



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.M.A.(MD) No.350 of 2016
C.M.P.(MD) No.4890 of 2016

The Branch Manager,
Reliance Insurance Co. Ltd.,
Sri Meenakshi Plaza,
First Floor, Plot No.HIG 55-80 Feet Road,
Anna Nagar, Madurai. ... Appellant/Respondent No.2

Vs.

1.Subbuthai
2.Kanagalakshmi ... Respondents 1 & 2/Petitioners
3.N.Venkatachala Perumal
4.Soundiram Ammal ... Respondents 3 & 4/
Respondent 1 & 3

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 22.07.2015 made in M.C.O.P.No.74 of 2011, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sivakasi.

For Appellant : Ms.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal arises out of the award made in M.C.O.P.No.74 of 2011 dated 22.07.2015, on the file of the Motor Accidents Claims Tribunal (Sub Judge), Sivakasi.

2.One Soundararajan met his death in an accident that took place on 09.11.2010 at about 11.15 hours. The deceased was riding his bicycle along Sattur - Kovilpatti road near Venkateshwarapuram H.P. Petrol Pump from South to North followed by one Singaraj in another bicycle. At such time, third respondent's TATA Sumo bearing registration No.TN 58 T 3654 was driven in a rash and negligent manner from the opposite direction and the same hit the bicycle. As a result, the deceased fell off the bicycle, sustained injuries and died. Respondents 1 and 2, his legal heirs, filed a civil suit for compensation in M.C.O.P.No.74 of 2011, before the Motor Accident Claims Tribunal (Sub Court), Sivakasi. Respondent 1 and 2/claimants examined 2 witnesses and marked 6 exhibits. On the

side of the appellant/2nd respondent R.Ws.1 and 2 were examined and Exs.R.1 and 2 were marked.

On appreciation of submissions and evidence before it, the Tribunal directed payment of Rs.10,78,000/- under the following heads:

1.Loss of income	: Rs. 6,40,000.00
2.Funeral expenses	: Rs. 25,000.00
3.Transport expenses	: Rs. 10,000.00
4.Loss of Estate	: Rs. 3,000.00
5.Loss of Love and affection	: Rs. 3,00,000.00
Total	: Rs. 10,78,000.00

Aggrieved by the order of the Tribunal, the appellant/insurance Company has preferred the present appeal.

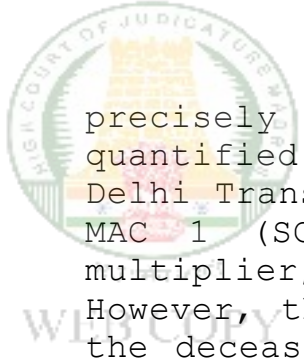
3. We have heard learned counsel for the appellant and perused the materials available on record.

4.Learned counsel for the appellant submitted that as against multiplier of 15, which is applicable for the age of 38 years, a wrong multiplier 16 is adopted. The compensation towards loss of love and affection in a sum of Rs.1,00,000/- to 3 claimants is on the higher side. Learned counsel would submit that the Tribunal failed to consider the contributory negligence of the deceased in the accident.

5.Allowing the claim, the Tribunal held that the 3rd respondent TATA Sumo was involved in the accident and its driver was responsible therefor and as the insurer of the Tata Sumo, the appellant is liable to pay compensation awarded to the claimants and fixed the same at Rs.10,78,000/-.

6.Perusal of the impugned judgment shows that evidence of the P.W.1/1st claimant, is supported by PW2-eye witness, and corroborated by Ex.P1-FIR, registered against 3rd respondent's driver, Ex.P5-Sketch and Ex.P3-Charge sheet. While operating the vehicles on Highways, it is for the drivers of heavy vehicles, to slow down the speed of the vehicle and to see as to whether there is any vehicle crossing the road. Considering the cumulative effect of the evidence adduced, had driver of the 3rd respondent driven the vehicle cautiously, the accident could have been averted. It is well settled that in claims cases, the test to prove negligence is, preponderance of probability. Testing the totality of evidence in the abovesaid principle, we do not find any error or flaw, in the finding of the Tribunal, fixing negligence, on the driver of the 3rd respondent, and hence the same is confirmed.

7. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- for the loss of love and affection. Though loss of love and affection cannot be



precisely measured in terms of money, the same has to be quantified. As per the decision in Smt. Sarla Verma & ors. v. Delhi Transport Corporation & another (SC) reported in 2009 (2) TN MAC 1 (SC), the proper multiplier is 15. If we apply such multiplier, the compensation would be reduced by Rs.40,000/-. However, the Tribunal has not considered the future prospectus of the deceased while computing compensation. Towards loss of estate no amount was awarded. We note that a clerical error stands made in not including the sum of Rs.1,00,000/- awarded towards loss of Consortium in computing the total sum payable both in the judgment and decree. Claimants may seek requisite correction u/s. 152 C.P.C. If considered the award should be increased. Hence, the award cannot be said as excessive.

8. In the result, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition also stands dismissed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS)

To

The Subordinate Judge, Motor Accidents Claims Tribunal, Sivakasi.

Copy to:

Subbuthai,
W/o. Late Soundararajan,
D.No.1/40, North Street,
Munnisevalpatti Post,
Mullitheval, Sathur Taluk,
Virudhunagar District.

+1cc to Mr.S.Srinivasa Raghavan, Advocate, Sr.No.25339

Sj

JM/AAL-MPA/21.07.2016/3P-4C

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