

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 3788 of 2008

&

C.M.P. Nos. 1988 of 2008 & 6154 of 2017

Oriental Insurance Co. Ltd.,

No.8, Esplanade,

Chennai 600 108.

..Appellant/2nd Respondent

Vs.

1. Vijayalakshmi

2. L. Rekha (Minor)

3. L. Naveen Kumar (Minor)

(Minors represented by their mother
and next friend Vijayalakshmi)

4. Abirami

5. C. Gopaldhas

..Respondents/Petitioners/
Ist Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 10.01.2005 passed in M.C.O.P. No. 1103 of 2003, on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant :: Mr.R. Sivakumar

For Respondents:: Mr.T. Saravanan
for R1 to R4
R5- Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.6,52,128/- passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, for the death of one Lakshmikanthan @ Lakshmikanthan Chowdry, aged about 35 years, said to have been doing business and earning Rs.7000/- per month, in the accident, which occurred on 24.09.2002, when he was driving a car, which was hit by a lorry bearing Registration No. KL-07-H-5099, insured with the appellant Insurance Company, driven rashly and negligently.

2. The challenge made by the Insurance Company, in this appeal, is only with regard to the quantum of compensation awarded by the Tribunal.

3. Heard Mr.R. Sivakumar, learned counsel for the appellant and Mr. T. Saravanan, learned counsel for respondents 1 to 4/claimants.

4. The 5th respondent/owner of the lorry, remained ex parte before the Tribunal and therefore, notice to the 5th respondent is dispensed with, as per the judgment of the Full Bench of Madhya Pradesh High Court rendered in Mrs. Jamuna Bai V. Chhote Singh reported in I (2004) Acc. 190 (FB).

5. Though the appeal has been filed by the Insurance company questioning only the quantum and there is no dispute as regards negligence aspect, in any event, based on Ex-P6, FIR and evidence of eye-witness P.W.2, the Tribunal rightly came to the conclusion that the lorry was driven rashly and negligently. That apart, there is no contra evidence adduced either by the appellant Insurance Company or by the owner of the lorry, in regard thereto. Hence, the finding rendered by the Tribunal, regarding negligence aspect, is confirmed.

6. Though the claimants contended, based on Ex-P4, Income Tax Return filed by the deceased, that the age of the deceased was 35 years, at the relevant point of time, however, the Tribunal determined the age of the deceased as 40 years, based on Ex-P5, postmortem certificate. A perusal of Ex-P4 would reveal that the deceased had given his date of birth as 20.11.1967, which was required to be furnished in the Income Tax Return Form. When the victim has specifically given his date of birth as 20.11.1967 to the statutory authority, his age should have been taken as 35 years, as rightly contended by the learned counsel for the claimants. When the age of the deceased is borne out by records, the question of relying upon Ex-P5, postmortem certificate, for fixing the age, does not arise. Moreover, the age given in the postmortem certificate is not calculated based on any test conducted by the Doctors and it is only an approximate determination made by them. Hence, based on Ex-P4, this Court re-determines the age of the deceased as 35 years.

7. As far as the income earned by the deceased is concerned, though the claimants adduced oral evidence to show that the deceased was doing Finance Business, Ex-P4, Income Tax Return filed, would reveal that the deceased was earning about Rs.7000/- per month. Therefore, the monthly income of the deceased, fixed by the Tribunal, at Rs.5000/- is set aside and Rs.7000/- is re-fixed as the monthly income of the deceased. No amount towards "Future Prospects" has been added by the Tribunal and therefore, following the judgments of the Honourable Apex Court in Sarla Verma's case (2009 (2) TN MAC 1), Santosh Devi 's case (2012 6 SCC 421) and Rajesh's case (2013 (3) CTC 883), this Court adds 50% to the monthly income of the deceased towards

"Future Prospects", as the deceased was aged about 35 years at the time of accident. The monthly income of the deceased works out to,

Total Monthly Income :: Rs.7000/- + 50% (Rs.7000/-)
:: Rs.10,500/-

The size of the family of the deceased is four and as per the judgment of the Honourable Apex Court rendered in Smt. Sarla Verma & Ors V. Delhi Transport Corporation and Another reported in (2009 (2) TN MAC 1), one-fourth deduction has to be made towards "Personal Expenses" of the deceased and accordingly, "Monthly Contribution of the deceased" is calculated thus:

Total Monthly Income :: Rs.10,500/-
One-fourth deduction
towards "Personal Expenses" :: Rs.10,500/- (-) $\frac{1}{4}$
(Rs.10,500/-)

Monthly contribution of the
deceased to his family :: Rs.10,500/- (-) Rs.2825/-
:: Rs.7875/-

Annual Contribution of the
deceased to his family :: Rs.7875 x 12

Since the age of the deceased has been re-determined as 35 years, the appropriate multiplier, as per Sarla Verma's case (cited supra) would be 16 and applying the said multiplier, "Loss of Income" is arrived at as hereunder:

Loss of Income :: Rs.7875/- x 12 x 16
:: Rs.15,12,000/-

8. As regards the other heads, no amount was awarded towards "Loss of Consortium". Since the accident occurred during the year 2002, a sum of Rs.50,000/- is awarded to the 1st respondent/wife of the deceased, towards "Loss of Consortium". Likewise, no amount was awarded towards "Loss of love and affection" to respondents 2 and 3, being the children of the deceased and to the 4th respondent, being the mother of the deceased. Therefore, a sum of Rs.50,000/- is awarded under the said head to respondents 2 to 4. The sum of Rs.2000/- awarded towards "Funeral Expenses" and Rs.10,000/- awarded towards "Transportation Expenses" are on the lower side and a sum of Rs.25,000/- is awarded cumulatively under the said heads. . No amount was awarded towards "Loss of Estate" and therefore, a sum of Rs.15,000/- is awarded under the said head. In all, a sum of Rs.16,52,000/-, rounded off to Rs.16,50,000/- is awarded as compensation to the claimants. The rate of interest awarded by

the Tribunal at 9% per annum is reduced to 7.5% per annum.

9. Though the appeal has been filed by the Insurance Company, this Court, on re-appreciating the evidence on record, applying the latest law and invoking Order XLI Rule 33 CPC and Section 151 CPC, has enhanced the compensation payable to the claimants, in an endeavour to award just and reasonable compensation, in the light of the judgment of the Honourable Apex Court rendered in Nagappa V. Gurudayal Singh reported in 2004 (2) TN MAC 398 (SC),. Besides, the provisions of Motor Vehicles Act are beneficial in nature, which aim at consoling, comforting and compensating the victims of road accidents and therefore, even in the appeal filed by the Insurance Company, in the absence of any appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation amount. Furthermore, an appeal is a continuation of the original proceedings and this Court is bound to re-appreciate the pleadings and evidence on record and award just compensation as contemplated under the Act. Hence, in an endeavour to do complete justice, the award of the Tribunal to the tune of Rs.6,52,128/- is enhanced to Rs.16,50,000/-.

10. The appellant Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. Out of the said amount, the 1st respondent/wife of the deceased would be entitled to Rs.7,00,000/-. The 2nd and 3rd respondents, the children of the deceased, would have attained majority by now and therefore, this Court, suo motu, declares their majority. They would be entitled to Rs.4,00,000/- each and the 4th respondent would be entitled to Rs.1,50,000/-. On such deposit being made, the Tribunal is directed to get the details of Bank Account of the claimants and thereafter, transfer the amount directly to the claimants, as per the apportionment aforesaid, through RTGS, within a period of two weeks thereafter. The claimants shall pay the appropriate court-fee for the enhanced amount.

11. In the result, the Civil Miscellaneous Appeal stands dismissed enhancing the award passed by the Tribunal, as indicated above. No costs. Connected C.M.Ps. are closed.

-s/d-

Assistant Registrar(CSVI)

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Sub-Assistant Registrar

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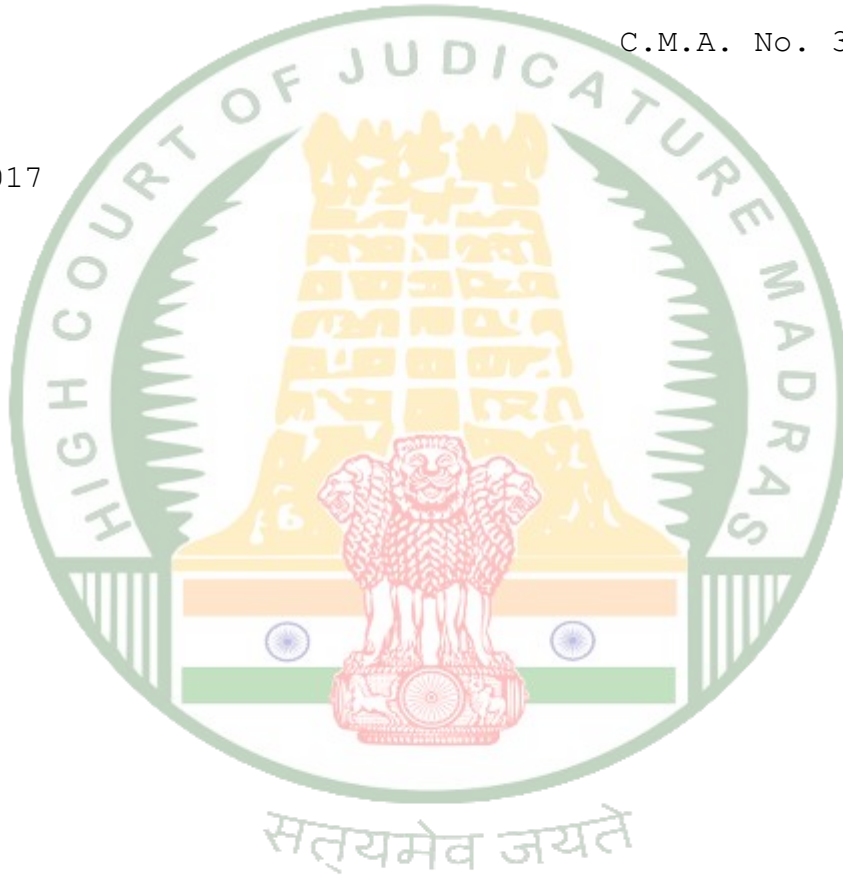
1.The MACT (II Court of Small Causes),
Chennai.

2.The Record Keeper
VR Section
High Court Madras

+1 cc to Mr.R.Sivakumar Advocate sr 22854
+1 cc to Mr.T.Saravanan Advocate sr 22781

C.M.A. No. 3788 of 2008

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