

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

CORAM:

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

Civil Miscellaneous Appeal No.304 of 2014

1. U. Moksha
2. U. Joshua (Minor)
rep. By his mother & N.F. 1st appellant
3. K. Vijayan
4. V. Jayakodi
5. V. Deepa ... Appellants/Claimants

vs.

1. K.V.Ram Prasanth
(was set exparte in the Trial Court)
2. Reliance General Insurance Co. Ltd.,
Regional Office (Legal Department),
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai 600 034. ... Respondents/Rondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.08.2013 passed in M.C.O.P.No.3095 of 2010, on the file of the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants : Mrs. P.T. Salim Fathima
for M.Swamikkannu

For 2nd Respondent : Mr.S.Arunkumar

J U D G M E N T

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

Challenging the judgment and decree dated 22.08.2013 passed by the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes) Chennai in M.C.O.P.No.3095 of 2010, the claimants have come up with this appeal seeking enhancement of compensation.

2. On 02.08.2010, about 13.20 hours, when the deceased V.Udayaselvam was riding his motor cycle bearing Registration No.TN-07-BD-8760 along with his brother Deepan as pillion rider, proceeding on the left side of Velachery main road from Velachery to Medavakkam, near Saravana Furniture Mart, Senthamizh Nagar, Medavakkam, an Eicher Van bearing Registration No.TN-09-M-4915 driven by its driver in a rash and negligent manner came from behind to the extreme left side of the road and dashed against the motor cycle, due to which, both the rider and pillion rider fell down, sustained skull injury and succumbed to it. The claimants, who are the wife, minor son, parents and unmarried sister of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.34,00,000/- was claimed as compensation for the death of Udayaselvam.

3. The Tribunal tried this matter along with connected M.C.O.P.No.3096 of 2010. Common evidence was recorded. In respect of this matter, on the side of the claimants, the 1st claimant, wife of the deceased, viz. Mrs.Moksha was examined as P.W.1; Mrs.Jayakodi, mother of the deceased was examined as P.W.2; one Mr.Dilipan was examined as P.W.3; one Mr.Jayaraman, an eye-witness to the accident was examined as P.W.4 and Exs.P1 to P4 were marked. On the side of the Insurance Company, one Mr.D.Vijaya Karthi, Assistant Manager (Legal) was examined as R.W.1 and Exs.R1 to R4 were marked. Details of the Exhibits would run thus:

Ex.P1	Copy of F.I.R., dated 02.08.2010
Ex.P2	Copy of Death Report, dated 03.08.2010
Ex.P3	Copy of Post mortem Certificate
Ex.P4	Legal Heir Certificate of deceased Udayaselvam, dated 11.01.2011
Ex.R1	Copy of Insurance Policy
Ex.R2	Copy of Driving Licence of R1's driver
Ex.R3	Copy of Driving Licence particulars on website
Ex.R4	Series copy of notice to R1 and his driver

4. On consideration of the available oral and documentary evidence, the Tribunal, held that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle, i.e. Eicher Van and fixed the liability to compensate the claimants on the 2nd respondent/Insurance Company and recover the same from the owner of the offending vehicle. The 1st respondent herein, who is the owner of the offending vehicle was set exparte before the Tribunal. Against the claim of Rs.34,00,000/- for the death of the deceased, the Tribunal awarded a sum of Rs.11,07,750/- as compensation under the following heads:

S.No.	Heads	Compensation awarded by the Tribunal
1	Loss of Income (Rs.4,500/- + 50% future prospects x 12 x $\frac{3}{4}$ x 17)	Rs. 10,32,750/-
2	Loss of Consortium	Rs. 25,000/-
3	Loss of Love and Affection	Rs. 25,000/-
4	Loss of Estate	Rs. 10,000/-
5	Funeral expenses	Rs. 10,000/-
6	Transportation	Rs. 5,000/-
	Total	Rs. 11,07,750/-

5. Learned counsel for the appellants/claimants contended that when the deceased, who was a carpenter by profession, has left behind his wife, minor son, parents and sister as his legal heirs, the Tribunal erred in fixing his monthly income only at Rs.4500/-, which is very low on account of the rising prices. She further contended that the Tribunal ought to have awarded a sum of Rs.1,00,000/- towards loss of consortium and a sum of Rs.25,000/- towards funeral expenses.

6. On the other hand, learned counsel appearing for the 2nd respondent/Insurance Company submitted that the compensation awarded by the Tribunal is just and reasonable and sought dismissal of the appeal.

7. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

8. In the claim petition, the claimants have stated that the deceased was aged 29 years at the time of accident. Since no material proof was marked in support of his age, the Tribunal, relying on the oral evidence of P.W.1, wife of the deceased and Ex.P3 - Post-mortem Certificate, fixed the age of the deceased as 29 years. Also, relying on the evidence of P.W.1 that the deceased was a Carpenter by profession, the Tribunal fixed his notional monthly income at Rs.4,500/- and in view of the Apex Court decision in the case of Rajesh vs. Rajbir Singh (2013 (3) CTC 883), 50% of his notional income was added for future prospects. After deducting 1/4th towards his personal expenses and applying the multiplier of '17', a sum of Rs.10,32,750/- was awarded by the Tribunal towards 'loss of dependency'.

9. This Court is not inclined to interfere with the fixation of age of the deceased by the Tribunal. Coming to the income aspect, we feel that the notional monthly income fixed by the Tribunal is low in view of the present economic scenario. Hence, taking note of the ratio laid down in Syed Sadiq vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, wherein, the notional monthly income of an injured vegetable vendor was fixed at Rs.6,500/- and also taking into account the escalating prices, this Court fixes the notional monthly income of the deceased in this case at Rs.7,000/-. Further, adding 50% of the said income towards future prospects, i.e. a sum of Rs.3,500/-, deducting 1/4th towards the personal expenses of the deceased and applying the multiplier of '17', the revised compensation towards "loss of dependency" is arrived at a sum of Rs.16,06,500/- (Rs.7000/- + Rs.3,500/- x 12 x $\frac{3}{4}$ x '17').

10. Further, we find that the compensation awarded under the heads, 'Loss of Consortium', 'Loss of Love and affection' and 'Funeral expenses' are on the lower side. Hence, we enhance the same by awarding a sum of Rs.1,00,000/- towards 'Loss of consortium'; a sum of Rs.1,00,000/- towards 'Loss of Love and Affection' and a sum of Rs.25,000/- together for 'Transport and Funeral expenses'. As enough compensation is awarded towards 'loss of dependency', a sum of Rs.10,000/- awarded by the Tribunal towards 'Loss of Estate' is struck off.

11. Since the 5th appellant in this appeal is the sister of the deceased and as her father, i.e. the 3rd appellant is very much alive, we uphold the Tribunal's finding that she cannot be considered as the legal heir of the deceased. In fine, the compensation of Rs.11,07,750/- awarded by the Tribunal is enhanced and the appellants 1 to 4, who are the wife, minor son and parents of the deceased, are entitled to a sum of Rs.18,31,500/- (Rupees Eighteen Lakhs Thirty One Thousand Five Hundred only) as revised compensation, as per the ratio fixed by the Tribunal. Interest awarded by the Tribunal at 7.5% per annum from the date of petition till the date of realization is confirmed. Break-up details of the revised award are tabulated below:

S.No	Heads	Compensation awarded by the Tribunal	Revised Compensation awarded by this Court
1	Loss of Income	Rs. 10,32,750/-	Rs. 16,06,500/-
2	Loss of Consortium	Rs. 25,000/-	Rs. 1,00,000/-

S.No	Heads	Compensation awarded by the Tribunal	Revised Compensation awarded by this Court
3	Loss of Love and Affection	Rs. 25,000/-	Rs. 1,00,000/-
4	Loss of Estate	Rs. 10,000/-	-
5	Funeral expenses	Rs. 10,000/-	Rs. 25,000/-
6	Transport	Rs. 5,000/-	
	Total	Rs. 11,07,750/-	Rs. 18,31,500/-

12. The revised compensation awarded by this Court along with interest and proportionate costs shall be deposited by the 2nd respondent/Insurance Company to the credit of M.C.O.P.No.3095 of 2010, less the amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this order. It is also made clear that the proportionate share of the amount awarded by this Court to the appellants 1, 3 and 4 shall be paid to them in the form of a crossed Account Payee Cheque, favouring only them and it should not be issued in favour of any other person/Company. The share of the minor 2nd appellant shall be invested in Indian Bank, Madras High Court Branch, Chennai 600 104, in a Fixed Deposit Scheme initially for a period of three years, renewable thereafter and the interest accrued on such deposit shall be withdrawn by his mother and natural guardian i.e. the 1st appellant herein, once in three months, till he attains majority.

13. The dismissal of the claim petition by the Tribunal in respect of the 5th claimant is confirmed. The Insurance Company can recover the award amount from the owner of the offending vehicle.

The Civil Miscellaneous Appeal is allowed with the above direction and observation. No costs.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Chief Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.
2. The Chief Manager,
Indian Bank,
Madras High Court Branch,
Chennai 600 104.

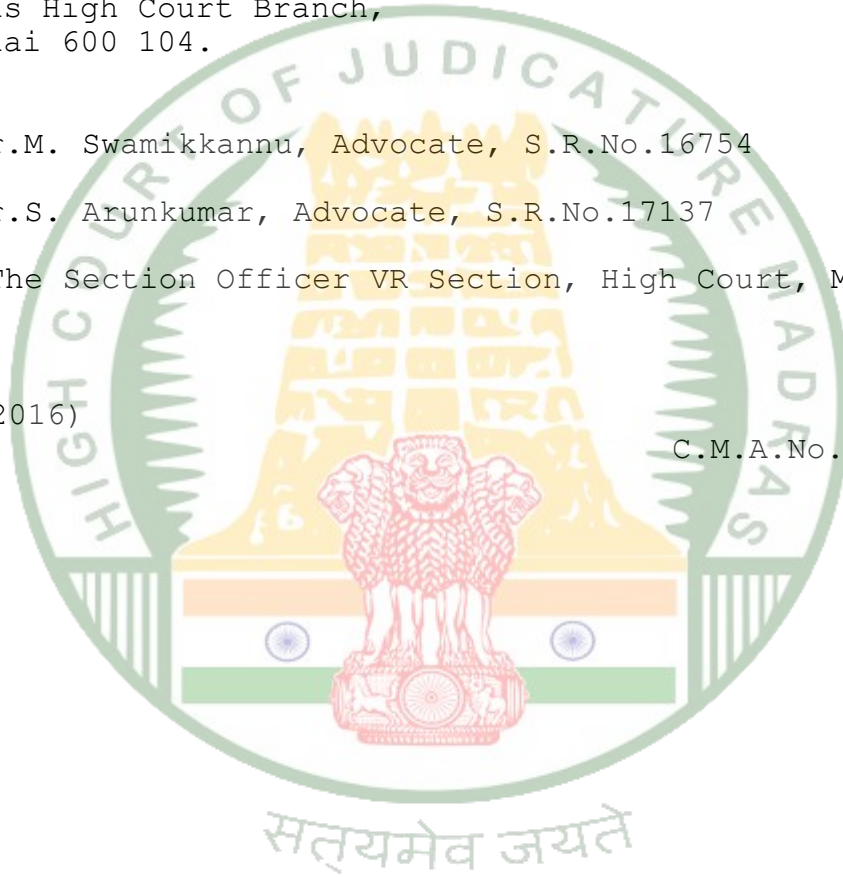
+1cc to Mr.M. Swamikkannu, Advocate, S.R.No.16754

+1cc to Mr.S. Arunkumar, Advocate, S.R.No.17137

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

SV(CO)
EU(06/06/2016)

C.M.A.No.304 of 2014



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