

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBBIAH
and
THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No.1270 of 2017

1.K.Santhi
2.K.Naresh Babu
3.K.Suganya
M.Radha (since dead) ... Appellants/Petitioners

Versus

1. Suresh Kumar
(R1 remained exparte before the Tribunal)
2. Royal Sundaram Alliance Insurance Company Ltd
Sundaram Towers
No.45 and 46, Whites Road
Chennai - 600 014 ... Respondents/Respondents

Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.06.2015 made in M.A.C.T.O.P. No. 3675 of 2013 on the file of the Motor Accident Claims Tribunal, II Judge (i/c) III Judge, Small Causes Court, Chennai.

For Appellants : Mr. F. Terry Chella Raja

For Respondents : Mr. M. Krishnamurthy for R2

For Respondent 1 : Exparte

JUDGMENT

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

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Chennai in and by the award dated 30.06.2015 passed in M.A.C.T.O.P. No. 3675 of 2013, the claimants have come forward with the present appeal.

2. The claim petition in M.A.C.T.O.P. No. 3675 of 2013 was filed by the Claimants who are the wife, son, daughter and father of the deceased Krishnan. During the pendency of the claim petition, the fourth claimant, who is father of the deceased Krishnan, died.

3. According to the claimants, on 24.03.2013 at about 11.05 hours, when the deceased Krishnan was riding his Pulsar Motor Cycle bearing Registration No. PY-01-BB 7441 along with another person as Pillion rider, from Chengalpattu to Tambaam, near Akshaya Apartments in G.S.T. Road, Guduvancherry, a Maruti Car bearing Registration No. TN 22 BH 4128 came in a rash and negligent manner and hit the two wheeler driven by the deceased from behind. In the impact, the deceased sustained grievous injuries and he was admitted at SRM Hospital, Potheri. In spite of medical treatment, the deceased succumbed to the injuries and died on the next day namely 25.03.2013. It was further stated that at the time of accident, the deceased was aged 55 years, working as Special Sub Inspector of Police at D-3, Guduvancherry Police Station, Kancheepuram District and earning a sum of Rs.35,000/- per month. According to the claimants, the deceased died due to the rash and negligent driving of the driver of the Car, which was insured with the second respondent/Insurance Company. On the death of the deceased, the family of the claimants have lost their bread winner and therefore, the claim petition was filed claiming compensation of Rs.60,00,000/- for the death of the deceased.

4. Before the Tribunal, the first respondent, who is the owner of the offending Car, remained exparte.

5. The Insurance Company resisted the claim petition by filing a counter. According to the second respondent/Insurance Company, it was the deceased who contributed to the accident inasmuch the deceased, who was driving the vehicle in the left side of the road, had suddenly severed to the right side without any indication or signal and this has led to the accident. Therefore, the Insurance Company cannot be mulcted with any liability to pay compensation to the claimants. It was further stated that the compensation amount claimed by the claimants is excessive and therefore, the Insurance Company prayed for dismissal of the claim petition.

6. Before the Tribunal, in order to prove the averments in the claim petition, the first claimant/wife of the deceased, has examined herself as PW1 and two other witnesses as Pws 2 and 3 besides Exs. P1 to P14 were marked. On behalf of the respondents in the claim petition, neither any witness was examined nor any document marked. The Tribunal, on the basis of the available materials on record, particularly the evidence of PW3, who has witnessed the accident, concluded that the accident had occurred due to the rash and negligent driving of the driver of the Car and therefore, the Insurance Company, with whom the car was insured, is liable to pay the compensation amount. As regards quantum of compensation, the Tribunal had taken the age of the deceased as 55 years. As the deceased had 3 years of left over service, the Tribunal proceeded to award compensation by adopting split-up multiplier method. Accordingly, the Tribunal, based on Ex.P12, Pay Certificate, taken the monthly income of the deceased at Rs.29,223/- in which 10% income was deducted towards income tax liability to arrive at a sum of Rs.26,300.00 Out of this

amount, 1/3rd amount was deducted towards the personal expenses of the deceased to take the total loss of income at Rs.20,54,376.90. By adding a sum of Rs.25,000/- towards loss of consortium to the first claimant/wife, Rs.30,000/- towards love and affection and Rs.15,000/- towards Funeral Expenses, the Tribunal awarded a total sum of Rs.21,24,376/- as compensation.

7. The learned counsel for the claimants/appellants would contend that the amount awarded by the Tribunal towards loss of consortium, loss of Love and Affection are very meager and it warrants enhancement. It was further submitted that the Tribunal ought to have awarded some amount towards Loss of Estate but no amount was awarded towards the same. The learned counsel for the appellants further submitted that the deceased met with the accident in Guduvancherry from where he was taken to SRM Hospital situated at Potheri. In this context, the Tribunal ought to have awarded some amount towards transportation charges but no amount was awarded under this head. The learned counsel for the appellants also submitted that the sum of Rs.15,000/- awarded towards funeral expenses is also very low and it requires enhancement. Accordingly, the learned counsel for the appellants therefore prayed for enhancement of the compensation amount.

8. On the contrary, the learned counsel appearing for the second respondent/Insurance Company would contend that what was awarded by the Tribunal as compensation towards pecuniary as well as non-pecuniary compensation is fair and reasonable befitting to the earnings of the deceased and therefore, he prayed for dismissal of the Appeal.

9. We have heard the rival submissions and perused the materials on record. Admittedly, the deceased was working as Special Sub-Inspector of Police and he died at the age of 55 years. He had a left over period of 3 years to retire, at the time of his death. The Tribunal therefore, rightly applied split-up multiplier. While calculating the loss of earnings, the Tribunal has taken into account the age of the deceased, his monthly income, deduction towards income tax and also the pensionary benefits that might have been received by the deceased had he been alive. While so, we see no reason to interfere with the pecuniary compensation awarded by the Tribunal at Rs.20,54,376.90.

10. As regards the non-pecuniary compensation awarded by the Tribunal, we feel that it was grossly inadequate and not befitting to the occupation and earnings of the deceased. We feel that the sum of Rs.25,000/- towards loss of consortium awarded by the Tribunal to the first claimant/wife is very meager and atleast the Tribunal ought to have awarded a sum of Rs.1,00,000/- under the said head. Similarly, for loss of love and affection, the Tribunal awarded a sum of Rs.30,000/- which deserves to be enhanced and we feel that a sum of Rs.2,00,000/- could be awarded towards loss of love and affection to the claimants, which would meet the ends of justice.

11. As rightly pointed out by the counsel for the claimants/appellants, the Tribunal ought to have awarded some amount towards loss of estate to the claimants especially when the deceased died at the age of 55 years, just 3 years prior to his retirement and the expectation of the claimants to receive the terminal benefits and other post-retirement benefits, had the deceased been alive, has to be adequately compensated. Therefore, we award a sum of Rs.1,00,000/- towards loss of estate to the claimants.

12. Further, as pointed out by the counsel for the appellants, the Tribunal could have awarded some amount towards transportation expenses, which the claimants could have incurred for carrying the deceased, soon after the accident, from the accident site to the hospital and thereafter, after his death, from the hospital to their home. While so, we are inclined to award a sum of Rs.25,000/- towards transportation charges, which would meet the ends of justice.

13. In the result, we enhance the compensation amount of Rs.21,24,376.90 awarded by the Tribunal to Rs.25,00,000/- as indicated below:-

Loss of income	:	Rs.20,54,376.90
Loss of consortium to first claimant/wife	:	Rs. 1,00,000.00
Loss of love and affection	:	Rs. 2,00,000.00
Loss of estate	:	Rs. 1,00,000.00
Transportation charges	:	Rs. 25,000.00
Funeral expenses	:	Rs. 15,000.00

		Rs.24,94,376.90
rounded off to	:	Rs.25,00,000.00

14. In the result, the Civil Miscellaneous Appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.21,24,376 to Rs.25,00,000/-. No costs. The second respondent/Insurance Company is directed to deposit the enhanced compensation, as determined by us in this appeal, to the credit of M.A.C.T.O.P. No. 3675 of 2013 on the file of the Motor Accident Claims Tribunal, Chennai, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant shall withdraw a sum of Rs.15,00,000/- and the remaining sum of Rs.10,00,000/- shall be withdrawn by the claimants 2 and 3 in equal proportion with accrued interest.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

To

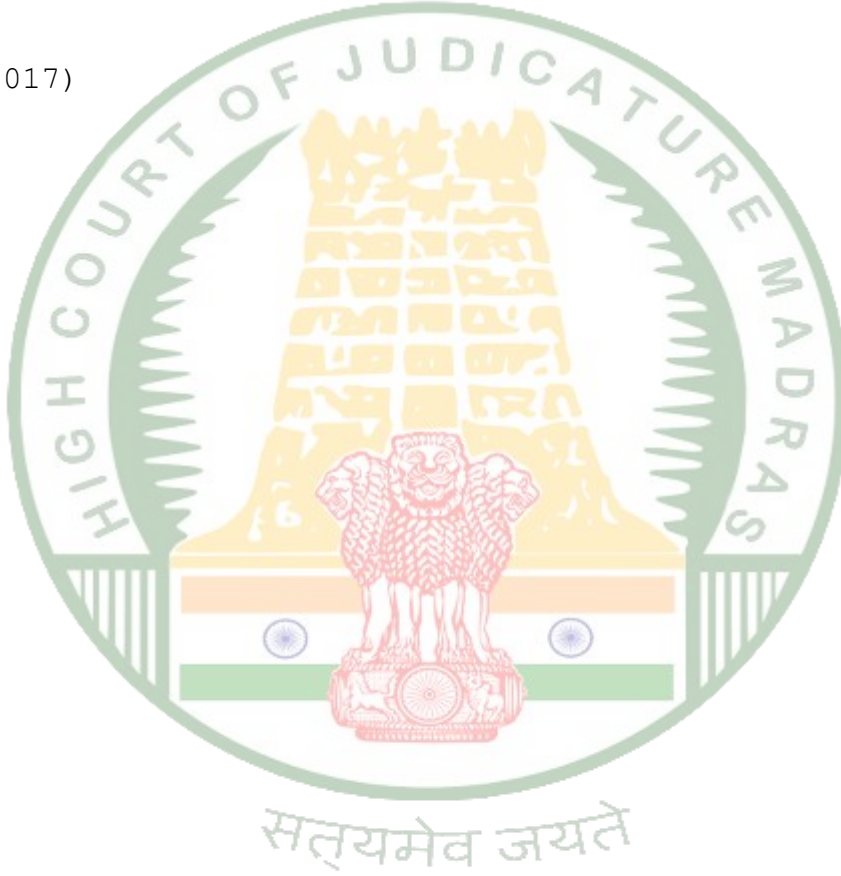
The II Judge (I/C) III Judge,
Motor Accident Claims Tribunal
Court of Small Causes,
Chennai.

+lcc to Mr.M.Malar, Advocate, S.R.No.56159

+lcc to Mr.M.Krishnamoorthy, Advocate, S.R.No.56021

C.M.A.No.1270 of 2017

KK(CO)
EU(22/11/2017)



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