



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.[MD].No.377 of 2013
and
M.P.(MD).No.1 of 2013

Annamma Sebastian Kannanthanam : Appellant/Petitioner

Vs.

1.Santhosh
2.M.R.Prasanth
3.Royal Sundaram Alliance Insurance Company,
Chennai Branch, 46, Whites Road,
Chennai 14.
4.Aruldas : Respondents/Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decreetal order dated 02.04.2012, on the file of the Motor Accident Claims Tribunal, Padmanabhapuram, [Court of the learned Subordinate Judge of Padmanabhapuram], in M.C.O.P.No.52 of 2003.

For Appellant : Mr.K.N.Thambi

For Respondent No.1 : Ex-parte

For Respondent No.2&4 : Mr.F.Deepak

For Respondent No.3 : Mr.S.Srinivasaraghavan

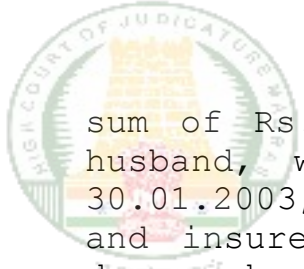
JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Padmanabhapuram, [Court of the learned Subordinate Judge of Padmanabhapuram], in M.C.O.P.No.52 of 2003, dated 02.04.2012, the present Civil Miscellaneous Appeal has been filed by the wife of the deceased, seeking enhancement of compensation.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The case of the claimant, as could be culled out from the Claim Petition, is that the appellant/claimant made a claim for a



sum of Rs.20,00,000/- before the Tribunal for the death of her husband, who died in a motor accident, that had occurred on 30.01.2003, involving the vehicle owned by the second respondent and insured with the third respondent - Insurance Company. The deceased was working as a Pastor in USA and earning salary as well as charges for 3,200 US dollars. The deceased came to India for the purpose of construction of a house. After the completion of the construction work, he planned to return back USA. In such circumstances, he met an with accident and lost his life. Hence, his wife made a claim before the Tribunal for a sum of Rs.20,00,000/- as compensation for the death of her husband.

3. In order to prove the claim, on the side of the claimant, two witnesses were examined as PW-1 and 2, and 29 documents were marked as EX-P1 to EX-P29. On the side of the appellant - Insurance Company, two witnesses were examined as RW-1 and RW-2 and seven documents were marked as EX-R1 to EX-R2. Having considered all the above materials, the Tribunal has awarded a sum of Rs.2,87,000/- as compensation together with interest at the rate of 7.5% per annum payable by the Insurance Company. As we have already pointed out, having not been satisfied with the award amount, the appellant/ claimant has come up with the present Civil Miscellaneous Appeal.

4. We have heard the learned counsel appearing for the appellant/claimant and the learned counsel appearing for the respondents 2 to 4 and we have also perused the records carefully.

5. The main submission of the learned counsel for the appellant/claimant is that the amount awarded by the Tribunal under the head of loss of dependency is inadequate. In fact, before the Tribunal, it is the case of the claimant that her husband was working as a Pastor in USA and earning salary as well as charges for 3,200 US dollars. However, the Tribunal has taken only a sum of Rs.4,500/- as monthly income and after 1/3 deduction towards personal expenditure, the Tribunal has calculated the loss of income at Rs.3,000/- and awarded a very meagre sum of Rs.2,52,000.

6. The learned counsel further submitted that apart from the above amount, the Tribunal has award a sum of Rs.10,000/- towards loss of consortium, a sum of Rs.10,000/- towards loss of love and affection, a sum of Rs.5,000/- towards ambulance charges, a sum of Rs.5,000/- towards medical expenditure and a sum of Rs.5,000/- towards funeral expenses. Thus, totally, the Tribunal has awarded a sum of Rs.2,87,000/-.

7. It is also submitted that the appellant has now obtained <https://hcservices.ecourts.gov.in/hcservices/> employment of her husband. Hence, the appellant has now filed M.P.(MD).No.1 of 2013 to receive the documents, viz., certificate issued by the Adamhs Board of Cuyahoga Country, dated



17.10.2012, certificate issued by the Northeastern Ohio Synod, Evangelical Lutheran Church in the America, dated 22.10.2012 and the salary certificate issued by the City of Cleveland, dated 01.11.2012. The above additional documents, according to the appellant, would prove the employment and the salary of the deceased. Thus, by taking the above additional documents into consideration, the amount awarded by the Tribunal needs to be enhanced.

8. The learned counsel appearing for the third respondent - Insurance Company opposed the prayer sought for by the appellant on the ground that unless the above documents are validly tested in evidence, the amount awarded by the Tribunal cannot be enhanced.

9. We have considered the above submissions.

10. In our considered view, since the appellant has now obtained additional documents, viz., certificate issued by the Adamhs Board of Cuyahoga County, dated 17.10.2012, certificate issued by the Northeastern Ohio Synod, Evangelical Lutheran Church in America, dated 22.10.2012 and the salary certificate issued by the City of Cleveland, dated 01.11.2012, she has to be afforded one more opportunity to prove the employment and the salary received by her husband. Thus, the matter has to be remitted back to the Tribunal for the purpose of adducing additional evidence by the appellant with regard to the amount awarded by the Tribunal relating to loss of dependency.

11. In the result, the Award dated 02.04.2012, made in M.C.O.P.No.52 of 2003, passed by the Motor Accident Claims Tribunal, cum Subordinate Judge, of Padmanabhapuram, is set aside and the matter is remitted back to the Tribunal with a direction to permit the appellant to adduce additional evidence, as referred to above, subject to proof and relevancy and also to permit the Insurance Company to cross-examine PW-1 and thereafter, pass appropriate award, under the head of loss of dependency, within a period of three months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar



To
The Subordinate Judge,
Motor Accident Claims Tribunal, Padmanabhapuram

Copy to: The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.Srinivasa Raghavan, Advocate SR.No.7429
+1cc to Mr.K.N.Thampi, Advocate Sr.No.7113

NB
SM:BS-MR:24.02.2017:4p/5c

JUDGMENT MADE IN
C.M.A. [MD] .No.377 of 2013
08.02.2017