

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1514 of 2013
and M.P.No.1 of 2013

Royal Sundaram Alliance Co. Ltd.,
45 & 46, Whites Road,
Royapettah,
Chennai - 600 014.

... Appellant/2nd Respondent

Vs.

1.Meenakshi @ Indra
2.Krishnan
3.Selvi
4.Karthikeyan (Minor)
5.Priya (Minor)

Minor represented by their guardian

Respondents1 to 5/
Petitioner

& mother Mrs.Selvi

6.T.Gunasekaran

... 6 th Respondent/1st
Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.174 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Virudhachalam dated 12.10.2011.

For Appellant :Mr.M.Krishnamoorthy

For Respondents :Mr.P.Kannan Kumar

[for R1, R2 & R3]

R4 & R5 - Minors rep. By R3

R6 - Ex parte

JUDGMENT

This appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Principal Sub Court), Virudhachalam in MCOP.No.174 of 2009.

2.In a road accident that took place on 07.04.2009, a lorry bearing registration No.TN20-AT-4950 dashed against a car in which the driver of the car died and there was injury to other passengers as well. The car stands in the name of Tamilvendan, and he was on the wheels at that time. Contending that the deceased was 42 years old and was running a provision store under the name and style of " Tamil Nadu Stores" and was said to

be earning Rs.1,20,000/- per annum, his widow, two children and his parents moved the Tribunal with a claim of Rs.20,00,000/-, whereas the Tribunal has passed an award for Rs.12,87,000/-. Of the said amount, the compensation awarded on the head of loss of dependency constitutes a major portion and the same was arrived at Rs.12,60,000/-, the Tribunal having notionally determined the income of the deceased at Rs.10,000/- as was claimed by the claimants. For loss of consortium, it granted a mere Rs.10,000/-; loss of estate it granted Rs.5,000/-; towards transportation by ambulance and recovery van it granted Rs.5,000 and Rs.2,500/- respectively; and for funeral expenses Rs.5,000/-; whereas it awarded nothing on the head of loss of love and affection.

3. The learned counsel for the appellant submitted that the only evidence of income of the deceased which the claimants attempted to establish is through Ext.P-46, Income Tax Returns, but the Tribunal has disbelieved it as it did not bear even the signature of the Chartered Accountant who has prepared it. In this regard, it is pertinent to mention, contended the counsel, that in Column No.7 of the petition, the claimants have asserted that the deceased was not an income tax assessee. In the absence of any evidence as to his income, which is possible to achieve if his turn-over could be assessed based on his sales tax returns, to fix his monthly income notionally at Rs.10,000/- is not only excessive, but also exaggerated.

4. Per contra, the learned counsel for the respondents submitted it is only appropriate to consider in these days that someone who owns a provision shop would earn at least Rs.10,000/- per month and therefore, it cannot be said to be excessive. At any rate, the Tribunal has not considered the future prospects which this Court may have to consider and on the heads of non-pecuniary damages, the Tribunal was unreasonably parsimonious and they have to be interfered with to fix just and fair compensation.

5. There is partial tenability in the submissions of both the sides. Turning first to the objection raised regarding the quantum of compensation awarded on the head of loss of family support, I find that Rs.10,000/- p.m. as fixed notionally by the Tribunal without even ascertaining the size of the business of the victim and without any material evidence to support it appears to be excessive. I therefore determine it at Rs.6,000/-. After deducting $\frac{1}{4}$ towards personal expenses of the deceased (based on Sarala Varma dictum), the net value of family support per month would be Rs.4,500/-. If an additional 30% were to be added to it towards future prospects of increase in the income of the deceased, the multiplicand would be Rs.5,850/. The appropriate multiplier being 14, the total compensation that may be justly fixed on this head is $(5,850 \times 12 \times 14)$

Rs.9,82,000/-. While amount awarded towards transportation can be retained, that which is awarded for funeral expenses is increased from Rs.5,000/- to Rs.10,000/-. On other heads of general damages viz., towards loss of consortium and loss of love and affection, I enhance the compensation. The enhanced compensation and final figure arrived is tabulated below :

Heads	Amount (Rs.)
Loss of Dependency	9,82,000.00
Loss of Consortium	1,00,000.00
Loss of love and affection for 2 children @ Rs.50,000/- each	1,00,000.00
Loss of love and affection to parents @ Rs.25,000/- each	50,000.00
Transportation by ambulance and recovery van	7,500.00
Funeral Expenses	10,000.00
Total :	12,49,500.00

6. To conclude with, this appeal is partially allowed without any costs and the total compensation payable is reduced from Rs. 12,87,000/- to Rs.12,49,500/-. The learned counsel for the appellant submitted that 50% of the award amount has already been deposited. The appellant is directed to deposit the balance award amount with accrued interest within four weeks from the date of receipt of a copy of this order. Reduced compensation will be apportioned in the same ratio in which the Tribunal has apportioned the amount it awarded. The widow and his parents will be entitled to withdraw the balance 50% of the apportioned amount forthwith, and in the case of his minor children, it will continue in Court deposit till they attain majority and they will be entitled to withdraw the interest accrued thereon for their upkeep. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-V)

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Sub-Assistant Registrar

To:

1. The Motor Accidents Claims Tribunal,
(Principal Subordinate Judge)
Virudhachalam

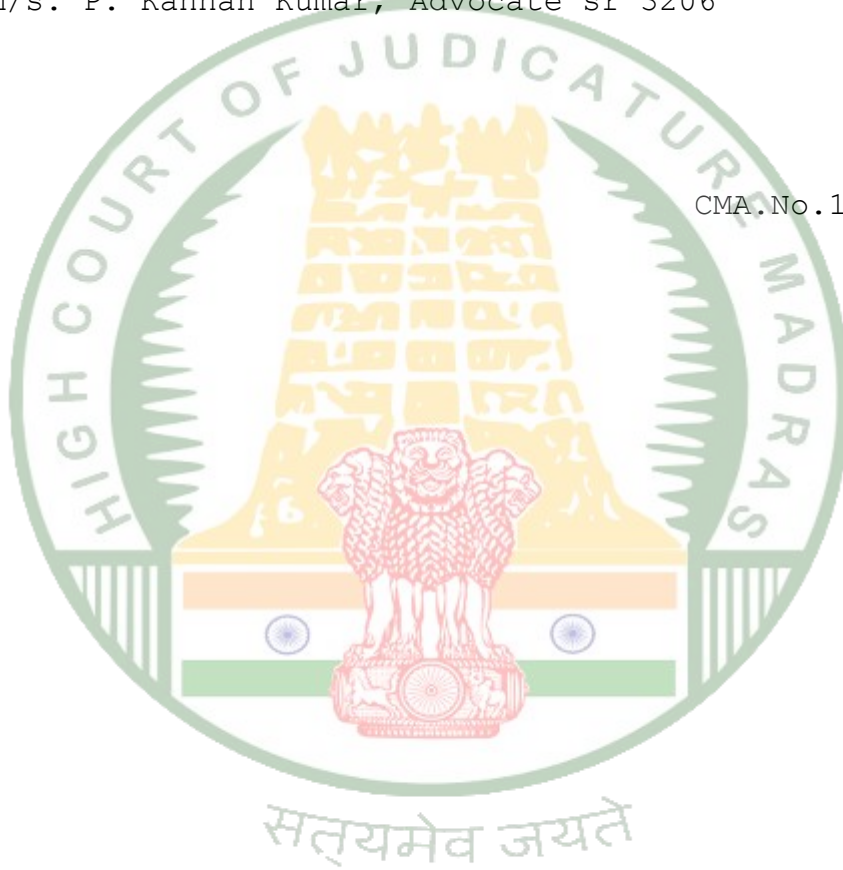
2. The Section Officer,
VR Section,
High Court, Madras.

+1 CC to M/s. K. Krishnamoorthy, Advocate sr 1876

+1 CC to M/s. P. Kannan Kumar, Advocate sr 3206

RSK(CO)
sp/27/2

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