

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved dt.07.11.2016

Judgment Delivered

DATED :03.01.2017

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.981 of 2013

1.R.Gajendran
2.G.Jayalakshmi

.. Appellants

... Vs ...

1.P.Viji
2.M.Lakshmanan
3.Royal Sundaram Aliance Insurance Company Limited,
3rd Floor, Subramanian Building,
No.1, Club House Road,
Chennai - 600 002.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.1125 of 2010, dated 24.09.2012 on the file of the Motor Accident Claims Tribunal, 4th Additional District Judge, Fast Track Court No.2, Coimbatore.

For Appellants : Mr.NEA.Dinesh

For Respondents : M/s.M.Krishnamoorthy for R3

R1 and R2 served (No Appearance)

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree made in M.C.O.P.No.1125 of 2010, dated 24.09.2012 on the file of the Motor Accident Claims Tribunal, 4th Additional District Judge, Fast Track Court No.2, Coimbatore.

2. The appellant as claimants had filed a claim petition in M.C.O.P.No.1125 of 2010, before the 4th Additional District Judge, Fast Track Court No.2, Coimbatore, claiming compensation of a sum of Rs.10,00,000/- for the death of their son, who met

with a road accident on 27.05.2010 at about 10.40 p.m.

3. On 27.05.2010, while the deceased G.Kishore Kumar was riding his motor cycle bearing Reg.No.TN-37-AT-1697 on the Coimbatore to Avinashi Main Road, a lorry bearing Reg.No.TN-23-F-5859 driven by the 1st respondent herein, insured with the 3rd respondent herein, came in a rash and negligent manner and hit the deceased, due to which, the deceased sustained grievous injuries and he was declared dead in the KMCH Hospital, Coimbatore.

4. The Tribunal, after considering the oral and documentary evidence and after hearing the arguments of both sides, awarded a sum of Rs.3,00,000/- towards compensation to the 1st and 2nd claimants/appellants, together with interest at the rate of 7.5% per annum. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the appellants/claimants, seeking enhancement of the compensation.

5. The learned counsel appearing for the appellants/claimants would mainly contend that the deceased was 19 years and was studying first year B.Sc Electronic and Communication in Karpagam University, Coimbatore, and was also doing part time Computer Programme Work in Sri Jaivel Electronics, Peelamedu, Avinashi Road, Coimbatore and was earning Rs.5,000/- per month. It is also contended that the claimants/parents, with the hope of their son getting good income in future, made the deceased son to study Engineering and because of the accident, their future has become dark. The learned counsel also contended that notional income of the deceased should have been fixed at Rs.10,000/- per month and the multiplier of 13 should have been applied, while arriving at the pecuniary loss, however, the Tribunal has erred in awarding a sum of Rs.3,00,000/-, without appreciating the evidence put forth on the side of the claimants. The learned counsel for the appellants thus prayed for enhanced compensation before this court.

6. The learned counsel appearing for the 3rd respondent-Insurance Company, would contend that, the Tribunal, after appreciating the evidence adduced on either side, has correctly fixed the loss of earning and also loss of future prospects and in such circumstances, there is no scope for interference to the award of the Tribunal and thus, prayed to confirm the award and for the dismissal of the present civil miscellaneous appeal.

7. This Court has considered the submissions made by the learned counsel on either side and perused the records.

8. Learned counsel for the appellants in support of their contention relied on the judgment of this court in the case of Royal Sundaram Alliance Insurance Co.Ltd.,Chennai, Vs. S.Lakshmi and others reported in 2016(1) TN MAC 490 (DB), wherein, for the death of 19 years old 1st year B.E., student, the award of Tribunal in fixing notional income at Rs.10,000/- per month and 50% towards future prospects and fixing the monthly income in total at Rs.15,000/- was held not erroneous. The learned counsel also relied on the judgment of the Supreme Court in the case of V.Mekala Vs. M.Malathi and another reported in 2014(2)TN MAC 6(SC), wherein, the Honourable Supreme Court, held that considering the past results, fixed the monthly notional income for computation of just and reasonable compensation under the head of Loss of Income at Rs.10,000/-.

9. This court, on considering the above judgments relied on the side of appellants and also on the other hand, considering the facts of the case, wherein, there is no proof to show that the deceased worked as a Part time programmer, this court is inclined to fix the notional monthly income of the deceased at Rs.2,000/- per month. The multiplier is taken at 13 in this case and accordingly, the loss of income to the dependents is calculated at Rs.2,000/- per month x 12 x 13 = 3,12,000/-. Further, this court is also inclined to award Rs.10,000/- each to the claimants/parents (total Rs.20,000/-) towards loss of love and affection. Further, towards transportation, a sum of Rs.5,000/-, towards funeral expenses, Rs.10,000/- and a sum of Rs.3,000/- towards damage to clothes and articles is hereby award. The modified compensation granted by this court is as follows:-

Compensation Awarded by the Tribunal	Heads of Compensation	Compensation amount awarded by this court
Rs.3,00,000/- with 7.5% interest p.a.	1) Loss of income to the dependents is calculated at Rs.2,000/- per month x 12 x 13 = 3,12,000/-	Rs. 3,12,000/-
	2) Loss of love and affection = Rs.10,000/- each to the claimants/parents (total Rs.20,000/-)	Rs.20,000/-
	3) Transportation, Rs.5,000/- and	= Rs.5,000
	4) Funeral expenses= Rs.10,000/-	Rs.10,000

Compensation Awarded by the Tribunal	Heads of Compensation	Compensation amount awarded by this court
	5) Damage to clothes and articles = 3,000/-	Rs.3,000/-
Total= Rs.3,00,000/-		Total =Rs.3,50,000/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.3,50,000/- with interest at 7.5% per annum. The award enhanced by this court shall be apportioned as Rs.1,75,000/- each to the appellants/claimants. The 3rd respondent/Insurance company is directed to deposit the enhanced compensation before the Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellants/claimants are entitled to withdraw the amount deposited by the insurance company, on filing due application. No costs. MP closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Motor Accidents Claims Tribunal,
The 4th Additional District Judge,
Fast Track Court No.2, Coimbatore.

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

+lcc to Mr.M. Krishna Moorthy, Advocate, S.R.No.305
+lcc to Mr.V. Nicholas, Advocate, S.R.No.341

sai(CO)
md(27/02/2017)

C.M.A.No.981 of 2013