

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM

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

C.M.A.No.975 of 2015
and M.P.No.1 of 2015 in
Cross Objection No.35 of 2016

Shriram General Insurance Co.Ltd.,
No.66, 2nd Floor, City Centre Complex
Thirumalai Pillai Road
T.Nagar, Chennai-600 017. Appellant/2nd Respondent
.... R1 in Cross Objection.

vs.

1.Sathya
2.Minor Jeevitha
3.Minor Sugapriyan
4.Lakshmi
5.Krishnan
Minors are rep. By their mother
and next friend 1st respondent. Respondents 1 to
5/Petitioners
.... Cross Objectors
6.A.Ramajayam Respondent No.6
/1st respondent.
.... R2 in Cross Objection.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment dated 10.10.2014 made in M.C.O.P.No.452 of 2013 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

M.P.No.1 of 2015 in Cross Obj.SR.53024 of 2015 filed to condone the delay of 90 days in filing the Cross Appeal in CMA.No.975 of 2015 against judgment and decree dated 10.10.2014 made in MCOP.No.452/2013 on the file of M.A.C.T. II Judge, Small Causes, Chennai.

For Appellant/Insurance Company
and for the I Respondent
in Cross Objection No.35 of 2016 : Mr.S.Dhakshinamoorthy
For Respondents 1 to 5/claimants
and for the Cross Objector in
Cross Objection No.35 of 2016 : Mr.V.Velu
For Respondent No.6 : Not Ready in notice.

JUDGMENT

(Judgment of the Court was delivered by S.VAIDYANATHAN,J.)

The Shriram General Insurance Company filed C.M.A.No.975 of 2015 challenging the award dated 10.10.2014 passed in M.C.O.P.No.452 of 2013 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai. M.P.No.1 of 2015 in Cross Obj.SR.53024 of 2015 is filed to condone the delay of 90 days in filing the Cross Appeal in CMA.No.975 of 2015.

2. We have heard the learned counsel appearing for the Insurance Company and the learned counsel appearing for the claimants.

3. In the petition for condonation of delay, the 1st claimant contended that after the death of her husband, she is eking out her livelihood as a coolie and found it difficult to file the appeal in time.

4. Considering the reasons set out in the petition for condonation of delay, the delay is condoned. M.P.No.1 of 2015 is ordered. Registry is directed to number the Cross-Objection.

5. It is a case of fatal accident. On 19.11.2012 at about 20.30 hours, while the deceased was riding his two-wheeler bearing Reg.No.TN 32 M 8872 at E.C.R. Road, Mugaiyur Thoppu, a Tata Sumo bearing Reg.No.TN 31 AW 2387 drove in a rash and negligent manner dashed the deceased viz., Ganesan, in which he sustained fatal injuries and died on the spot. The claimants, who are wife, two minor daughters, mother and father of the deceased have filed a claim for compensation for a sum of Rs.30,00,000/-. According to the claimants, the deceased was working as Photographer in Devi Studio, Chunambedu, Kancheepuram District and was earning a sum of Rs.25,000/- per month.

6. In support of the claim, the wife of the deceased viz., Sathya was examined as P.W.1; one Sekar, employer of the deceased was examined as P.W.2; one Prabhu, said to have witnessed the accident was examined as P.W.3 and Krishnan, father of the deceased was examined as P.W.4 and Exhibits P-1 to

Ex.P-9 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of F.I.R., in Cr.No.352/2012 registered at E5-Koovathur Police Station, Trichy District.
P2	Post Mortem Certificate
P3	Legal Heir Certificate
P4	Devi Studio Telephone bills and Insurance Policy
P5	Copy of PAN and Aadhaar Card of P.W.2
P6	Copy of Rough Sketch
P7	Copy of Charge Sheet
P8	Copy of identity card of the deceased
P9	Copy of driving licence of the deceased

On behalf of the Insurance Company, no witness was examined and no exhibit was marked before the Tribunal.

7. 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 driver of the Tata Sumo was rash and negligent and was responsible for the accident and consequently liability was fixed on the appellant/Insurance Company, since the vehicle belonging to the 1st respondent herein was insured with the appellant, to compensate the claimants. On this issue, learned counsel for the appellant/Insurance Company 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.

8. 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 16	Rs.17,28,000/-
2	Loss of consortium	Rs. 1,00,000/-
3	Funeral expenses	Rs. 25,000/-
4	Loss of love and affection	Rs. 2,25,000/-
	Total	Rs. 20,78,000/-

9. Pertaining the income of the deceased, the Tribunal, on the basis of the exhibits filed before it, taken the monthly income at Rs.8,000/- per month. Further, as per the decision reported in 2013(2) TN MAC 55 (SC) Rajesh and others Vs. Rajbir Singh and Others, the future prospects is taken at 50% and as per the decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009(2) TNMAC 1 (SC), adopted the multiplier of 16 for the age of 32. Even though, the learned counsel appearing for the appellant/Insurance Company raised objection as regards the award granted towards loss of love and affection, considering the fact that the two minor daughters' studies and education to be looked after, the sum granted under the head of loss of love and affection could not be said to be excessive. We also find that the amounts granted under other conventional heads are also just and proper. Accordingly, we find no error in the order of the Tribunal warranting interference by this Court.

10. Insofar as the Cross Objection filed by the claimants is concerned, seeking enhancement of the award of the Tribunal, it is to be pointed out that there is no proof filed by the dependents showing the income earned by the deceased and in such circumstances, the amount fixed by the Tribunal cannot be said to be meagre.

11. Accordingly, the compensation awarded by the Tribunal stands confirmed. The Civil Miscellaneous Appeal filed by the Insurance Company and the Cross Objection filed by the claimants are dismissed.

- (i) The award of the Tribunal at Rs.20,78,000/- is confirmed.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The award amount is apportioned to the claimants as directed by the Tribunal.
- (iv) This Court by order dated 02.06.2015 directed the appellant/insurance company to deposit the entire award amount along with accrued interest and costs.
- (v) The claimants are permitted to withdraw the award amount along with accrued interest. As far as the minors' share are concerned, the same shall be deposited in a Nationalised Bank and on majority, they are permitted to withdraw the same.
- (vi) There will be no order as to costs in this appeal.

(vii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

Motor Accidents claims Tribunal, Chennai.
II Court of Small Causes, Chennai.

Copy to:

- 1.The Section Officer,
Judicial Section,
High Court, Madras.
- 2.The Section Officer,
VR Section,
High Court, Madras-104. [12/07/2016]

+2ccs to MR.S.Dhakshnamoorthy, Advocate Sr.21349 & 20338
+1cc to Mr.V.Velu, Advocate sr.20260

C.M.A.No.975 of 2015
and M.P.No.1 of 2015
in Cross Obj.No.35 of 2016

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srg 11/7/2016

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