

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1663 of 2017
and CMP.No.8886 of 2017

The Chief Manager,
The Oriental Insurance Company Limited,
3rd Party Claims Hub,
No.216, Old No.115,
Prakasam Salai,
Broadway, Chennai - 600 108. Appellant/2nd Respondent

vs.

1. P.Sangeetha
2. Minor Gowtham
3. R.Viswanathan
4. Valarmathi
5. V.Dinesh Babu Respondents 1 to 5/
Petitioners
6. V.Raja Mahendran 6th Respondents/1st Respondent

[2nd respondent minor, represented by mother guardian and next friend, 1st respondent herein]

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the Decree and Judgment dated 26.04.2016, in M.C.O.P.No.1571 of 2013, passed by the Motor Accidents Claims Tribunal, (I Additional District Judge), Cuddalore.

For Appellant : Mrs.C.Harini
for Mr.N.Vijayaraghavan

For Respondents: Mr.R.Sreedhar

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

For the death of Prakash, legal representatives of the deceased, have filed MCOP No.1571 of 2013, on the file of Motor Accidents Claims Tribunal, (I Additional District Judge), Cuddalore, claiming compensation of Rs.50,00,000/- under various

heads. At the time of accident i.e. on 02.04.2013, he was aged 25 years. Claiming that deceased was a owner of Jewellery /pawn broker, legal representatives/claimants contended that he earned Rs.50,000/- per month. Ex.P8, Pawn Broker's licence, Ex.P9, dated 20.03.2013, order for renewal of licence issued by the Thasildar, Kurinjipadi, Ex.P16, list of membership of Kullanchavadi Jewellery Shop and pawn brother shop, Ex.P17 dated 11.07.2013, notice issued by ICICI Bank to the deceased, Ex.P18, Token issued by ICICI Bank and Ex.P19, series of original Bill Books and Estimate Books have been filed to support avocation and income.

2. However, by observing that the legal representatives of the deceased/claimants have not filed any document to show the actual income of the deceased, by accepting the avocation, the tribunal fixed the monthly income as Rs.25,000/- and accordingly, computed the loss of contribution to the family. The tribunal has awarded compensation of Rs.40,85,000/- with interest, at the rate of 7.5% per annum from the date of claim till deposit as hereunder.

Pecuniary loss	: Rs.38,25,000/-
(Rs.25,000/- x $\frac{3}{4}$ x 17 x 12)	
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	
to minor son	: Rs. 1,00,000/-
to parents	: Rs. 40,000/-
Funeral Expenses	: Rs. 20,000/-
Total	: Rs. 40,85,000/-

3. Instant appeal is filed by the Oriental Insurance Company Limited, on the sole ground that determination of monthly income as Rs.25,000/- is high, in the absence of any bank accounts / income tax returns. Excepting the above, no other ground is urged.

4. On 18.04.2017, when CMP No.6577 of 2017 in CMA Sr. No.79459 of 2016, filed to condone the delay of 47 days in filing the appeal, came up for hearing, we directed the appellant herein to deposit 75% of the award amount with proportionate interest and costs. Subsequently, on 07.06.2017, delay was condoned.

5. On this day, when the matter came up for further hearing, Ms.Harini, learned counsel representing Oriental Insurance Company Limited, appellant herein and Mr.R.Sreedhar, learned counsel representing the legal representatives of the deceased / respondents, after deliberations, on the limited challenge, stated supra, have consented for determination of compensation as Rs.38,19,500/-, with interest, at the rate of 7.5% per annum and costs, less the statutory deduction as hereunder.

Income fixed : Rs.15,000/- per month
Future prospects : Rs. 7,500/-
Total : Rs.22,500/-
Deduction : 1/4th

Pecuniary Loss : Rs.34,42,500/-
(Rs.22,500/- x 12 x 3/4 x 17)
Loss of consortium : Rs. 1,00,000/-
Loss of love and affection : Rs. 2,00,000/
Loss of Estate : Rs. 50,000/-
Funeral Expenses : Rs. 25,000/-
Damages to clothes & articles :Rs. 2,000/-
Total : Rs. 38,19,500/-

6. In the light of the consensus arrived at by the learned counsel for the parties, on appeal, compensation has to be reduced. Compensation awarded by the tribunal is Rs.40,85,000/-. On appeal, compensation arrived at by parties is Rs.38,19,500/-. Reduction in quantum of compensation is Rs.2,65,500/- and that the same is deducted from the share of the wife.

7. Upon perusal of the award shows that though, brother is also one of the legal representatives of the deceased, who had joined the claim, no compensation has been awarded by the tribunal on the ground that he is not a legal heir of the deceased, which we are not inclined to subscribe. As per Section 166 of the Motor Vehicle's Act, 1988, a claim can be made by any or all legal representatives of the deceased. Brother, who had lost the love and affection of the deceased is entitled to claim compensation under the head loss of love and affection and also some portion of the contribution to the family.

8. That apart, Mr.R.Sreedhar, learned counsel for the legal representatives /claimants fairly submitted that Rs.3,00,000/- can be apportioned to the share of the brother. Compensation now arrived at by the parties is Rs.38,19,500/-. Having regard to the age of the minor, we are not inclined to deduct any amount from Rs.10,00,000/-, apportioned to the share of the minor, by the tribunal. So also, we are not inclined to reduce any compensation from Rs.3,00,000/- each, apportioned to the parents. Left with no other alternative we propose to deduct Rs.3,00,000/- from the share apportioned to the wife.

9. Thus, compensation of Rs.38,19,500/- with interest at the rate of 7.5% per annum from the date of claim till deposit, is apportioned as hereunder.

Wife	: Rs.19,19,500/-
Minor son	: Rs.10,00,000/-
Parents	: Rs. 6,00,000/-
(Rs.3,00,000/- each)	
Brother	: Rs. 3,00,000/-
Total	: Rs.38,19,500/-

10. Order dated 18.04.2017 in CMP No.6577 of 2017 in CMA Sr.No.79459 of 2016 directing deposit of 75% of the award amount with proportionate interest and costs, less the statutory deposit to the credit of MCOP No.1571 of 2013, dated 26.04.2016, on the file of MACT [I Additional District Judge], Cuddalore, is stated to have been complied with. M/s.Oriental Insurance Company Limited, Chennai, appellant herein is directed to deposit the balance amount to the credit of MCOP No.1571 of 2013, on the file of MACT [I Additional District Judge], Cuddalore, with proportionate interest at the rate of 7.5 % per annum and costs, within a period of four weeks from the date of receipt of a copy of this order.

11. Upon deposit of the balance amount with proportionate interest and costs, major respondents/claimants are permitted to withdraw the share apportioned to them with proportionate interest and costs, by making necessary applications.

12. Share apportioned to the minor/respondent No.2, shall be in the bank deposit till he attains majority. Interest accruing on the share of the minor shall be paid to the 1st respondent/mother of the minor once in three months, till he attains majority. On attainment of majority, he shall file necessary applications for withdrawal.

13. The Civil Miscellaneous Appeal is allowed in part, as indicated above. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

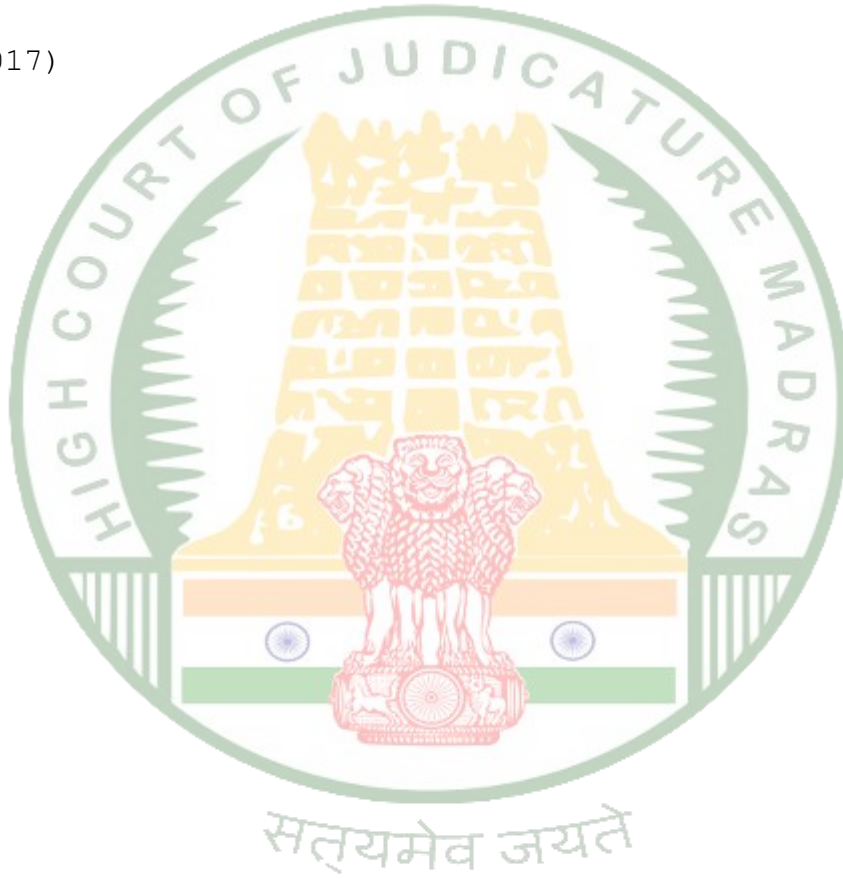
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To
The Motor Accidents Claims Tribunal,
[I Additional District Judge], Cuddalore.

+1cc to M/s.R.Sreedhar, Advocate sr.41545

C.M.A.No.1663 of 2017
and CMP.No.8886 of 2017

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