

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

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

C.M.A.No.2523 of 2014

M/s New India Assurance Co. Ltd.,
No.45, Moore Street,
V Floor, Chennai 600 001. .Appellant/Respondent II

vs.

1. Radhabai ..R1/1st Petitioner
2. Narayanan ..R2/2nd Petitioner
3. M.Abdul Kasim .R3/Respondent I

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 29.04.2014 passed in M.C.O.P.No.6156 of 2012 on the file of the Motor Accidents Claims Tribunal, (II Judge, Small Causes Court), Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.N.M.Muthurajan (R1 &2)

JUDGMENT

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

The Insurance Company is on appeal against the Judgment and decree dated 29.04.2014 passed in M.C.O.P.No.6156 of 2012 on the file of the Motor Accidents Claims Tribunal, (II Judge, Small Causes Court), Chennai.

2. It is a case of fatal accident. The deceased viz., V.Jayaprakash, 31 years old, died in a road accident which took place on 04.06.2012. While the deceased was walking along Service Road of Velachery Railway Over Bridge, north to south direction, along with his friend C.Prabhu, nearing Dindigul Velu Briyani Shop, the Motorcycle bearing Registration No.TN-09-AQ-3341, which was driven in a rash

and negligent manner, came from behind and hit against him, in which, he suffered serious injuries and died during the course of treatment on 17.09.2012. At the time of accident, the deceased, a B.Tech Graduate, was working as Junior System Administrator in M/s ReGen Powertech Private Limited, Chennai and was earning a sum of Rs.21,320/-. The claimants who are the parents of the deceased have filed a claim for compensation for a sum of Rs.55,00,000/-.

3. In support of the claim, the wife of the deceased was examined as P.W.1; C.Prabhu an eye witnesses was examined as P.W.2 and one S.Suresh, General Manager of the Regen Power Tech.(P) Ltd., was examined as P.W.3; and Exs.P-1 to Ex.P.24 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR in Cr.No.226/S1/2012 registered at J3 Guindy Traffic Investigation
P2	Discharge summary
P3	Medical Bills
P4	Credit Bills
P5	Medical Prescriptions
P6	Death Summary
P7	Pharmacy Bills
P8	Medical Bills
P9	Medical Prescriptions
P10	Medical Bills
P11	Postmortem Certificate
P12	Death Report
P13	Copy of driving licence of the deceased
P14	Legalheirs certificate
P15	Copy of degree course certificate
P16	Copy of Appointment letter
P17	Confirmation letter
P18	Bank statement
P19	Copy of PAN card of the deceased
P20	Copy of Passport of the deceased
P21	Copy of Aadhar card of 1st petitioner
P22	Copy of identify card of the deceased
P23	Salary details of the deceased

Ex.No.	Details
P24	Copy of Form No.16

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 1st respondent remained exparte.

4. 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	Pecuniary loss	Rs.33,71,155/-
2	Funeral Expenses	Rs. 15,000/-
3	Loss of Love and Affection for petitioners 1&2	Rs. 75,000/-
4	Pain and Sufferings	Rs. 1,50,000/-
5	Medical Expenses	Rs.11,60,679/-
	Total	Rs.47,71,834/-

This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the said award of the Tribunal.

5. The learned counsel for the appellant pleaded that as per the decision in the case of Sarla Verma vs. Delhi Transport Corporation reported in (2009) 6 SCC 121, there should be 50% deduction in case the deceased was a bachelor. However, the Tribunal, has deducted 1/3rd instead of deducting 50% towards personal expenses. Thus, the Tribunal has erred in awarding compensation under the head "Pecuniary loss". Further, the learned counsel for the appellant pleaded that the Tribunal has awarded a sum of Rs.1,50,000/- under the heading "Pain and Sufferings", which would be applicable only in a case of injury. He would further plead that there is no dispute with regard to other amounts awarded by the Tribunal.

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

7. The Tribunal, considering the age of the deceased, family circumstances, the educational qualifications of the deceased and the evidence of P.Ws.1 and 3, fixing the income of the deceased at Rs.21,320/- p.m and by adding 50% towards future prospects, fixed the annual income at

Rs.3,51,162/- and deducting 1/3th towards his personal expenses and adopting the multiplier 16, in the light of the decision reported in 2009 ACJ 1298 SC (Sarala Verma & Ors. vs. Delhi Transport Corporation and Anr.), and deducting 10% towards payment of income tax, awarded a sum of Rs.33,71,155/- towards loss of pecuniary benefits.

8. We find that the Tribunal has erred in deducting 1/3rd towards the personal expenses of the deceased, since, as per Sarala Verma's case, 50% deduction has to be made. If that calculation is applied, the compensation towards Pecuniary loss would be Rs.28,09,296/-.

9. Since a substantial sum has been awarded under the heading Medical Bills, this Court is of the view that no amount need be granted under the heading "Pain and Sufferings". Hence, the compensation of a sum of Rs.1,50,000/- awarded under the heading "Pain and Sufferings" stands deleted.

10. Since there is no dispute with regard to the other heads, the compensation awarded under the other heads are confirmed.

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

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Pecuniary Loss	Rs.33,71,155/-	Rs.28,09,296/-
2	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
3	Loss of Love and Affection for petitioners 1&2	Rs. 75,000/-	Rs. 75,000/-
4	Pain and Sufferings	Rs. 1,50,000/-	Rs. -
5	Medical Expenses	Rs.11,60,679/-	Rs.11,60,679
	Total	Rs.47,71,834/-	Rs.40,59,975/-

12. There is no serious objection in respect of the interest granted at 7.5% per annum.

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

(i) The award of the Tribunal is reduced to Rs.40,59,975/- from Rs.47,71,834/- and the claimants are entitled to share the compensation

amount awarded by this Court as apportioned by the Tribunal.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) Since the entire award amount has already been deposited to the credit of M.C.O.P.No.6156 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, and 50% of the respective shares of the claimants have already been permitted to be withdrawn by this Court, the claimants are permitted to withdraw their respective shares in the balance amount in the award as ordered by this Court by filing necessary applications before the Tribunal.

(iv) The excess amount if any deposited by the appellant is directed to be refunded.

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

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

The Presiding Officer
1. The II Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

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

2 ccs to M/s. N.M. Muthurajan, Advocate, Sr. 13031
1 cc to M/s.J. Chandran, Advocate, Sr. 13056

C.M.A.No.2523 of 2014

RSI (CO)
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