

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.06.2017

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.2439 of 2016
and
C.M.P. No.17186 of 2016

The Regional Manager
The New India Assurance Company Ltd.
No.30, Jawaharlal Nehru Street
Pondicherry

... Appellant/R2

Vs.

1.Nathiya
2.Lakshmi
3.V.Krishnapriya (Minor)
4.V.Loshani (Minor)
Respondents 3 and 4
Rep by mother Mrs.Nathiya
5.S.Sivamani

...RR1 to 4/Petitioners

...Respondent No.5/R1

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 08.07.2015, passed in M.C.O.P. No.355 of 2013, by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Virudhachalam.

सत्यमेव जयते

For Appellant : Mr.R.Neethi Perumal

For Respondents : Mr.Udayakumar for R1 to R4

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JUDGMENT

(Made by S.MANIKUMAR, J.)

Being aggrieved by the quantum of compensation of Rs.21,14,000/- with interest, at the rate of 7.5% per annum, from the date of claim, till deposit and costs, awarded to the

legal representatives of the deceased, appellant/New India Assurance Company, has filed the instant appeal. At the time of accident, the deceased, was aged 35 years.

2. Going through the award and material on record, it could be deduced that Vasudevan, sole breadwinner of the respondents, while riding his motorcycle, bearing Registration No.TN-10 R-0159, on Chennai - Ulundurpet National Highways 45, near Kali Temple, another two wheeler, bearing Registration No.TN-31 AD-8933, drive by S.Sivamani/5th respondent herein, in a rash and negligent manner, hit the motorcycle driven by Vasudevan, due to which, he was thrown off. He sustained head injuries and died on the spot. A case in Crime No.738 of 2012 on the file of Ulundurpet Police Station has been registered.

3. Legal representatives have filed M.C.O.P. No.355 of 2013, on the file of Motor Accident Claims Tribunal (Principal Subordinate Judge), Virudhachalam, claiming compensation under various heads. On the basis of oral and documentary evidence, the Claims Tribunal held that the 5th respondent/motorcyclist, was negligent in causing the accident. Fixing the monthly income as Rs.13,500/-, the Tribunal awarded compensation of Rs.21,14,000/-, with 7.5% per annum, with interest and costs, as follows:-

Loss of contribution to family	:	Rs.19,44,000/-
(Rs.12,300/- x 3/4 x 12 x 16)		
Loss of consortium	:	Rs. 50,000/-
Loss of love and affection	:	Rs. 1,00,000/-
Funeral expenses	:	Rs. 10,000/-
Transportation	:	Rs. 10,000/-
Total	:	Rs.21,14,000/-

4. Being aggrieved by the judgment of the Tribunal fixing of monthly income as Rs.9,000/- and compensation awarded under other heads, as excessive, appellant/New India Assurance Co. Ltd., has filed the instant appeal. We requested the learned counsel for both parties to consider the award made under various heads and to arrive at a consensus, as to whether compensation could be reduced, under some of the heads.

5. Going through the same and after deliberation, learned counsel for the parties, on consensus agreed that the monthly income of the deceased be fixed as Rs.7,500/- instead of

Rs.9,000/- as fixed by the Tribunal. As the Tribunal has awarded less compensation under the heads loss of consortium, love and affection and funeral expenses, both the learned counsel also arrived at a consensus for modifying the compensation awarded under the said heads. The Tribunal also failed to award compensation under the heads conventional damages and loss of estate. Hence, after considering all the factors, compensation awarded by the Tribunal shall be reduced to Rs.20,07,000/- as hereunder:

Loss of contribution to family : Rs.16,20,000/-
(Rs.11,250/- x 3/4 x 12 x 16)

Loss of consortium : Rs. 1,00,000/-

Loss of love and affection : Rs. 2,50,000/-

Funeral expenses : Rs. 25,000/-

Transportation : Rs. 10,000/-

Conventional damages : Rs. 2,000/-

Total : Rs.20,07,000/-

6. In the light of consensus arrived at, the compensation, to which the legal representatives/respondents would be entitled, is fixed at Rs.20,07,000/-, as against Rs.21,14,000/- awarded by the Tribunal, with interest, at the rate of 7.5% per annum, from the date of claim till deposit. Compensation amount, now determined by this court, is apportioned as under:

Wife of Vasudevan/1st respondent : Rs. 9,07,000/-

Mother : Rs. 3,00,000/-

Minor Children (Rs.4,00,000/- per
child for 2 children) : Rs. 8,00,000/-

Total : Rs.20,07,000/-

7. Learned counsel for the appellant/insurance company submitted that the entire award amount along with interest and cost has already been deposited to the credit of M.C.O.P. No.355 of 2013 on the file of Motor Accident Claims Tribunal (Principal Sub Court), Virudhachalam. It is further submitted by him that during the pendency of the instant appeal, subsequent to order dated 23.11.2016, made in C.M.P. No.18304 of 2016 in C.M.A. No.2439 of 2016, mother/second respondent, had already been

permitted to withdraw her share of Rs.3,00,000/-. Submission is placed on record. On the remaining amount, the first respondent/wife of Vasudevan, is permitted to withdraw her share, by filing proper application before the Tribunal. Share of the minors, namely respondents 3 and 4 herein, is directed to be deposited in any one of the Nationalised Banks under reinvestment scheme, proximate to the residence of the first respondent and renewable thereafter. Respondent No.1/mother of the minor children is permitted to withdraw interest once in three months, till the minor children attain majority. Tribunal is directed, to disburse the amount only on proper identification and proof.

8. The Civil Miscellaneous Appeal is partly allowed as indicated above. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

asr

To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal
Virudhachalam.

+1cc to Mr.R,Neethi Perumal, Advocate Sr. 42252

+1cc to Mr.S.Udayakumar, Advocate Sr. 42010

C.M.A.No.2439 of 2016
and C.M.P. No.17186 of 2016

EV(CO)
VR(25/07/2017)

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