

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

C.M.A.No.808 of 2014

1. Mohamed Saleem
2. Asma Appellants/Petitioner

Vs.

1. Ganapathy
2. The Divisional Manager,
National Insurance Company Limited,
372, J.N.Street,
Puducherry. Respondents/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 17.07.2012 passed in M.C.O.P.No.705 of 2010 on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), Pondicherry.

For Appellants : Mr.P.Nethaji

For Respondents: Mr.J.Chandran for R.2

JUDGMENT

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

The claimants, who are the parents of the deceased - Syed Madhar Kasim, who died in the road traffic accident, have preferred this appeal challenging the award dated 17.07.2012 passed in M.C.O.P.No.705 of 2010 on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), Pondicherry.

2. It is a case of fatal accident. On 10.09.2010, at about 00.45 hours at 100 feet road, Ellaipillaichavadi, Puducherry, when Syed Madhar Kasim, aged 21 years along with his brother Raffique @ Mohammed Hasan Mydeen as a pillion-rider

were proceeding in a Bajaj Pulsar Motorcycle bearing Reg.No. PY 01-AU-8532 along the north to south direction in extreme left side of road, a Mahindra Tractor bearing Regn.No.PY-01-X-7009 came in the opposite direction in a rash and negligent manner with a high speed and suddenly turned towards west direction and dashed against the motorcycle. As a result, the rider as well as the pillion rider of the motor cycle were thrown on the road in a pool of blood. Immediately, they were admitted as in-patients in the Government General Hospital, Puducherry and were later referred to JIPMER Hospital, Puducherry for further treatment. Despite the treatment, both of them died in the Hospital itself. The deceased was working as an Engineer in a private company at Puducherry and was earning a sum of Rs.20,000/- per month. Apart from this, the deceased is also running a footwear shop under the name and style of "Western Footwear" at Puducherry and earning a sum of Rs.15,000/- per month. Due to the rash and negligent driving of the 1st respondent's driver, the deceased Syed Madhar Kasim died and crippled the family of the claimants. Alleging that the 1st respondent, being the owner and the 2nd respondent, being the insurer of the accident vehicle, are jointly and severally liable, the appellants, the father and the mother of the deceased Syed Madhar Kasim filed a petition before the Tribunal claiming a compensation of Rs.40,00,000/-.

3. In support of the claim, the 1st claimant - father of the deceased was examined as P.W.1 and Ex.P-1 to Ex.P-20 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Photo copy of First Information Report
P2	Xerox copy of RC Book of the R1's vehicle
P3	Xerox copy of the Insurance Policy of the R1's vehicle
P4	Xerox copy of Accident Inspection Report
P5	Xerox copy of the driving licence of the R1's driver
P6	Xerox copy of the Postmortem Examination report
P7	Xerox copy of the driving licence of the deceased
P8	Xerox copy of the final report
P9	Xerox copy of the Birth Certificate of deceased
P10	Xerox copy of the Education Certificate of deceased

Ex.No.	Details
P11	Xerox copy of the licence of M/s.Western Footwear
P12	Xerox copy of Income Tax Certificate
P13	Xerox copy of the VAT Certificate
P14	Xerox copy of the Bank Statement of Loan Credited
P15	Loan Pass Book
P16	Xerox copy of passport
P17	Xerox copy of Bank Statement of Loan credited
P18	Xerox copy of passport of first petitioner
P19	Xerox copy of Family Ration Card
P20	Xerox copy of Adhaar Card of the 2 nd claimant

On behalf of the Insurance Company, R.W.1 - the Motor Vehicle Inspector was examined and no exhibits were marked before the Tribunal.

4. The Tribunal based on the oral evidence of P.W.1, the F.I.R. and also taking note of the fact that the rider of the two wheeler was having valid driving licence to drive the two wheeler came to conclusion that the 1st respondent's driver was rash and negligence and was responsible for the accident and consequently liability was fixed on the 2nd respondent Insurance Company, since the vehicle belonging to the 1st respondent herein was insured with the 2nd respondent, to compensate the claimants. On this issue, learned counsel for the 2nd respondent 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 by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amount 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 by adopting multiplier 15	Rs.5,10,000/-
2	Loss of love and affection	Rs. 10,000/-
3	Funeral expenses	Rs. 10,000/-

Sl. No.	Head	Amount granted by the Tribunal
	Total	Rs.5,30,000/-

6. The only serious objection raised by the appellants/claimants with regard to the grant of compensation is that the Tribunal failed to take into consideration that the deceased was an educated young man and working as an Engineer. Further, the future prospects of the deceased were not taken into consideration and the multiplier adopted is also very low. The compensation awarded by the Tribunal towards loss of love and affection and funeral expenses is also very low. Reliance has been placed by the learned counsel for the appellants on a decision of the Supreme Court in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC).

7. Heard Mr.J.Chandran, learned counsel appearing for the 2nd respondent - Insurance company.

8. The Tribunal considering the employment of the deceased arrived at a sum of Rs.15,000/- per month as income of the deceased. His contribution to the family was taken as Rs.3,000/- per month by the Tribunal and adopting multiplier 15, the loss of dependency to the claimants was arrived at Rs.5,10,000/- (Rs.3,000 x 12 x 15). It is to be pointed out that the multiplier 15 adopted by the Tribunal is not correct in view of the decision of the Supreme Court in Sarla Verma's case. The Tribunal has also not taken into consideration the future prospects of the deceased, who was an young man and working as an Engineer. The accident in this case had occurred on 10.9.2010. We also notice that the amount of compensation awarded towards loss of love and affection to the parents of the deceased is very meagre. Therefore, finding that there has been gross injustice in granting compensation to the claimants, we are inclined to enhance the compensation. Accordingly, considering the fact that the monthly income of the deceased was Rs.15,000/- as on the date of accident, a further sum of 50% of the said amount i.e., Rs.7,500/- is added towards future prospects of the deceased. After deduction of 50% of the said amount of Rs.22,500/- (Rs.15,000/- + Rs.7,500/-), the contribution of the deceased towards the family could be arrived at Rs.11,250/- per month. Accordingly, loss of pecuniary benefits to the claimants could be granted as Rs.24,30,000/- (Rs.11,250x12x18) by adopting multiplier 18 and enhancing the amount of Rs.5,10,000/- awarded by the Tribunal under the said head. A further sum of Rs.25,000/- could be awarded towards loss of love and affection to the claimants, who are parents of deceased by enhancing the sum of Rs.10,000/- awarded by the

Tribunal under the said head. A further sum of Rs.15,000/- could be awarded towards funeral expenses by enhancing the sum of Rs.10,000/- awarded by the Tribunal under the said head. Thus, a total sum of Rs.24,70,000/- (Rupees twenty four lakhs and seventy thousand only) could be awarded towards compensation to the claimants.

9. Accordingly, the compensation awarded by the Tribunal stands enhanced as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 18	Rs.5,10,000/-	Rs.24,30,000/-
2	Loss of love and affection	Rs. 10,000/-	Rs. 25,000/-
3	Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
	Total	Rs.5,30,000/-	Rs.24,70,000/-

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

10. In the result, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.24,70,000/- from Rs.5,30,000/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The award amount is apportioned equally between the claimants.
- (iv) The 2nd respondent - Insurance Company is directed to deposit the entire amount of compensation as awarded by this Court together with interest before the Tribunal within a period of eight weeks from the date of receipt of copy of this judgment;
- (v) On such deposit, the claimants are permitted to withdraw the award amount as ordered and apportioned by this Court as above.

(vi) The excess court fee paid in this appeal is directed to be refunded as per rule.

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

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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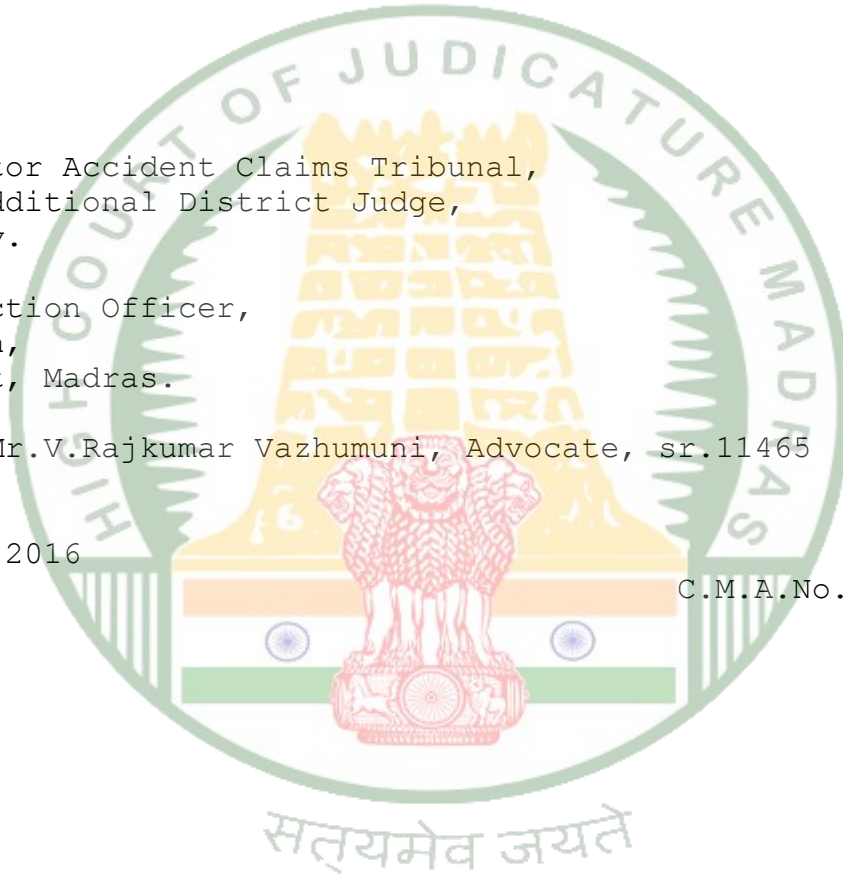
1. The Motor Accident Claims Tribunal,
The III Additional District Judge,
Puducherry.

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

+1 cc to Mr.V.Rajkumar Vazhumuni, Advocate, sr.11465

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kra 23.03.2016

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