

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Civil Miscellaneous Appeal No. 2108 of 2017

1. Ponmalar
 2. P.Ponnarasu
 3. P.Arockiasamy
 4. P.Amalorpavam
- Appellants/Claimants

Versus

1. The New India Assurance Company Limited
14, Jahangir Street
Chennai - 600 001
 2. M. Rajendran
- Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.02.2006 made in MACTOP No. 4154 of 2000 passed by the Motor Accidents Claims Tribunal (III Small Causes Court) Chennai

For Appellants : Mr.R.Saravanakumar

For Respondents : Mr.J.Chandran for R1

JUDGMENT

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

Not satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (III Small Causes Court) Chennai in the Judgment and Decree dated 07.02.2006 passed in MACTOP No. 4154 of 2000, the claimants have come forward with this appeal.

2. The appellants/claimants are the wife, sons and mother of the deceased P.A. Pandiaraj. According to the appellants, on 04.08.1999, when the deceased Pandiaraj was riding the two wheeler - Hero Honda, at about 2.30 p.m., near S.N. Chetty Street, Royapuram, the driver of the Trailor lorry bearing Registration No. TN 04 E-0117 had driven it in a rash and negligent manner and in the process of overtaking the two wheeler driven by the deceased, hit the bike from behind. In the impact, the deceased was thrown out of the bike and the left front wheel of the lorry ran over him. Consequently, the deceased died on the spot. According to the appellants, the

deceased died only due to the rash and negligent driving of the driver of the lorry and therefore, the respondents herein namely Insurance Company as well as the owner of the lorry are jointly and severally liable to pay compensation to them. It is further claimed by the appellants in the claim petition that the deceased was aged 42 years and working as Deputy Manager (Administration and Legal) with Madras Fertilizers Limited, Manali, Chennai and earning a sum of Rs.24,620/- per month as salary. Therefore, for the death of the deceased, the appellants have filed the claim petition in MACTOP No. 4154 of 2000 claiming a compensation of Rs.38,51,360/-.

3. Resisting the claim of the appellants in the claim petition, the Insurance Company has filed a counter affidavit before the Tribunal denying the age, avocation and earnings of the deceased. It was further stated that it is the deceased who has contributed to the accident by suddenly applying brake while riding the two wheeler in the middle of the road and this had resulted in the accident. It was further stated that the claim of Rs.38,51,360/- made by the appellants is exorbitant and therefore the Insurance Company prayed for dismissal of the claim petition.

4. Before the Court below, the first claimant/wife examined herself as PW1 apart from two other witnesses as PW1 and PW2 and Exs. P1 to P6 were marked. On behalf of the respondents in the claim petition, no one was examined besides no document was marked. The Court below, on analysing the oral and documentary evidence concluded that the accident had occurred due to the rash and negligent driving of the driver of the lorry and therefore the Insurance Company is liable to pay the compensation. Further, on considering Ex.P6, salary slip, the Court below concluded that the deceased was drawing a sum of Rs.14,381/- as salary and after deductions, he was in receipt of a sum of Rs.12,000/- as salary per month. Out of this amount of Rs.12,000/-, a sum of Rs.4,000/- was deducted towards personal expenses. By taking the age of the deceased as 42 and applying multiplier '15' a sum of (Rs.8,000 X 12 X 15) Rs.14,40,000/- was awarded towards loss of earning. That apart, the Court below awarded a sum of Rs.40,000/- towards loss of love and affection to minor claimants 2 and 3, a sum of Rs.10,000/- towards loss of love and affection to the wife/first claimant and Rs.20,000/- awarded towards loss of estate to all the claimants. Thus, the Court below awarded a total sum of Rs.14,80,000/- as compensation.

5. The learned counsel appearing for the claimants/appellants would vehemently contend that even though the claimants have produced Ex.P6, salary slip, which indicates that the deceased was drawing a sum of Rs.14,381/- per month as salary, the Tribunal has erroneously taken only Rs.12,000/- as the monthly income of the deceased. Further, the Court below failed to consider that the deceased died at the age of 42 years and had he been alive, he would have claimed the promotional ladder in his career with attractive higher pay. While so, the court below ought to have awarded 50% of the

monthly salary towards future prospects and failure to do so has caused prejudice to the claimants/appellants. The learned counsel for the claimants/appellants would further contend that the amount awarded under other heads, particularly towards loss of Consortium to the wife at Rs.10,000/- is very low and he prayed for enhancement.

6. On the other hand, the learned counsel appearing for the first respondent/Insurance Company would support the Judgment and Decree passed by the Court below by stating that a fair and reasonable amount was awarded as compensation to the claimants and prayed for dismissal of the appeal.

7. We have heard the counsel for both sides and perused the materials placed on record. Before dealing with the rival contentions, it is necessary to mention that the claimants have filed the present appeal seeking enhancement of the quantum of compensation awarded by the Tribunal. The Insurance company has not filed any appeal questioning the liability to pay the compensation amount. Therefore, we are not dealing with the other aspects of the award passed by the Court below and we are only dealing with the correctness or otherwise of the amount awarded by the court below as compensation in favour of the appellants in this appeal.

8. At the outset, we find that the accident took place on 04.08.1999 and the Claim petition was filed in the year 2000. The claim petition was adjudicated by the Tribunal and passed the award on 07.02.2006. After a decade, the claimants have filed the present appeal seeking enhancement. We also find that the Tribunal has rightly taken into account a sum of Rs.12,000/- per month as salary of the deceased per month after all statutory deductions even though Ex.P6 reflects the salary of the deceased as Rs. Rs.14,381/- per month. Therefore, we hold that the Tribunal is right in taking the net salary as income of the deceased and we do not find any infirmity in the same.

9. As regards the claim of the claimants/appellants that the Tribunal failed to award any amount towards future prospectus, it is necessary to mention that the Honourable Supreme Court, in the off-quoted decision rendered in case of (Sarla Verma vs. Delhi Transport Corporation and another) reported in (2009) 6 Supreme Court Cases 421 held that assumption of the claimants that the actual future pay revision should be taken into account for calculating the income is not sound especially when the accident took place two decades before and there was delay on the part of the claimants in approaching the Court seeking compensation. Useful reference could be made to Para Nos. 45 to 47 of the said Judgment, which reads as follows:-

"45. The assumption of the appellants that the actual future pay revision should be taken into account for the purpose of calculating the income is not sound. As against the contention of the

appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met the same other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of the accident.

46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1998 had been disposed of in the year 1988-1989 itself and if the appeal has been decided by the High Court in the year 1989-1990, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.

47. If the contention urged by the claimants is accepted, it would lead to the following situation; the claimants could only rely upon the pay scales in force at the time of accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher scale that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation."

10. Therefore, having regard to the law laid down by the Honourable Supreme Court in the decision cited supra whereby the Honourable Supreme Court rejected the claim made by the appellants therein in identical circumstances, we hold that the contention of the appellants that the claimants are entitled for future prospects is rejected.

11. We find that the Tribunal has awarded non-pecuniary compensation under the head of Loss of Love and Affection, Loss of Consortium taking note of the cost of living prevailing at the time of accident and therefore, we see no reason to interfere with the same.

In the result, we confirm the decree and judgment passed by the Tribunal and consequently, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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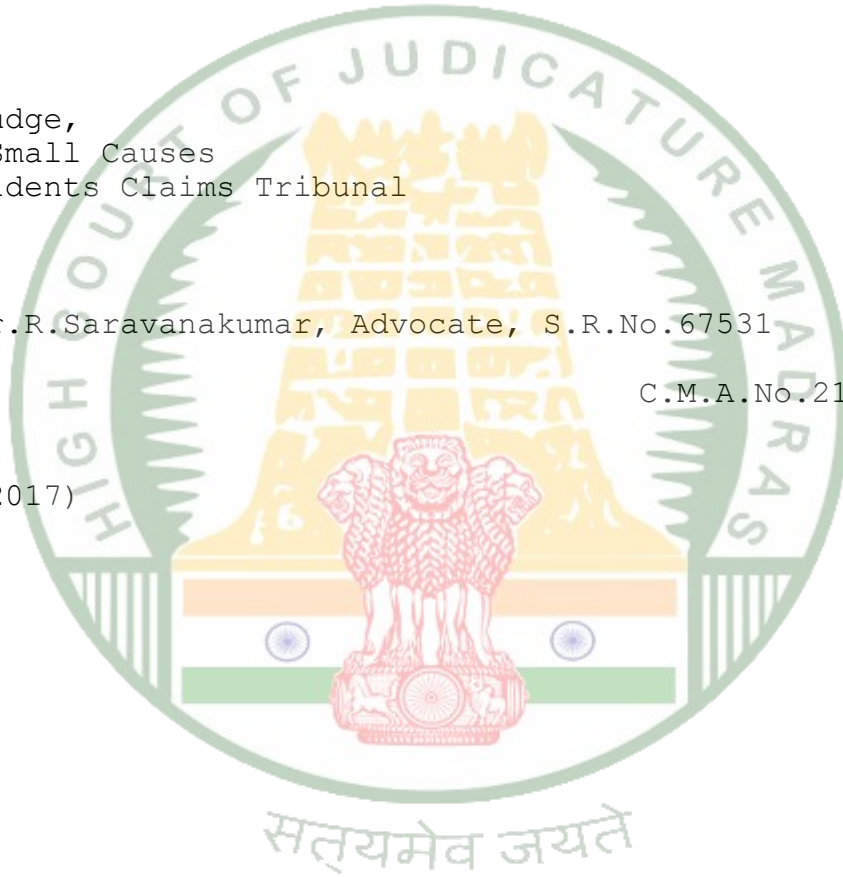
To

The III Judge,
Court of Small Causes
Motor Accidents Claims Tribunal
Chennai

+1cc to Mr.R.Saravanakumar, Advocate, S.R.No.67531

C.M.A.No.2108 of 2017

SSI(CO)
CA(15/11/2017)



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