

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH
and
THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1164 of 2015
and
MP.No.1 of 2015

M/s.Royal Sundaram Alliance Insurance Co Ltd
rep. by its Branch Manager
Krishna Plaza, First Floor
No.17, Nachiappa Street,
Erode.

..Appellant/2nd Respondent

..vs..

1. Santhi
2. Thirupathy
3. Sakthivel
4.S.Mohanraj

..Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 23.12.2014 passed by the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri in MCOP.No.151 of 2013.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.Mukund R.Pandiyan
For R1 to R3

JUDGMENT

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

This appeal has been preferred by M/s.Royal Sundaram Alliance Insurance Co. Ltd, Erode ('the insurance company' for short) against the order and decreetal order dated 23.12.2014 passed in MCOP.No.151 of 2013, whereby, the Motor Accidents Claims Tribunal, Krishnagiri ('the Tribunal' for brevity) awarded a sum of Rs.33,60,000/- as compensation for the death of one Shankar, in a road accident that had occurred on 02.07.2012.

2.The short facts of the case are that on 02.07.2012, at about 7.45 hours, while the deceased Shankar was proceeding in a motor cycle bearing Regn.No.TN24-K-9681, on the Dam Koottu Road fly over, Dharmapuri - Krishnagiri Road, a car bearing Regn. No.TN34-P-1291 belonging to the fourth respondent herein and insured with the appellant insurance company came in a rash and negligent manner and hit the motor cycle from behind, due to which, the deceased was thrown out from the motor cycle and sustained fatal injuries and died on the spot. Hence, the respondents 1 to 3 herein, who are the mother, father and brother of the deceased, filed a claim petition before the Tribunal, seeking compensation of Rs.25,00,000/- under the various heads.

3.Denying the averments made in the claim petition, the appellant insurance company filed its counter statement before the Tribunal.

4.In order to prove the claim of the respondents/claimants, the wife of the deceased was examined as P.W.1, besides examining one Pazhani as P.W.2 and Exs.P1 to P15 documents were marked, whereas, the appellant insurance company neither examined any witness nor marked any document. However, one Vasudevan was examined as CW1 and the salary certificate of the deceased and the attendance register were marked as Exs.C1 and C2 respectively.

5.The Tribunal, on evaluation of those oral and documentary evidence, arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the car insured with the appellant insurance company and consequently, awarded a sum of Rs.33,60,000/- as compensation. Aggrieved over the same, the insurance company has filed the present appeal before this Court.

6.When the appeal was taken up for consideration, learned counsel for the appellant fairly contended that the present appeal has been filed only questioning the quantum of compensation awarded by the Tribunal. In view of the same, it is unnecessary for this Court to traverse into the other aspects of the award.

7.With regard to quantum of compensation, the learned counsel for the appellant insurance company submitted that the Tribunal erred in awarding a higher compensation of Rs.33,60,000/-, when the claim made by the respondents/claimants itself was only at Rs.25,00,000/-. The learned counsel further submitted that the compensation awarded by the Tribunal under the head "loss of income" has to be recalculated by first adding future aspects and then deducting personal expenses.

8.Per contra, the learned counsel for the respondents/claimants submitted that the Tribunal, considering all the evidence adduced by the parties, awarded compensation of Rs.33,60,000/-, which is fair, just and reasonable and which warrants no interference by this Court.

9.We have considered the submissions of the learned counsel appearing for the parties and perused the materials.

10.According to the respondents/claimants, the deceased Shankar was earning a sum of Rs.15,000/- per month by working as a P.G. Teacher in Nalanda Matriculation Higher Secondary School. P.W.1/wife of the deceased has also stated so in her evidence. To substantiate the same, one Vasudevan, Principal of the said School was summoned and was examined as CW1, as per which, the deceased was employed as a Maths Teacher at the time of accident and was getting a salary of Rs.15,000/- per month. Through CW1, the salary certificate of the deceased was marked as Ex.C1. During the cross examination of CW1 by the appellant insurance company, the attendance register maintained by the said School was marked as Ex.C2. Based on the aforesaid oral and documentary evidence, the Tribunal has fixed the monthly income of the deceased at Rs.15,000/-, from which, 50% of the salary was deducted towards personal expenses, as the deceased was a bachelor. Thereafter, the Tribunal added 50% of the salary towards future prospects and applied the multiplier "17", considering the age of the deceased, who was 29 years at the time of accident and determined the compensation under the head "loss of income" at Rs.30,60,000/- (Rs.15,000/- x 12 x 17). It is urged by the learned counsel for the appellant that while calculating the compensation under the head "loss of income", after adding the future prospects to the salary, personal expenses has to be deducted. This Court finds considerable force in the contention made by the learned counsel for the appellant. Accordingly, the compensation under the head "loss of income" is recalculated as follows:

Monthly salary of the deceased	Rs.15,000/-
Add: 50% of Rs.15,000/- towards future prospects	Rs. 7,500/-
	
	Rs.22,500/-
Less:half of the salary towards personal expenses	11,250/-
	
loss of monthly income	Rs.11,250/-
	

If multiplier "17" is applied, then the loss of income to the family of the deceased works out to Rs.22,95,000/- (Rs.11,250/- x 12 x 17). Thus, the sum of Rs.30,60,000/- awarded by the Tribunal is hereby reduced to Rs.22,95,000/- under this count.

11.Further, the Tribunal awarded a sum of Rs.1,00,000/- each to the parents and Rs.50,000/- to the brother of the deceased under the head "loss of love and affection", which, in our opinion, is fair, just and reasonable and is hereby confirmed. Similarly, the compensation of Rs.20,000/- awarded by the Tribunal towards transport to hospital is very much reasonable and the same is hereby confirmed. However, the compensation of Rs.30,000/- awarded by the Tribunal under the head "funeral expenses" appears to be on the higher side and the same is hereby reduced to Rs.25,000/-.

12.In view of the above discussion, the compensation of Rs.33,60,000/- awarded by the Tribunal is hereby reduced to Rs.25,90,000/-, the details of which, read as under:

Loss of income	-	Rs.22,95,000/-
Loss of love and affection (parents)	-	Rs. 2,00,000/-
Loss of love and affection (brother)	-	Rs. 50,000/-
Transport to hospital	-	Rs. 20,000/-
Funeral expenses	-	Rs. 25,000/-
		
Total	-	Rs.25,90,000/-
		

The respondents 1 to 3/claimants are entitled to get Rs.6,47,500/-, Rs.6,47,500/- and Rs.12,95,000/- respectively from and out of the aforesaid compensation amount.

13.The appellant insurance company is directed to deposit the aforesaid modified compensation amount, after deducting the amount already deposited, if any, along with proportionate interest at 7.5%p.a, and costs, to the credit of MCOP.No.151/2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 3/claimants are permitted to withdraw their respective compensation amount as apportioned by this Court.

14.In fine, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.

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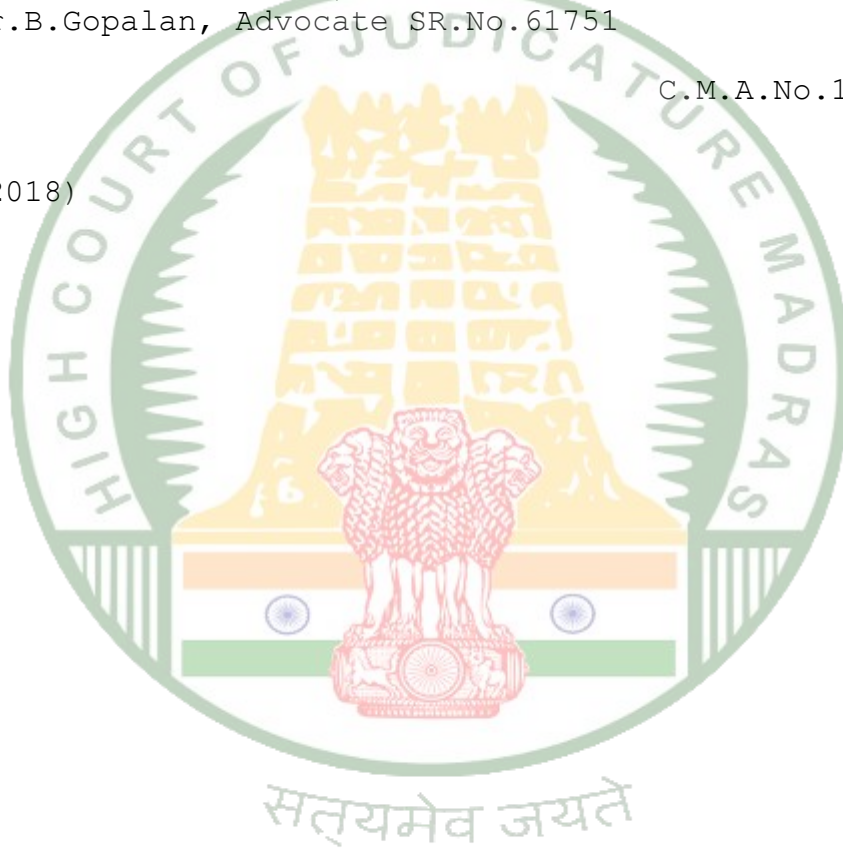
The Record Keeper,
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High court, Madras.

+1cc to Mr.Mukund R.Pandian, Advocate SR.No.62953

+1cc to Mr.B.Gopalan, Advocate SR.No.61751

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