



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.452 of 2015

Subburaj (Died)

1.Saroja
2.Surothuvani
3.Sathyarani
4.Jeyadurga

... Appellants

Vs.

1.P.Venkatakrishna Rajan

2.ICICI Lombard General Insurance
Company Ltd.,
V.V.D.Mahal 3rd Floor,
181, Palayamkottai Road,
Tuticorin District.

3.M.Balan
(Notice to 1st and 3rd respondents are
dispensed with as they remained
exparte before the Tribunal)

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, to set aside the fair and decretal order dated 21.03.2014 passed in M.C.O.P.No.115 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Tuticorin and enhance the award amount.

For Appellant : Mr.U.Minnavadi
For Respondents : Mr.K.K.Ramakrishnan for R2

JUDGMENT

The claimants have filed this civil miscellaneous appeal aggrieved by the inadequate compensation awarded in M.C.O.P.No.115 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Tuticorin.

2.The case of the claimants is that the original petitioner Subburaj suffered grievous injuries in the accident that took place on 19.08.2008 on account of the rash and negligent driving of the offending lorry belonging to the first respondent herein.

The condition of the said Subburaj was so bad that he was not even in a position to file a petition on his own. He therefore filed it through his wife Saroja. During the pendency of the petition, the said Subburaj passed away. The said Subburaj was working in Ethiopia and had come down to India on leave. When he was planning to return to Ethiopia, the accident occurred. The compensation for a sum of Rs.15,00,000/- was sought. The Tribunal awarded a sum of Rs.5,76,500/- with interest. The Tribunal has also directed that the second respondent insurance company can satisfy the award and recover the same from the first respondent/vehicle owner. Contending that the compensation awarded is inadequate, this appeal has been filed.

3.The Court below rightly found that the accident occurred on account of the rash and negligent driving of the driver employed by the first respondent herein. There is no reason to take a different view. The said finding is confirmed.

4.The Tribunal was of the view that since no income proof has been furnished by the claimants, it can fix the monthly income of the deceased only at Rs.4,500/-. In my view, the Tribunal did not take into account Ex.P12 Passport marked by the claimants. It is the specific case of the claimants that the deceased Subburaj was employed in Ethiopia. He was in India only on leave. That he has been working in Ethiopia is evident from the passport entries. A person, who is employed in abroad is bound to earn atleast a sum of Rs.12,500/- per month. Therefore, the said figure ought to have been accepted as such. Since the deceased was employed abroad, he would have spent atleast 50% of the said amount on himself. If he had been in India, this Court would have made only 1/3 deduction. Since he was employed abroad, it would be safe to deduct 50% of the income. Therefore, the monthly income earned by the deceased for the purpose of computing compensation can be fixed at Rs.6,250/-. Therefore, the loss of income will have to be calculated as Rs.6,250/- x 12 x 13. The loss of consortium is fixed at Rs.1,00,000/- for the wife. The children have lost of love and affection of their father. Therefore, they can be awarded Rs.50,000/- in all. Towards the funeral expenses, Rs.25,000/- can be awarded. Thus, the compensation payable to the claimnt to come to Rs.11,50,000/-

Sl.No.	Head	Award Amount in Rs.
1.	Loss of income	9,75,000/-
2.	Loss of consortium for wife	1,00,000/-
3.	Love and Affection for children	50,000/-
4.	Funeral expenses	25,000/-
5.	Total	11,50,000/-



5. In the result, the civil miscellaneous appeal is partly allowed and the award dated 21.03.2014 passed in M.C.O.P.No.115 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court, Tuticorin) is enhanced from Rs.5,76,500/- to Rs.11,50,000/- as indicated above. The second respondent is directed to deposit the balance of the enhanced compensation amount with accrued interest at 7.5% per annum from the date of claim petition till the date of realization to the credit of M.C.O.P.No.115 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court, Tuticorin), within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the first appellant/wife is entitled to 50% of the entire award amount and the balance 50% of award amount shall be apportioned equally (1/3 share) to the appellants 2 to 4. The appellants are permitted to withdraw the entire compensation with accrued interest, by filing proper application before the Tribunal, less the amount already withdrawn by them. The Registry is directed to collect the Court fee for the enhanced compensation, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Tuticorin.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.U.Minnavadi, Advocate Sr.No.82821

ARUL

VB/SKN/RSK/SAR1/19/12/2017/3P/4C

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12.10.2017