

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.03.2016

CORAM

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

C.M.A. NO.683 OF 2016
and C.M.P.No.5606 of 2016

The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 01.

..... Appellant/Respondent-II

- Vs -

1. Tmt.Urmila Devi
2. Thiru.Bhola Prasad
3. Amrita Priyadarshini
4. Preeti Priyadarshini
5. Anya Priyadarshini

...Respondents 1to5/Petitioners

6. M.S.Kotaiah

...6th Respondent/Respondent-I

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 16.03.2015 passed by the Motor Accident Claims Tribunal (II Judge, Small Causes Court), Chennai, made in M.C.O.P.No.5820 of 2013.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Amar D.Pandiya - R1 to R5

सत्यमेव जयते

J U D G M E N T
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

2. The appellant/Insurance Company has filed the appeal challenging the Award dated 16.03.2015 passed by the Motor Accident Claims Tribunal (II Judge, Small Causes Court), Chennai, made in M.C.O.P.No.5820 of 2013.

3. It is a case of fatal accident. On 06.06.2013 at about 5.15 p.m. when the deceased Amit Kumar, aged 21 years was travelling in his motor cycle bearing Registration No.TN 22 AX 0574 from West to East near Koyambedu, a van bearing

Registration No.TN 20 BM 5052 came in a rash and negligent manner and hit against the deceased. As a result, the deceased sustained multiple injuries. Immediately, he was admitted and treated in the KMC Hospital and thereafter, he was referred to Government Hospital, where he died. Hence, the claimants, who are mother, aged 43 years, father, aged 48 years, sisters, aged 25,22, and 19 respectively have filed claim petition claiming a sum of Rs.50,00,000/- as compensation. According to the claimants, the deceased was a student studying B.Tech (IT Branch) at Dr.MGR Engineering College, Chennai and was awaiting final year result.

4. In support of the claim petition, the mother of the deceased was examined as P.W.1; one Venkatesan, who is stated to be an eye witness to the accident, was examined as P.W.2 and one Mr.G.Mohan was examined as P.W.3 and Exs.P-1 to P-10 were marked, the details of which are as follows:-

Ex.P-1	Copy of FIR in Cr.No.109/KM2/2013 registered at K-1- Koyambedu Police Station, Ch - 107.
Ex.P-2	Charge Sheet
Ex.P-3	Postmortem Certificate
Ex.P-4	Death Certificate
Ex.P-5	Burial Ground Certificate
Ex.P-6	Legal Heirship Certificate
Ex.P-7	College ID Card
Ex.P-8	Authorisation Letter
Ex.P-9	B.Tech studies related document
Ex.P-10	Statement of fees paid to Dr.MGR Educational & Research Trust.

5. On the side of the respondents, neither any witness was examined nor any document was marked.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant/Insurance Company to refute the evidence as to the rash and negligent driving of the van, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the van, and therefore, the liability was fixed on the appellant, since the van was insured with the appellant and consequently the appellant was directed to compensate the claimants. On this issue, learned counsel for the appellant 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 at by the Tribunal. Accordingly, the Tribunal awarded compensation under the following heads :-

Pecuniary loss	-	Rs.20,25,000 (Rs.9,375x12x18)
Loss of Love and affection	-	Rs. 1,50,000/-
Funeral Expenses	-	Rs. 25,000/-
Loss of Estate	-	Rs. 2,00,000/-
Total Compensation	-	Rs.24,00,000/-

7. In all, the Tribunal awarded a compensation of Rs.24,00,000/= with interest at the rate of 7.5% from the date of the petition till the date of deposit. Aggrieved by the said award, the appellant - Insurance Company is before this Court by filing this appeal.

8. Learned counsel appearing for the appellant-Insurance Company submitted that the Tribunal has wrongly awarded compensation towards loss estate, since the deceased was a student and was not holding any possessions. Per contra, it is submitted by the learned counsel for the respondents/claimants that taking note of the age of the dependents in the family, the Tribunal had correctly awarded compensation and therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record.

10. With regard to the contention of the learned counsel appearing for the appellant that since the deceased was a student there was no loss to the estate, we find that there is no proof that the deceased was holding any possessions or property. In the absence of the same, it is not fair to award any amount towards loss of estate. Accordingly, the compensation awarded towards loss of estate is rejected. As far as the compensation awarded on other heads, we feel that the compensation awarded by the Tribunal is just and reasonable. The interest awarded by the Tribunal at 7.5% per annum is not in dispute and the same is confirmed.

11. Accordingly, the award of the Tribunal stands modified as follows:

	Compensation awarded by the Tribunal	Compensation awarded by this Court
Pecuniary loss	Rs.20,25,000 (Rs.9,375x12x18)	Rs.20,25,000 (Rs.9,375x12x18)
Loss of Love and affection	Rs. 1,50,000/-	Rs. 1,50,000/-
Funeral Expenses	Rs. 25,000/-	Rs. 25,000/-
Loss of Estate	Rs. 2,00,000/-	---
Total Compensation	Rs.24,00,000/-	Rs.22,00,000/-

12. In the result, this Civil Miscellaneous Appeal stands disposed of as follows:

(i) The award of the Tribunal is reduced to Rs.22,00,000/- from Rs.24,00,000/-

(ii) The interest awarded by the Tribunal at 7.5% per annum stands confirmed.

(iii) Learned counsel appearing for the appellant seeks time to deposit the award amount now ordered by this Court.

(iv) The appellant is granted eight weeks time to deposit the award amount now ordered by this Court, less the amount, if any deposited already, along with interest and costs.

(v) On such deposit being made, the father and mother of the deceased, who are dependents of the deceased, are permitted to withdraw the amount now ordered by this Court.

(vi) 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 III)

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Sub Assistant Registrar

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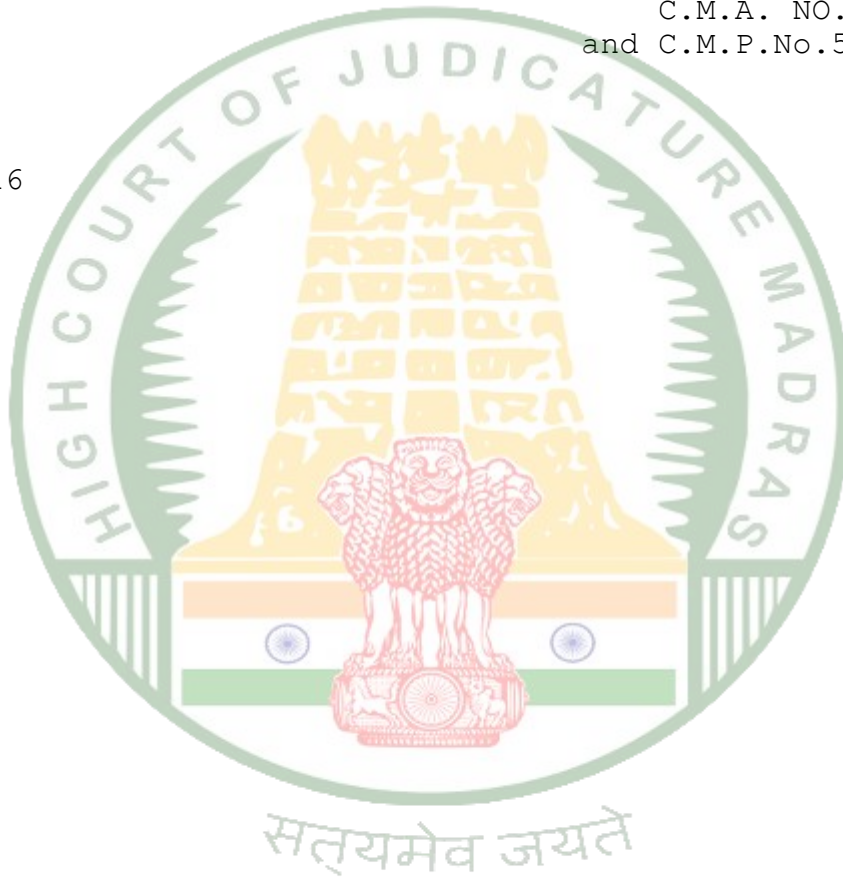
To

The Motor Accidents Claims Tribunal,
Ind Judge, Small Causes Court, Chennai

1 cc to Mr.S. Ravikumar, Advocate Sr.19214
+ 1 cc to Mr.J. Chandran, Advocate Sr.19523

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