



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

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C.M.A.(MD) No.353 of 2016
C.M.P.(MD) No.4940 of 2016

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.6, Whites Road,
Royapettah,
Chennai - 600 014.

... Appellant/Respondent No.2

Vs.

1.T.Seetha
2.T.Manimegalai
3.G.Thamizh Mani
4.T.Nagarajan
5.M.Gunasekaran

... Respondents 1 to 4/Petitioners
... 5th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 04.06.2015 made in M.C.O.P.No.458 of 2014, on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Pudukkottai.

For Appellant : 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.458 of 2014 dated 04.06.2015, on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Pudukkottai.

2.One Thirumaran met his death in an accident that took place on 11.02.2014 at about 11.45 hours. The deceased was crossing the road to go to his house from Rengamma Sathiram Bus Stop. At such time, fifth respondent's car bearing registration No.TN 45 AQ 1939 was driven in a rash and negligent manner from North to South and the same hit him. As a result, the deceased sustained injuries and died. Respondents 1 to 4, his legal heirs, filed a claim petition in M.C.O.P.No.458 of 2014, before the Motor Accident Claims Tribunal (Principal District Judge), Pudukkottai. Respondent 1 to 4/claimants examined 1 witness and marked 8 exhibits. No oral or documentary evidence was adduced on the side of the appellant/2nd respondent. On appreciation of submissions and evidence before it, the Tribunal directed payment of Rs.9,95,500/- under the following heads:

1. Loss of income	: Rs.4,00,000.00
2. Loss of consortium	: Rs. 25,000.00
3. Loss of Estate	: Rs. 20,000.00
4. Funeral expenses	: Rs. 20,000.00
5. Transportation expenses	: Rs. 5,000.00
6. Loss of Love and affection	: <u>Rs.4,00,000.00</u>
Total	: <u>Rs.9,95,500.00</u>



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.

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4. Learned counsel for the appellant submitted that deceased suffered the accident while crossing the road. The Tribunal failed to see that the accident had taken place owing to his negligence in doing so. Compensation awarded towards loss of love and affection and loss of consortium are on the higher side. He would further submit that when compensation stands awarded for loss of consortium, awarding compensation towards loss of estate was unjustified.

5. Allowing the claim, the Tribunal held that the 5th respondent car was involved in the accident and its driver was responsible therefor and as the insurer of the car, the appellant is liable to pay compensation awarded to the claimants and fixed the same at Rs.9,95,000/-.

6. Perusal of the impugned judgment shows that evidence of the P.W.1/eye-witness, is corroborated by Ex.P1-FIR. The contention of the appellant regarding the accident has not been supported by any evidence or documents. While operating the vehicles near bus stops, it is for the drivers of vehicles, to slow down. Considering the cumulative effect of the evidence adduced, had driver of the car 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 above said principle, we do not find any error or flaw, in the finding of the Tribunal, fixing negligence, on the driver of the Maruthi Omni Car, and hence the same is confirmed.

7. There can be no universal rule that when compensation has been awarded to the wife towards loss of consortium, no amount can be awarded towards loss of love and affection and loss of estate. The factual position necessarily would vary from case to case and the Court may consider the same and award compensation there towards.

8. 'Consortium' as per the decision in Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, comfort, mutual services, sexual intercourse, etc." In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, held as follows:

'In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage

40. Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts



have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

Further, 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. Hence, it cannot be said that the compensation awarded towards loss of love and affection and loss of consortium are on the higher side. In the instant case, we find that a most reasoned approach has been adopted by the Court below. The order under challenge does not call for any interference.

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

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

1. The Motor Accidents Claims Tribunal,
(Principal District Judge),
Pudukkottai.

+1CC to M/S.S.Srinivasa Raghavan, Advocate, SR.No. 25338

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sj
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