

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM:

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

CIVIL MISCELLANEOUS APPEAL No.3585 of 2014

M/s. Royal Sundaram Alliance Insurance Co. Ltd.,
II Floor, No.3, Khader Nawaz Khan Road,
Nungambakkam, Chennai. ... Appellant/2nd respondent

vs.

1. M.Dharmiah
2. M.Selvi
3. M.Durga Devi
4. M.Appu (Minor)
(represented by Mother and
natural guardian, 2nd respondent)
... Respondents/Claimants 1 to 4
5. Shree Ganapathi Trans,
GST Road, Sothupakkam,
Cheyyur, Kanchi District. ... 5th Respondents/1st
Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the judgment and decree dated
20.03.2014 passed by the Motor Accidents Claims Tribunal, V
Court of Small Causes, Chennai, in M.C.O.P.No.2467 of 2011.

For Appellant : Mr.N.Vijayaraghavan

For Respondents 1 to 4 : Mr.S.Angamuthu

J U D G M E N T

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

Heard the learned counsel for the appellant/Insurance
Company and the learned counsel appearing for the respondents 1
to 4/claimants.

2. Challenging the quantum of compensation awarded by the
Motor Accidents Claims Tribunal (V Court of Small Causes),

Chennai, by its judgment dated 20.03.2014 in M.C.O.P.No.2467 of 2011, the Insurance Company has come up with the present appeal.

3. This is a case of fatal accident. On 25.03.2011, about 12.45 p.m., when the deceased D.Mohan was riding the motor cycle bearing Registration No.TN-04-T-2455 at G.S.T. road near Tambaram Bus Stand, a Lorry bearing Registration No.TN-19-B-7279 came from south to north direction in a rash and negligent manner and hit the deceased, thereby he fell down and sustained grievous head injuries and died on the spot. Alleging that the accident took place only due to the negligence of the Lorry driver and that the 5th respondent herein, the owner of the Lorry and the appellant Insurance Company, with which the Lorry is insured are liable to compensate them, the claimants filed a claim petition before the Tribunal seeking a sum of Rs.20,00,000/- as compensation, as the deceased was the only bread-winner of the family.

4. The owner of the Lorry, who is the 5th respondent in this appeal remained exparte before the Tribunal. The appellant/Insurance Company resisted the claim petition before the Tribunal questioning the manner of accident and the quantum of compensation claimed by the claimants.

5. Before the Tribunal, in support of the claim, the 2nd claimant, viz. Mrs.M.Selvi, wife of the deceased was examined as P.W.1; an eye-witness to the accident, viz. Mr.Govindaraj was examined as P.W.2; one Mr.Paramesh Anand (Civil Engineer) was examined as P.W.3 and Exs.P1 to P9 were marked, the details of which are as follows:

Ex.P-1	Copy of FIR
Ex.P-2	Copy of Post-mortem Certificate
Ex.P-3	Copy of Driving Licence of the driver of the Lorry
Ex.P-4	Death Certificate
Ex.P-5	Legal Heir Certificate
Ex.P-6	Copy of Insurance Policy
Ex.P7	Copy of RC Book
Ex.P8	Driving Licence of the deceased
Ex.P9	Building Plan Contract Deed, dated 18.08.2010

6. On the side of the appellant/Insurance Company, no witness was examined and no document was marked.

7. The Tribunal, taking note of the oral evidence of P.W.1 and the corroborating evidence of P.W.2, an eye-witness to the

accident coupled with Ex.P1-F.I.R., held that the accident took place due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN-19-B-7279 and awarded a sum of Rs.16,89,000/- as compensation to the claimants with interest at 7.5% per annum, from the date of filing of the claim petition till the date of deposit, under the following heads:

Loss of income	Rs. 15,18,840.00
Consortiu	Rs. 1,00,000.00
Funeral expenses	Rs. 25,000.00
Loss of Love and Affection	Rs. 45,000.00
Total compensation	Rs.16,88,840. 00 r/off to Rs.16,89,000.00

8. According to the learned counsel for the appellant/Insurance Company, the compensation awarded by the Tribunal is exorbitant and not in consonance with the facts and circumstances of the case.

9. While so, learned counsel appearing for the respondents 1 to 4/claimants would submit that the compensation awarded by the Tribunal is just and reasonable.

10. Heard the rival submissions of the learned counsel and carefully perused the materials available on record.

11. As could be seen from the records vide Ex.P8-Driving Licence of the deceased, at the time of accident, he was aged 38 years. Taking into account the evidence of P.W.1 that the deceased was a Building Contractor, earning a sum of Rs.10,000/- per month, the Tribunal fixed the monthly income of the deceased at Rs.7,500/-. Further, relying on the judgments of the Apex Court, the Tribunal added 50% of the income of the deceased towards future prospects. Thus, a sum of Rs.11,250/- was derived as the monthly income of the deceased and after deducting 1/4th towards his personal expenses, a sum of Rs.8,438/- was arrived as the monthly contribution to his family. Accordingly, compensation towards "Loss of income" was arrived at Rs.15,18,840/- (Rs.8438/- x 12 x '15'). Since the main objection raised by the Insurance Company is the fixation of the monthly income of the deceased, this Court is inclined to modify the compensation towards "Loss of income". Taking the monthly income of the deceased at Rs.7,500/- and adding 30% of

the same towards future prospects, a sum of Rs.9,750/- (7,500/- + Rs.2,250/-) is arrived and after deducting 1/4th towards personal expenses, a sum of Rs.7,313/- is fixed as monthly contribution to the family. Applying the multiplier of '15' to the annual income of 87,756/- (Rs.7,313/- x 12), a sum of Rs.13,16,340/- is arrived as compensation towards "Loss of income".

12. Since the compensation awarded by the Tribunal under other heads, viz. "Loss of Consortium", "Funeral expenses" and "Loss of Love and Affection" are found to be reasonable, they are confirmed. Break-up details of the revised award would run thus:

Heads	Award of the Tribunal	Revised Award of this Court
Loss of income	Rs. 15,18,840.00	Rs. 13,16,340.00
Consortium	Rs. 1,00,000.00	Rs. 1,00,000.00
Funeral expenses	Rs. 25,000.00	Rs. 25,000.00
Loss of Love and Affection	Rs. 45,000.00	Rs. 45,000.00
Total compensation	Rs.16,88,840.00	Rs.14,86,340.00 r/off to Rs.15,00,000/-

13. In fine, the compensation awarded by the Tribunal is modified and the respondents 1 to 4/claimants are entitled to a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed. It is needless to state that if the Insurance Company has not deposited any amount so far, it is directed to deposit the entire award amount as ordered by this Court together with accrued interest from the date of the claim petition till the date of deposit to the credit of M.C.O.P.No.2467 of 2011 on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai, within a period of six (6) weeks from the date of receipt a copy of this judgment.

14. On such deposit being made, the respondents 1 to 3/claimants are permitted to withdraw the award amount. As far as the minor 4th respondent/claimant is concerned, his proportionate share of the award amount shall be initially deposited in any one of the Nationalised Banks under

reinvestment scheme, initially for a period of three years renewable thereafter and the interest accrued on such deposit shall be withdrawn by his natural guardian, once in three months, till he attains majority.

15. It is also made clear that the award amount shall be paid to the major claimants in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. In the case of minor claimant, the award amount shall be paid to him in the form of a crossed Account Payee Cheque, once he attains majority.

The Civil Miscellaneous Appeal is partly allowed with the above modification. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To:

1.The V Judge,
The Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.

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

+lcc to Mr.S.Angamuthu, Advocate, S.R.No.11439
+lcc to M/S.M.B.Gopalan, Advocate, S.R.No.11246

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rsi(CO)
srg(28/03/2016)