raghavan, Advocate SR 24713

pvs(co)
prk16/6

C.M.A.No.950 of 2015
and
C.M.A.No.2183 of 2015

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