

In the High Court of Judicature at Madras

Dated : 18.08.2017

Coram

The Honourable Mr.Justice R.SUBBIAH
and
The Hon'ble Mr.Justice A.D.JAGADISH CHANDIRA

C.M.A.No.2442 of 2017
and CMP No.13271 of 2017

Royal Sundaram Alliance Insurance Company Limited,
Subramaniam Building, 2nd floor,
No.1, Club House Road,
Anna Salai, Chennai. ..Appellant/2nd Respondent

..vs..

1. Jeyarani
2. Rosalin Rithika (Minor)
(2nd respondent represented by
Mother and Next Friend 1st respondent)
3. John Peter
4. Madhana Merry ..Respondents 1 to 4/Petitioners
5. Eraivan ..5th Respondent/1st Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP No.1090 of 2014 dated 29.4.2016 on the file of Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant : Mr.M.B.Raghavan

For R1 to R4 : Mr.Ma.P.Thangavel

JUDGMENT

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

Challenging the judgment and decree dated 29.04.2016 passed by the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur, in MCOP No.1090 of 2014, the appellant - Insurance Company has filed the present appeal. The respondents

1 to 4 are the claimants before the Tribunal, who are the wife, daughter and parents of the deceased Arokia Sagayaraj.

2. Mr.Ma.Pa.Thangavel, learned counsel entered appearance through caveat, for the respondents. By consent of both the parties, the appeal itself is taken up for final disposal at the time of admission itself.

3. It is the case of the respondents 1 to 4/ claimants before the Tribunal that on 03.08.2014 at about 5.00 p.m, the deceased Arokiya Sagayaraj was riding a two wheeler, bearing Registration No.TN 42 E 9624 on the left extreme side of Palladam to Trichy Road at Madappur. At that time, a car bearing Regn.No.TN 37 BC 2709, owned and driven by the fifth respondent herein and insured with the appellant -Insurance Company, came in a rash and negligent manner and dashed against the two wheeler and thus, caused the accident, in which, the deceased sustained grievous injuries and died on the same day. Hence, the respondents/claimants made a claim of Rs.30,00,000/- as compensation, before the Tribunal.

4. The claim made by the respondents / claimants was resisted by the appellant Insurance Company stating that the accident was caused due to rash and negligent riding of the two wheeler by the deceased. Hence, the Appellant Insurance Company is not liable to pay the compensation amount.

5. In order to prove the claim of the respondents / claimants, the first respondent/wife examined herself as P.W.1, besides examining one John, who is an eye witness to the occurrence, as P.W.2 and marked Exs.P.1 to P.4 documents. On the side of the Appellant Insurance Company, no witness was examined and no document was marked.

6. The Tribunal, after considering the oral and documentary evidence adduced before it, came to the conclusion that the accident was caused due to rash and negligent driving of the driver of the car, insured with the appellant Insurance Company. Accordingly, the Tribunal fixed the entire liability on the appellant Insurance Company and awarded a sum of Rs.19,03,600/- @ Rs.19,00,000/- as compensation with interest at 7.5%p.a. from the date of petition till the date of deposit. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant Insurance Company is before this Court with the present appeal.

7. Since the issue that arises for consideration herein is only with regard to the quantum of compensation awarded by the Tribunal, it is unnecessary for us to traverse into the other aspects of the award.

8. The learned counsel for the appellant -Insurance Company contended that in the absence of any tangible evidence on the side of the respondents / claimants to show that the deceased was working as Power Loom Fitter and was earning a sum of Rs.15,000/- per month at the time of accident, the Tribunal ought not to have fixed a sum of Rs.7,500/- as monthly income of the deceased. Therefore, learned counsel prayed to this Court to fix lesser sum for the monthly income of the deceased and accordingly, reduce the award amount under the head "loss of income".

9. Per contra, learned counsel appearing for the respondents/claimants supported the compensation amount awarded by the Tribunal.

10. Keeping the submissions made by the learned counsel on either side, we have carefully gone through the entire materials available on record.

11. Though the respondents / claimants claimed that the deceased was earning a sum of Rs.15,000/- per month at the time of accident, the Tribunal has fixed only a sum of Rs.7,500/- as monthly income of the deceased. Considering the present cost of living, we are of the opinion that the sum of Rs.7,500/- fixed by the Tribunal as monthly income of the deceased, cannot be said to be on the higher side. The Tribunal by adding 50% of Rs.7,500/- towards future prospects, fixed a sum of Rs.11,250/- (7,500/- + 3,750/-) as loss of monthly income. The Tribunal, after deducting 1/4th amount towards personal expenses, arrived at Rs.8,400/- as loss of contribution of the deceased to his family. Thereafter, the Tribunal, based on the age of the deceased, who was 28 years at the time of accident, applied the multiplier '17' and calculated the loss of income at Rs.17,13,600/- (Rs.8,400 x 12 x 17). Accordingly, the Tribunal awarded the said sum of Rs.17,13,600/- towards loss of income to the family of the deceased, which, in our opinion, is well within the principles laid down by the Apex Court and the same does not call for any interference by this Court.

12. Further, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium to the first respondent / wife. Considering the fact that the first respondent/wife has lost her husband at the age of 28 years, the amount so awarded

is just and proper. That apart, the Tribunal has awarded a sum of Rs.50,000/- to the second respondent / daughter, besides awarding a sum of Rs.10,000/- each to the respondents 3 and 4 / parents of the deceased, under the head "loss of love and affection", which, in our view, are just and reasonable, having considered the fact that the respondents 2 and 3 and 4 have lost her/their father and son respectively. Similarly, a sum of Rs.10,000/- each awarded by the Tribunal under the respective heads "funeral expenses" and "transport charges" are just and proper. The break up details of the compensation awarded by the Tribunal are as follows:

Loss of income	:	Rs.17,13,600
Loss of Consortium to 1 st respondent	:	Rs. 1,00,000
Loss of love and affection to 2 nd respondent		Rs. 50,000
Loss of love and affection to the respondents 3 and 4 (Rs.10,000/- each)	:	Rs. 20,000
Funeral expenses	:	Rs. 10,000
Transport charges	:	Rs. 10,000
Total		Rs.19,03,600/-

Rounded off at Rs.19,00,000/-

13. Absolutely, we do not find any error or infirmity in the award so passed by the Tribunal. Moreover, we do not find any compelling circumstances, warranting this Court to interfere with the same. Therefore, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14. The appellant Insurance Company is directed to deposit the entire award amount with proportionate interest and costs, after deducting the amount already deposited, if any, to the credit of the MCOP No.1090/2014 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1, 3 and 4/ wife and parents of the deceased respectively, are permitted to withdraw their respective shares, as apportioned by the Tribunal. Insofar as the compensation amount payable to minor claimant/ 2nd respondent is concerned, the Tribunal is directed to invest the same in any one of the Nationalised Banks in a fixed deposit, till she attains

majority. The first respondent/ wife is permitted to withdraw the interest accrued on the share of minor's deposit, once in three months directly from the Bank concerned.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

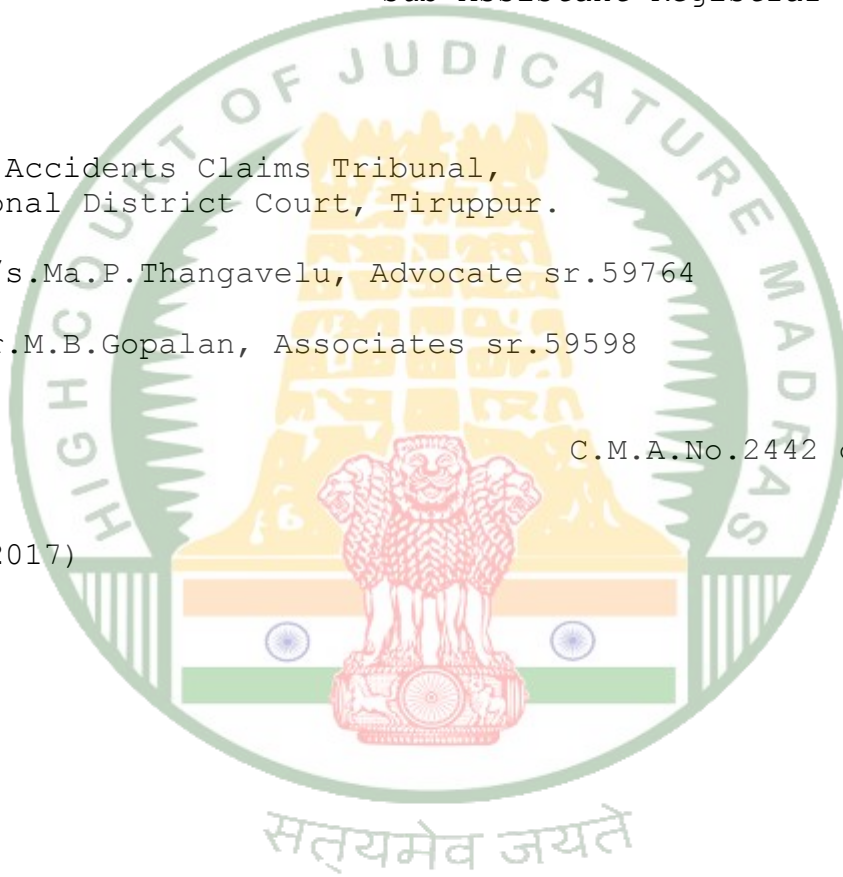
The Motor Accidents Claims Tribunal,
II Additional District Court, Tiruppur.

+1cc to M/s.Ma.P.Thangavelu, Advocate sr.59764

+1cc to Mr.M.B.Gopalan, Associates sr.59598

C.M.A.No.2442 of 2017

GP(co)
ss(28/10/2017)



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