

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 1085 of 2017

1. P. Rathinam
 2. Thangaraj
- ... Appellants/Petitioner

Vs.

1. J. John Maneesh Raja
(remained ex-parte before the Tribunal)
 2. United India Insurance Co. Ltd.,
Old No. 139, New No.50, North Usman Road,
T. Nagar,
Chennai - 600 017.
- ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 17.11.2011 passed in MACT O.P. No. 1675 of 2008 by the Motor Accidents Claims Tribunal (Additional District & Sessions Judge), FTC III, Chennai.

For Appellants :: Mr.N.M.Muthurajan

For Respondents:: R1- Exparte
Mr.C. Paranthaman for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimants aggrieved over the quantum of compensation of Rs. 4,20,032/- awarded by the Tribunal for the death of one Rathiesh Kumar , aged about 24 years, working as Mason, alleged to be earning Rs. 350/- per day, in the road accident, which occurred 02.12.2007, when the said Rathiesh Kumar, who was travelling as a pillion rider in the motor cycle bearing Registration No. TN-09-AS-7339, belonging to the 1st respondent and insured with the 2nd respondent, from Meenambakkam to Saidapet, along GST Road, south to north direction, near Azharkhana Sub-way, driven in a rash and negligent manner, hit the central median due to which the said Rathiesh Kumar fell down and later, succumbed to the injuries in the hospital.

2. Heard Mr.N.M. Muthurajan, learned counsel for the appellant and Mr.C.Paranthaman, learned counsel for the 2nd respondent.

3. Since the 1st respondent/owner of the vehicle remained ex parte before the Lower Court, notice is dispensed with as per the Full Bench Judgment of the Madhya Pradesh High Court rendered in Mrs. Jamuna Bai V. Chhote Singh reported in I (2004) Acc. 190 (FB)

4. The Tribunal, relying upon Ex-P1, FIR, lodged against the rider of the two-wheeler, Ex-P2, rough sketch and the evidence of the eye-witness P.W.2, rightly found that the offending vehicle insured with the 2nd respondent was driven rashly and negligently and thereby contributed to the accident. That apart, there is no contra evidence adduced by the respondents to contradict the evidence available on the side of the claimants. Therefore, the finding rendered by the Tribunal with regard to negligence cannot be disturbed.

5. Mr.N.M. Muthurajan, learned counsel for the appellants would submit that the Tribunal wrongly determined the multiplier as 8 as per the age of the parents of the deceased/appellants herein, instead of the age of the deceased.

6. The aforesaid contention of the learned counsel for the appellants has got force. As per the judgment of the Honourable Supreme Court in Amit Bhanu Shali and others Vs. National Insurance Co.Ltd. And others reported in 2012 ACJ 2002 , the age of the deceased alone is required to be taken for determining the multiplier. Therefore, the multiplier 8 adopted by the Tribunal, as per the age of the claimants is set aside.

7. The Tribunal took Rs.250/-per day as the income of the deceased and for 25 days, took Rs.6,250/- as the monthly income and deducted one-third towards "Personal expenses". The determination of Rs.6,250/- as monthly income without awarding "Future Prospects" is erroneous. So also, the deduction of one-third towards " Personal Expenses", since the deceased was a bachelor. Though Mr.C. Paranthaman, learned counsel for the 2nd respondent would oppose adding of " Future Prospects", relying on the judgment rendered in Santosh Devi's case, this Court, in the light of the judgment of the three judge's Bench of the Honourable Apex Court in Rajesh and others V. Rajbir Singh and others, reported in 2013 3 CTC 883 is inclined to add 50% towards " Future Prospects" and accordingly, the total monthly income of the deceased would be,

= Rs.6,250/- (+) 50% (Rs.6,250/-)

Total Monthly Income = Rs.9,375/-

As the deceased died as a bachelor, 50% has to be deducted towards "Personal Expenses" as per Sarla Verma's case. Accordingly, "Monthly Contribution of the deceased to his family" would come to,

= Rs.9,375/- (-) 50% (Rs.9,375/-)

=Rs.4687.50p

Annual Contribution = Rs.4687.50 x 12

The postmortem certificate, Ex-P4, would reveal that the deceased was aged about 25 years and the appropriate multiplier, as per the judgment of the Honourable Apex Court in Smt. Sarla Verma and Others V. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC would be 18. Applying multiplier 18, "Loss of Income" is calculated as hereunder:

Loss of Income = Rs.4687.50 x 12 x 18

= Rs.10,12,500/-

The sum of Rs.15,000/- awarded towards "Loss of Love and Affection" to the appellants is low and the same is enhanced to Rs.50,000/-. So also, the sum of Rs.5000/- awarded towards "Funeral Expenses" is enhanced to Rs.10,000/-. No amount was awarded towards "Transportation Expenses". Hence a sum of Rs.5000/- is awarded. Hence, the award of Rs. 4,20,032/- granted by the Tribunal is enhanced to Rs.10,77,500/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains intact.

8. The 2nd respondent Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, along with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the said amount equally in favour of each of the claimants, through RTGS, after getting their Bank Account details, within a period of two weeks thereafter. The appellants/claimants shall pay additional court-fee for the enhanced amount within a period of two weeks from the date of receipt of a copy of this order.

9. In fine, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is enhanced, as indicated above. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

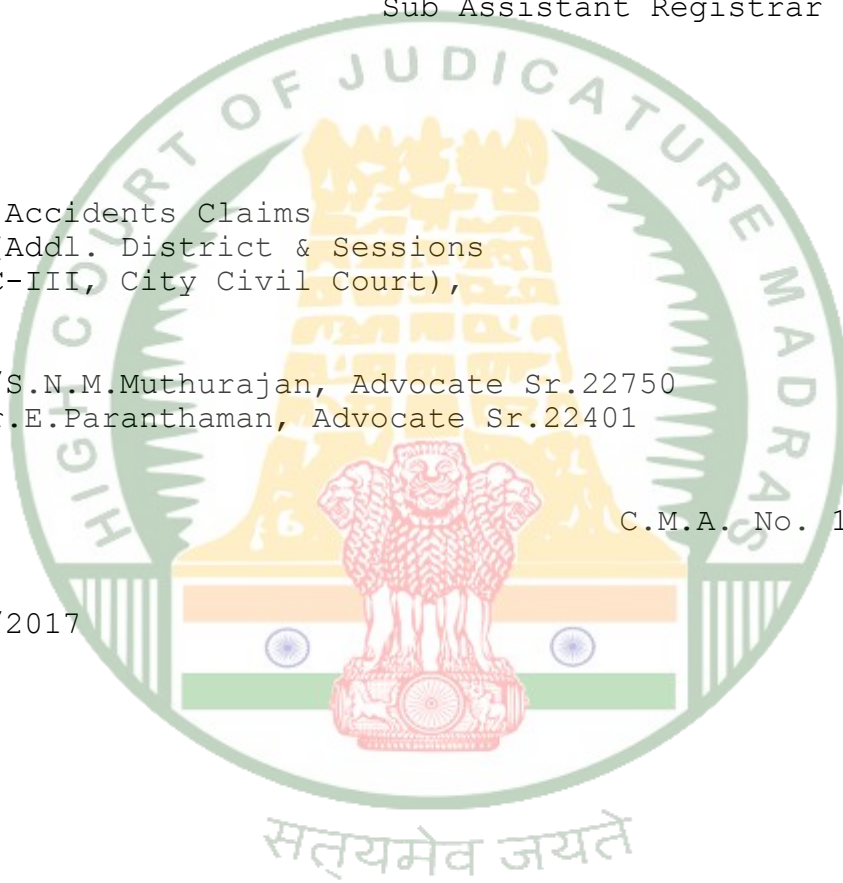
nv
To

The Motor Accidents Claims
Tribunal (Addl. District & Sessions
Judge, FTC-III, City Civil Court),
Chennai.

+1cc to M/S.N.M.Muthurajan, Advocate Sr.22750
+1cc to Mr.E.Paranthaman, Advocate Sr.22401

C.M.A. No. 1085 of 2017

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srg 16/06/2017



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