

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM

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

C.M.A.No.3272 of 2014

M/s. Royal Sundaram Alliance Insurance
Co. Ltd.,
No.8/H-1, Mangalam Buildings,
Four Roads, Salem - 9.

... Appellant/2nd
Respondent

vs.

1. R.K. Upadhyaya
2. Mrs. Shyama Devi Upadhyaya

... Respondents 1 to 2/
Petitioners

3. Kaspar D. Hundal

4. The Managing Director,
TNSTC, Ramakrishna Road,
Salem - 7.

... Respondents 3 & 4
Respondents 1 & 3

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 04.06.2014 passed in M.C.O.P.No.1542 of 2010 on the file of the Motor Accidents Claims Tribunal (II Additional District Court), Salem.

For Appellant : Mr.N. Vijayaraghavan

For Respondents: Mr.D. Shivakumaran
for R1 & R2

JUDGMENT

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

The Insurance Company is on appeal challenging the Judgment dated 04.06.2014 passed in M.C.O.P.No.1542 of 2010 on the file of the Motor Accidents Claims Tribunal (II Additional District Court), Salem.

2. It is a case of fatal accident. On 08.03.2010, at about 00.30 hours, when the deceased Upadhyaya Chandhan Parashar, aged about 21 years, was coming in a Hyundai Santro Car bearing Registration No.TN 30 AA 0718, belonging to the 3rd respondent and insured with the appellant, near Vinayaka Mission Administrative Office, on Sankari-Salem Main Road, the driver of the car, drove the vehicle in a rash and negligent manner and dashed on the back side of the bus, bearing Registration No. TN-30-N-0425, belonging to the 4th respondent, which was stationed due to some mechanical defect and caused the accident, due to which, the deceased sustained grievous injuries and died on the way to the hospital. The claimants, who are parents of the deceased, have filed a claim for compensation of a sum of Rs.40,00,000/-.

3. On the side of the claimants, P.W.1 - Ramakant Upadhyaya and P.W.2 - S. Rajendran, an eye-witness to the occurrence were examined and Exs.P-1 to Ex.P.22 were marked, the details of which are as follows:-

Ex.No.	Details
P1	certified copy of the FIR
P2	Certified copy of the Accident Register
P3	Certified copy of the Postmortem Certificate
P4	Certified copy of the Motor Vehicle Inspector's Report (TN 30 AA 0718 Car)
P5	Certified copy of the Motor Vehicle Inspector's Report (TN 30 N 0424 G Bus)
P6	Certified copy of Rough Sketch
P7	Certified copy of Charge Sheet
P8	Certified copy of Judgement
P9	Airway Tickets (Rs.31,125/-) (Original)
P10	Certified Copy of Bangalore to Patna Human Rehai Cargo bills (Rs.14,472)
P11	Certified Copy of Remitted fees in the year 2007-08 to 2009-2010 (Rs.6,32,650/-)
P12	Certified Copy of Conduct Certificate
P13	Certified Copy of Transfer Certificate
P14	Certified Copy of BDS certificate in August, 2009
P15	Mark Sheet of I year and II Year BDS (original)
P16	Mark Statement (2003-2006) (Original)

Ex.No.	Details
P17	Hindi Competition and Sports Activities Certificate (original)
P18	Certified copy of Death Certificate
P19	Certified Copy of LR's Certificate
P20	Legal Notice by Indian Bank (Served Copy)
P21	Court Summons Karur ASJ to the 1 st petitioner in O.S. No. 372/2013 (Served Copy)
P22	Plaint Copy in O.S. NO. 372/13 before ASJ Karur by Indian Bank Karur against the 1 st petitioner and Guarantor Kalavathi (Served Copy)

On behalf of the Insurance Company, neither any oral nor documentary evidence was adduced. The 3rd respondent remained absent and was set ex parte.

4. The Tribunal based on the oral evidence of P.W.2, the eye-witness to the accident and Exs-P1, P4 to P8, came to the conclusion that the driver of the Santro Car was rash and negligent and was responsible for the accident and consequently, liability was fixed on the appellant Insurance Company, with whom the car was insured. 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.

5. 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	Rs.16,50,000/-
2	Loss of love and affection	Rs. 50,000/-
3	Transport bill -1	Rs. 31,125/-
4	Transport Charges bill -2	Rs. 14,472/-
5	Funeral	Rs. 25,000/-
6	Damage to Cloth	Rs. 5,000/-
	Total	Rs. 18,00,595/-

6. Insofar as the compensation is concerned, considering the fact that the deceased was a third year BDS student, who was

studying in Vinayaka Mission College; that the deceased had cleared all the papers in his I year and II year without any arrears; that he would have come out with flying colours in his profession, if he had been alive and in the light of the decision of the Honourable High Court reported in 2013 (3) TN MAC 846, wherein the income of a B.E. Student, aged about 19 years, who died in an accident, was fixed at Rs.15,000/- including future prospects, the Tribunal fixed the income of the deceased along with future prospects as Rs.25,000/-, which is very reasonable and is justified.

7. Since the deceased died as a bachelor, the Tribunal, deducted 50% towards his personal expenses, which appears to be justified.

8. As far as the multiplier is concerned, as per the dictum of the Honourable Apex Court in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC), taking into consideration the age of the parents of the deceased, the Tribunal adopted multiplier 11. Therefore, this Court finds no good reason to interfere with the same and the quantum of compensation awarded by the Tribunal.

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

10. In the above circumstances, finding no merit, the Civil Miscellaneous Appeal is dismissed. No costs.

11. The appellant Insurance Company has already deposited the entire award amount with proportionate accrued interest and costs as per order of this Court dated 27.11.2014 passed in M.P. No. 1 of 2014 and the claimants have also been permitted to withdraw 50% of the amount deposited along with accrued interest by order dated 27.03.2015 passed by this Court in M.P. No. 2 of 2014. Hence, from the remaining amount, the claimants/respondents 1 and 2 are permitted to withdraw their respective shares, as per the apportionment of the Tribunal, by filing necessary application.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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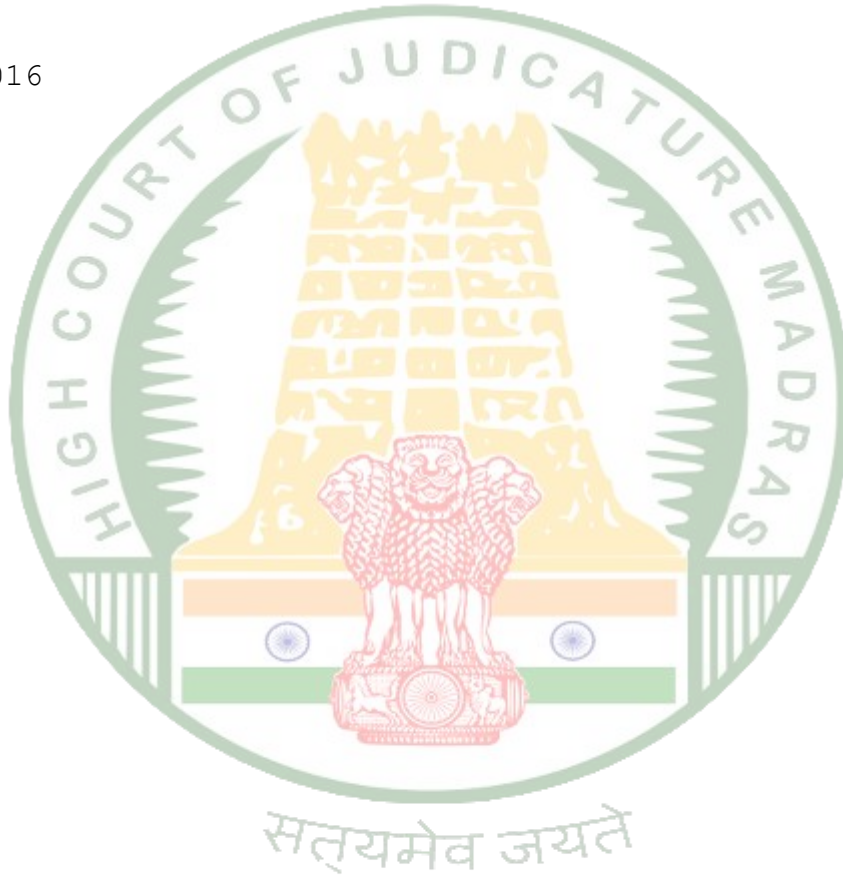
To

The II Additional District Court,
(Motor Accidents Claims Tribunal)
Salem.

+1 cc to M/s.M.B.Gopalan Advocate sr.14191
+1 cc to Mr.D.Shivakumaran Advocate sr.1398

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