

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.677 of 2017
C.M.P.No.3803 of 2017

M/s.Royal Sundaram Alliance
Insurance Co. Ltd., Coimbatore.

.. Appellant

vs

Sivakumar (Died)
1. Kaliasammal
2. M.N.Krishnan

.. Respondents

Appeal against the fair and decretal order dated 30.10.2013,
passed in M.C.O.P.No.510 of 2010, on the file of the Motor Accidents
Claims Tribunal (II Additional District Court), Tiruppur.

For Appellant .. Mr.N.Vijayaraghavan

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

Challenge in this appeal filed by M/s.Royal Sundaram Alliance
Insurance Co. Ltd., Chennai, is to the quantum of compensation of

Rs.16,66,300/-, with interest, at the rate of 7.5% per annum and costs, from the date of claim, till the date of deposit, awarded to the mother, legal representative of the deceased, stated to be a Flatlock Tailor in Jupiter Knitting Company, Tiruppur and aged 32 years, at the time of accident.

2. Material on record discloses that on 20.12.2009, when Sivakumar, was riding a Motorcycle, bearing Registration No.TN 39 Y 4984, a van, bearing Registration No.TN 39 AS 1671, driven in a rash and negligent manner, insured with the appellant-Insurance Company, dashed against the two-wheeler, due to the impact, he fell down and sustained grievous injuries. Immediately, he was taken to Revathi Hospital, Tirupur and given treatment. Thereafter, he was admitted in KG Hospital, Covai. In this regard, a case in Cr.No.1912 of 2010, has been registered, against the driver of the Van, for the offences, under Sections 279 and 337 IPC., on the file of Anuparpalayam Police Station. Though claim was made by S.Sivakumar, during trial, he succumbed to the injuries and on his behalf, mother of the deceased perused the claim, for compensation of Rs.25,00,000/-.

3. Before the Claims Tribunal, mother of the deceased examined herself as PW.1, and deposed about the manner of accident. She has marked FIR as Ex.P1, Ex.P2 - Salary Certificate, Exs.P3 & P5 - Medical Bills, Ex.P4 - Discharge Summary and Ex.P6 - Identity Card. There is no oral or documentary evidence, on the side of appellant-Insurance Company. Evaluating the same, the Claims Tribunal fixed negligence on the driver of the van, insured with the appellant-Insurance Company.

4. Having regard to the age of the deceased, documents, stated supra and evidence of PW3, Periyasamy, a co-worker of the deceased, the Claims Tribunal fixed the monthly income of the deceased as Rs.5,000/-. Following the decision made in **Oriental Insurance Company Ltd., v. Chandra and others** reported in **2013 (2) TNMAC 105 (DB)**, the Claims Tribunal added Rs.2,500/- (50% of the monthly income) towards future prospects. Thereafter, the Tribunal fixed the monthly income of the deceased as Rs.7,500/-, for the purpose of computing loss of contribution to the family. Since the deceased was a bachelor, the Tribunal deducted 50% towards personal

and living expenses of the deceased and after applying '16' multiplier, to the age of the deceased, determined a sum of Rs.7,20,000/- (Rs.7,500 x 12 x 16 x 50% deduction), as loss of contribution to the family. That apart, the Claims Tribunal has awarded Rs.50,000/- for loss of love and affection, Rs.1,00,000/- towards pain and suffering, Rs.3,000/- for transportation, Rs.4,500/- for extra nourishment, Rs.6,38,880/- for medical expenses and Rs.5,000/- towards Funeral Expenses. Altogether, Claims Tribunal has awarded Rs.16,66,300/-, as total compensation.

5. Though Mr.N.Vijayaraghavan, learned counsel for the appellant-Insurance Company, assailed the correctness of the finding, fixing negligence on the driver of the van, as erroneous, this Court is not inclined to reverse the same. Testimony of PW.1, mother of the deceased, is duly corroborated by Ex.P1 - FIR. On the contra, there is no oral or documentary evidence, on the side of appellant-Insurance Company. As there is no rebuttal, we are not inclined to interfere.

6. As regards quantum of compensation, PW.1, mother of the deceased, has deposed that at the time of accident, the deceased, aged about 32 years, was a Flatlock Tailor in Jupiter Knitting Company, Tirupur and to support the same, marked Ex.P2 - Salary Certificate. PW.3, Periyasamy, a co-worker, has stated that the deceased was working with him and earned Rs.5,430/- per month. Income of the deceased, based on the evidence of PW.3, a co-worker and Ex.P2 - Salary Certificate, cannot be said to be erroneous.

7. Addition of 50% of the income, towards future prospects, is based on the decision of the Hon'ble Apex Court in **Rajesh v. Rajbir Singh** reported in **2013 (2) TNMAC 55 (SC)**. Application of '16' multiplier, as per **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (5) LW 561**, is proper.

8. Accident has occurred on 20.12.2009. The Claims Tribunal has taken note of the principles laid down, while arriving at the quantum of compensation. Though the quantum of compensation is stated to be on the higher side, having regard to the age of the

deceased, sole breadwinner to the family, Rs.7,500/- taken as monthly income by the Claims Tribunal, for computing the loss of contribution to the family, cannot be said to be erroneous.

9. Computation of loss of contribution to the family has been done, only for 16 years. Even taking it for granted that the deceased would have got married, after some time, still contribution to the family, would have continued for a longer time. Though mother is not entitled to be compensated under the head, pain and suffering, having regard to the lesser compensation awarded under other heads, the same can be adjusted. Quantum of compensation of Rs.16,66,300/-, awarded to the legal representative of the deceased, cannot be said to be on the higher side, warranting interference.

10. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the award amount, with accrued interest and costs, to the credit of M.C.O.P.No.510 of 2010, 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 being made, the respondent is permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (M.G.R., J.)
23.02.2017

Index: Yes/No

Internet: Yes/No

skm

To

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

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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