

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2652 of 2007

1.Saraswathi.

2.Minor Sukanya
rep. by her mother and natural
guardian Saraswathi

3.Pachaiammal. Appellants/Claimants

Vs.

1.R. Anbuganapathy
(set ex-parte in the lower Court)

2.The New India Assurance Company Ltd.,
rep.by its Branch Manager,
No.110, Gandhi Market Road,
Arni. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal file under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree passed in M.C.O.P.No.271 of 2001 on the file of the Motor Accidents Claims Tribunal/Sub Court, Arni dated 02.12.2005.

For Appellant : Mr. P.Satheesh Kumar

For Respondent-2 : Mr.C. Ramesh Babu

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimants against the Judgment and decree passed in M.C.O.P.No.271 of 2001, dated 02.12.2005 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Arni, seeking for enhancement of the compensation amount.

2.The brief facts of the case of the claimants are that on 10.11.2001, at about 7.00 a.m, the husband of the 1st appellant's husband viz., Sarveswaran was travelling as a pillion rider in a motor-cycle and while, he was proceeding in Arni - Arcot Road, an Ambassador car bearing Registration No.TN.04.5334, owned by the first respondent and insured with the 2nd respondent-

Insurance Company came in a rash and negligent manner and dashed against the motor-cycle, due to which the said Sarveswaran sustained multiple injuries. Immediately, he was rushed to the GPM hospital at Vellore, where he took treatment as inpatient from 10.11.2001 to 29.11.2001. Thereafter, he continued his treatment in a private hospital. Hence, he filed the claim petition claiming a sum of Rs.3 lakhs as compensation. Pending the claim petition, he died inspite of the treatment given to him. Hence, the appellants herein, who are the wife, minor son and mother of the said Sarveswaran, impleaded themselves as claimants and made a claim before the Tribunal.

3. On the side of the claimants, the 1st claimant/wife examined herself as PW.1, besides examining one Arunachalam as PW.2 and marked 14 documents as Ex.P.1 to Ex.P.14. On the side of the respondent/Insurance Company, one Kesavan was examined as RW.1, but no documentary evidence was produced.

4. The Tribunal, after analysing the entire evidence adduced on either side, has given a finding that the accident had occurred only due to the rash and negligent driving of the driver of the Ambassador car bearing Registration No.TN.04.5334, owned by the first respondent and insured with the 2nd respondent-Insurance Company and further, by verifying the document Ex.P.5, 9, 10 & 14, the Tribunal came to the conclusion that the death of the injured is not due to the impact of the accident directly. By coming to such a conclusion, the Tribunal has passed an award for a total sum of Rs.45,000/-. The break up details of the compensation amount awarded by the Tribunal are as follows:-

For Grievous injuries (5000X3)	: Rs.15,000/-
Loss of income during treatment:	Rs. 4,000/-
Transport Expenses	: Rs. 1,000/-
Loss of Dependency	: Rs.25,000/-
Total	Rs.45,000/-

Not being satisfied with the quantum of compensation awarded by the Tribunal, the present appeal has been filed by the claimants seeking enhancement of compensation.

5. The learned counsel for the appellants/claimants has argued that only during the time of treatment, the victim died and in order to prove the same, on the side of the claimants, medical records were marked as Ex.P2 - Ex.P12, which would show the injuries sustained by the deceased, the period of treatment and also the cause for the death. It is further submitted by the learned counsel for the appellants/claimants that the

Tribunal has awarded only a meagre sum of Rs.25,000/- towards the loss of consortium.

6.Per contra, it is submitted by the learned counsel for the respondent-Insurance Company that no post-mortem report was filed on side of the claimants and the Doctor was also not examined for proving that the injured died only to the injuries sustained by him in the accident.

7.Heard both sides and perused the materials available on record.

8.From a perusal of the materials available on record, it is seen that the injured person was under continuous treatment. While awarding compensation, the period of treatment, the pain and suffering that would have been undergone by the injured, and also the probable expenses that would have been incurred by the claimants, are necessarily to be considered by the Court.

9.On perusal of the record, it is seen that at the time of accident the deceased was doing flower vending business and was earning Rs.3,600/- per month. The claimants are the wife of the victim ; the minor daughter and the mother of the deceased. Due to the death of the victim, the family has not only lost the support and care but also the income. Hence, under the head loss of Dependency, the sum awarded by the Tribunal is on the lower side. Hence, the same is to be enhanced.

10.On perusal of record it is observed that the deceased was under treatment for nearly 24 days. Hence, for the medical expenses a sum of Rs.15,000/- would be reasonable amount that has to be awarded and for the transport expenses, the sum awarded by the Tribunal is not altered. Hence, the award passed by the Tribunal is hereby modified and enhanced to Rs.1,00,000/-. The break up details of the same are as follows:-

For Medical Expenses	: Rs. 15,000/-
For Loss of dependency	: Rs. 65,000/-
For Grievous injuries	: Rs. 15,000/-
(5000X3)	
Loss of income	: Rs. 4,000/-
For Transport Expenses	: Rs. 1,000/-
Total	Rs.1,00,000/-

11.In the result, the Civil Miscellaneous Appeal is partly allowed. The Insurance Company is directed to deposit the compensation amount determined in this appeal together with interest at the rate of 7.5% per annum, within a period of 8 weeks from the date of receipt of a copy of this order, after adjusting the amount if any already deposited. On such deposit, the claimants are entitled to withdraw the compensation amount

determined in this appeal together with accrued interest. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1 The Motor Accidents Claims Tribunal,
Sub Court, Arni.

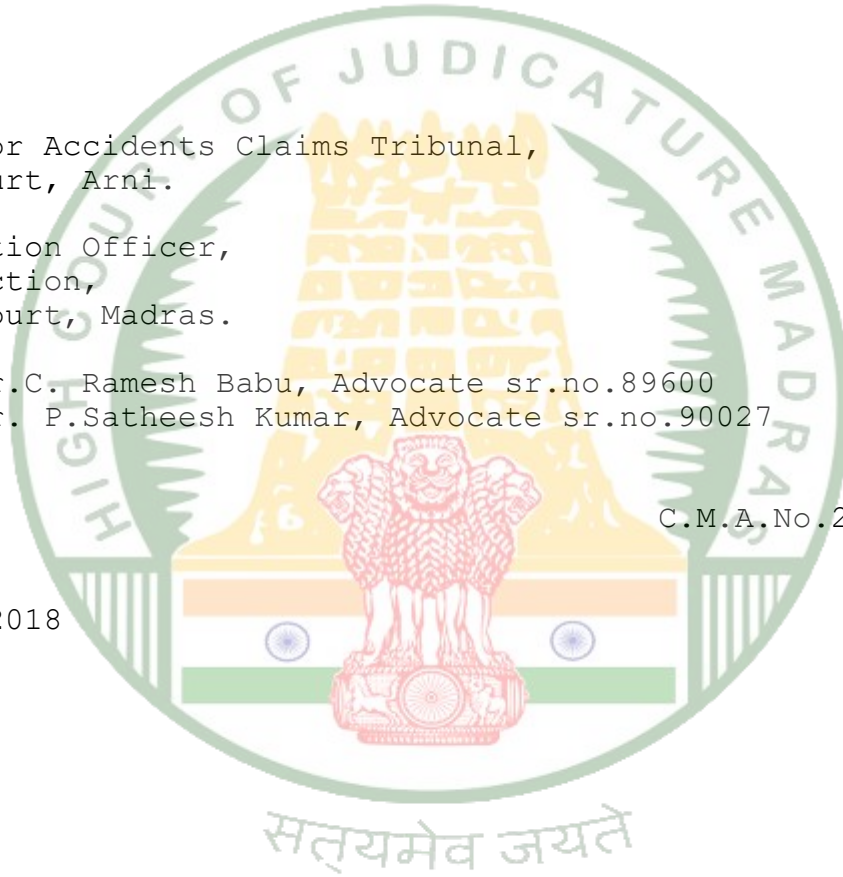
2 The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C. Ramesh Babu, Advocate sr.no.89600

+1cc to Mr. P.Satheesh Kumar, Advocate sr.no.90027

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