

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and

The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal No.213 of 2015
and

M.P.Nos.1 and 2 of 2015

M/s.National Insurance Co. Ltd.,
Flat No.101-106, N1 BMC House
Connaught Place
New Delhi - 110 00 Appellant /Respondent II

Vs

1.Tmt.A.Rosy
2.J.Alphonse Antony
3.Miss A.Linda
4.Srinivasa Balaji R. Respondents/Petitioner 1 to 3/
Respondent I

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.07.2014, passed in M.C.O.P.No.3324 of 2011, by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr.J.Chandran
For Respondents: Mr.K.Suryanarayanan
for R1 to R3

J U D G M E N T
(Made by S.Manikumar, J.)

Not satisfied with the quantum of compensation of Rs.18,33,080/- with interest at the rate of 7.5% and costs, awarded in MCOP No.3324/2011 dated 17.07.2014 on the file of Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, awarded to the legal representatives of the deceased A.Kelvin, appellant/National Insurance Company, is on appeal. Tribunal has quantified the said sum, as hereunder:

Loss of dependency	: Rs. 17,83,080/-
Love and affection	: Rs. 10,000/-
Funeral expenses	: Rs. 25,000/-
Transport Expenses	: Rs. 5,000/-

	: Rs. 18,33,080/-

2. That on 17.06.2011 at 5.50 hours, when son of the respondents 1 and 2 and brother of respondent No.3, riding his motorcycle bearing Regn. No.TN-09 AU-0783 at Anna Nagar 6th Avenue, Z Block, 14th Street Junction, Chennai, a Maruti Swift car bearing Regn. No.TN-01 AM-5149 belonging to 4th respondent, driven by him in a rash and negligent manner, dashed against the motor cycle and another car and due to the impact the motorcyclist was thrown out. He sustained grievous injuries and died in Government General Hospital. It was claimed that at the time of accident, the deceased was a Senior Consultant in Bright Choice Consultants and earned Rs.20,000/-.

3. Assailing the correctness of the award, Mr.J.Chandran, learned counsel for the appellant submitted that accident occurred solely due to the negligence of the motorcyclist and that the Tribunal should have awarded compensation under Section 140 of the Motor Vehicles Act.

4. It is the further contention of the learned counsel for the appellant that the Tribunal has failed to appreciate that the claimants produced only a course completion certificate of diploma and therefore the contention of the claimants that the deceased was employed as, a Senior Consultant, should have been rejected.

5. It is the further submission of the learned counsel for the appellant/insurance company that, in the absence of any evidence of incorporation of the company, as "Right Choice Consultant", by any acceptable statutory document, such as Registration Certificate, Service Tax Licence etc. the Tribunal, should have rejected the evidence of PW3-Senior Consultant of the said company. In the light of the above, he contended that the Tribunal has erred in fixing the income of the deceased at Rs.12,700/- per month and addition of 30% towards future prospects, is also erroneous.

6. We have gone through the material on record. We find considerable force in the submissions of the learned counsel for the appellant/insurance company on the aspect of fixing of income. However, having regard to Ex.P7 - course completion certificate, the deceased would have secured some job, suitable to his educational qualification and earned a reasonable income, which, we deem it fit to fix as Rs.7,500/-. At the time of accident, he was 20 years. Therefore, we deem it fit to add 50% towards future prospects. Thus, for the purpose of computing compensation under the head loss of contribution to the family, sum of Rs.11,250/- can be taken. He was a bachelor and therefore 50% has to be deducted towards his personal expenses and living expenses. The Tribunal has correctly adopted multiplier '18'. Hence under the head, loss of contribution to the family, claimants are entitled to Rs.12,15,000/- (Rs.11,250 x 12 x 18 x 50/100 = Rs.12,15,000/-).

7. The Tribunal has awarded Rs.10,000/- under the head loss of love and affection, which we deem it record as a pittance. Following the decision of the Hon'ble Apex court in Reshma Kumari's case, the same is enhanced to Rs.2,00,000/-. The Tribunal has awarded compensation of Rs.25,000/- under the head funeral expenses, which, in our considered view, does not require any increase and the same is confirmed. During the course of hearing of this appeal, we directed the learned counsel for the parties to discuss and arrive at a figure, so as to enable the court, to fix the total compensation. Mr.J.Chandran, learned counsel for the insurance company and Mr.K.Suryanarayanan, learned counsel for the claimants submitted that, the compensation payable, can be recorded as hereunder. consensus, accorded is recorded.

8. After modification of the award under the various heads, the total compensation payable to the claimants/legal representatives of the deceased is as under:

Loss of dependency	: Rs. 12,15,000/-
Love and affection	: Rs. 2,00,000/-
Funeral expenses	: Rs. 25,000/-

	: Rs. 14,40,000/-

9. Learned counsel for the respondents 1 to 3/claimants has contended that the third respondent herein is the sister of the deceased and the Tribunal has not apportioned any amount to her. Taking note of the said submission, we are inclined to apportion some amount to her. Out of the total compensation, respondents 1 and 2 are entitled to get Rs.5,00,000/- each, and the third respondent is entitled to get the remaining amount, namely, Rs.4,40,000/-, with proportionate interest.

10. Learned counsel for the appellant/insurance company submitted that the entire award amount with proportionate interest and costs, has already been deposited and that the claimants/legal representatives of the deceased have been permitted to withdraw 25% of the amount deposited. In view of the same, appellant/insurance company is permitted to seek for refund of the balance amount lying in the credit of MCOP No.3324 of 2011 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai. Tribunal is directed to disburse the compensation amount, only, after due verification and identity of the claimants/respondents 1 to 3. We direct that, there should be strict compliance.

In the result, the civil miscellaneous appeal is partly allowed to the extent indicated above. No costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

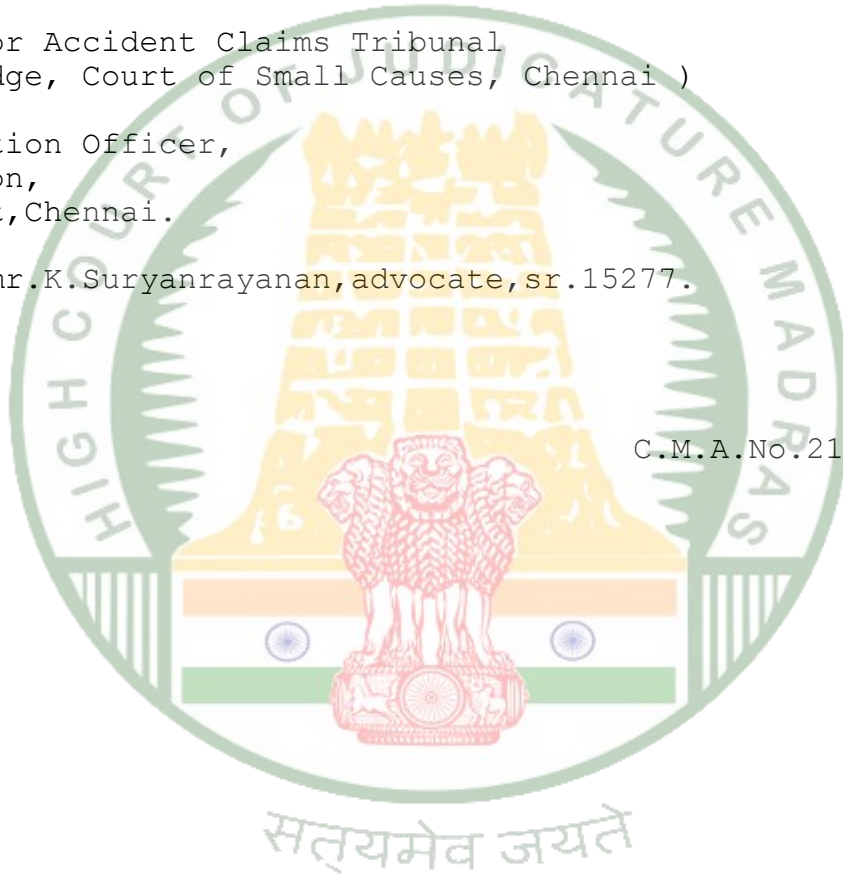
1.The Motor Accident Claims Tribunal
(Chief Judge, Court of Small Causes, Chennai)

2.The Section Officer,
V.R.Section,
High Court,Chennai.

+1 cc to mr.K.Suryanrayanan,advocate,sr.15277.

nm(co)
krd 28/3

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