

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2018

Coram:

The Hon'ble Mr. Justice R. Subbiah
and
The Hon'ble Mr. Justice P.D. Audikesavalu

C.M.A.No.1011 of 2014

1. S.Krishnamoorthy
2. K.ChitraAppellants/Petitioner

Vs.

1. A.Thirumugam
2. National Insurance Company Ltd.,
No.378, Mint Street,
Sowcarpet, Chennai - 600 079.
3. M.SanthanamRespondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.10.2013 in M.C.O.P.No.421 of 2011 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes at Chennai).

For Appellants : Mr.P.Natarajan
for Mr.N.Manokaran

For 2nd Respondent : Mr.C.R.Krishnamoorthy

For 1st and 3rd Respondents : No appearance

JUDGMENT

(Order of the Court was delivered by R.Subbiah, J.)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) Chennai, in and by the award passed in M.C.O.P.No.421 of 2011, dated 08.10.2013, the claimants have filed the present appeal seeking for enhancement of the compensation.

2.Since the present Appeal is filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3.The claimants are the parents of the deceased Mr. K.Marishwar Raj. It is the case of the claimants that on 08.10.2010, at about 8.30 hours, when the said Marishwar Raj was riding his motorcycle bearing registration No.TN 20 BT 5487 on Poonamallee-Avadi Road from north to south direction, a Lorry bearing Registration No. TN 25-V 1850, owned by the first respondent and insured with the second respondent/Insurance Company came in a rash and negligent manner and hit against the two-wheeler and thus caused the accident. In the said accident, the said Marishwar Raj sustained grievous injuries and died on the spot. Hence, the appellants have made a claim for a sum of Rs.90,60,000/- as compensation for the death of their son.

4.Before the Tribunal, in order to prove the claim on the side of the claimants, the first claimant examined himself as P.W.1 besides examining one other witness as P.W.2 and marked 19 documents as Ex.P.1 to Ex.P.19. On behalf of the Insurance Company, neither any witness was examined nor any document was marked.

5.The Tribunal, after analyzing the entire evidence both oral and documentary, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the Lorry insured with the 2nd respondent herein/Insurance Company. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total compensation amount of Rs.8,50,000/-, out of which a sum of Rs.8,10,000/- was awarded under the head of loss of dependency alone. The break up details of the compensation amount awarded by the Tribunal are as follows :-

Loss of Dependency	: Rs. 8,10,000/-
Love and Affection	: Rs. 25,000/-
Funeral Expenses	: Rs. 10,000/-
Transportation	: Rs. 5,000/-
Total	Rs. 8,50,000/-

Not being satisfied with the same, the claimants have filed the present Appeal.

6. When the matter is taken up for consideration, the learned counsel appearing for the appellants/claimants, by

relying upon the judgment of the Division Bench of this Court, in the case of Managing Director, Metropolitan Transport Corporation Ltd., Vs. K.Murugesan, [(2014) 1 TNMAC 370 (DB)], would submit that in identical facts of the case, the Division Bench has fixed a sum of Rs.20,000/- as notional income and made calculation on that basis. Thus, the learned counsel appearing for the appellants submitted that by following the said decision, the compensation awarded by the Tribunal towards Loss of Dependency could be enhanced.

7. Per contra, the learned counsel for the second respondent/Insurance Company has made her submissions supporting the award passed by the Tribunal, contending that the deceased was only a student and he was not earning any income at the time of the death. Under such circumstances, it would not be appropriate to fix Rs.20,000/- as monthly income of the deceased. Thus, the learned counsel prayed for dismissal of the Appeal.

8.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

9.Admittedly, the deceased Marishwar Raj was a B.E. student, studying final year. Since he was a student, the Tribunal has fixed only a sum of Rs.7,500/- as monthly income. We are of the opinion that since the deceased was a Engineering Student and on completion of studies, he would have got a good job fetching good income not less than Rs.20,000/- per month. In fact, in an identical situation, this aspect was taken note of by the Division Bench in the aforementioned decision and fixed Rs.20,000/- as notional income. Hence, we are inclined to follow the above referred decision in the present case also. We are of the opinion that it would be appropriate to fix a sum of Rs.20,000/- as monthly income of the deceased to arrive at a just and proper compensation. In the instant case, at the time of accident, the deceased was aged 20 years. Hence, the correct multiplier that has to be applied is 18. If the monthly income of the deceased is taken as Rs.20,000/-, then 40% amount has to be added towards future prospects and if so added, the total comes to Rs.28,000/- (20,000 + 8,000). If 50% amount is deducted towards personal expenses, the monthly loss of dependency comes to Rs.14,000/-. Then, the total loss of dependency works out to Rs.30,24,000/- (14,000 x 12 x 18). Hence, the compensation amount of Rs.8,10,000/- awarded by the Tribunal under the head of loss of dependency is hereby modified and enhanced to Rs.30,24,000/-.

10.That apart, considering the fact that the claimants/parents have lost their son at the young age, the sum of Rs.25,000/- awarded by the Tribunal for loss of love and

affection appears to be on the lower side. Hence, the same is hereby modified and enhanced to a sum of Rs.50,000/-. Similarly, considering the present day cost of living, the compensation amounts awarded by the Tribunal under the heads Transportation and Funeral expenses are also required proper enhancement as the same are inadequate. Accordingly, the sum of Rs.10,000/- awarded by the Tribunal for funeral expenses is hereby enhanced to Rs.15,000/-. Similarly, the sum of Rs.5,000/- towards Transportation is enhanced to Rs.15,000/-. Further, it is seen that the Tribunal has not awarded any amount for loss of estate. Hence, a sum of Rs.15,000/- is hereby awarded for loss of estate. Consequently, the total compensation amount of Rs.8,10,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.31,19,000/-. The break up details of the modified/enhanced compensation amount are as follows:-

Loss of Dependency	: Rs.30,24,000/-
Love and Affection	: Rs. 50,000/-
Funeral Expenses	: Rs. 15,000/-
Transportation	: Rs. 15,000/-
Loss of Estate	: Rs. 15,000/-

Total	Rs. 31,19,000/-

11. In fine, the Civil Miscellaneous Appeal is partly allowed and the total compensation amount of Rs.8,50,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.31,19,000/-. The 2nd respondent/Insurance Company is directed to deposit the entire modified/enhanced compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants/claimants are entitled to withdraw the same with proportionate accrued interest in equal share by making necessary application before the Tribunal. Since the awarded amount is below the claimed amount, the Registry is directed to refund the excess Court fee to the claimants/appellants, to which they are entitled to. No costs.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

sd

To

1.The Chief Judge,
The Motor Accident Claims Tribunal,
(Court of Small Causes at Chennai)
Chennai.

2.The section officer,
Accounts Section,
High Court, Madras.

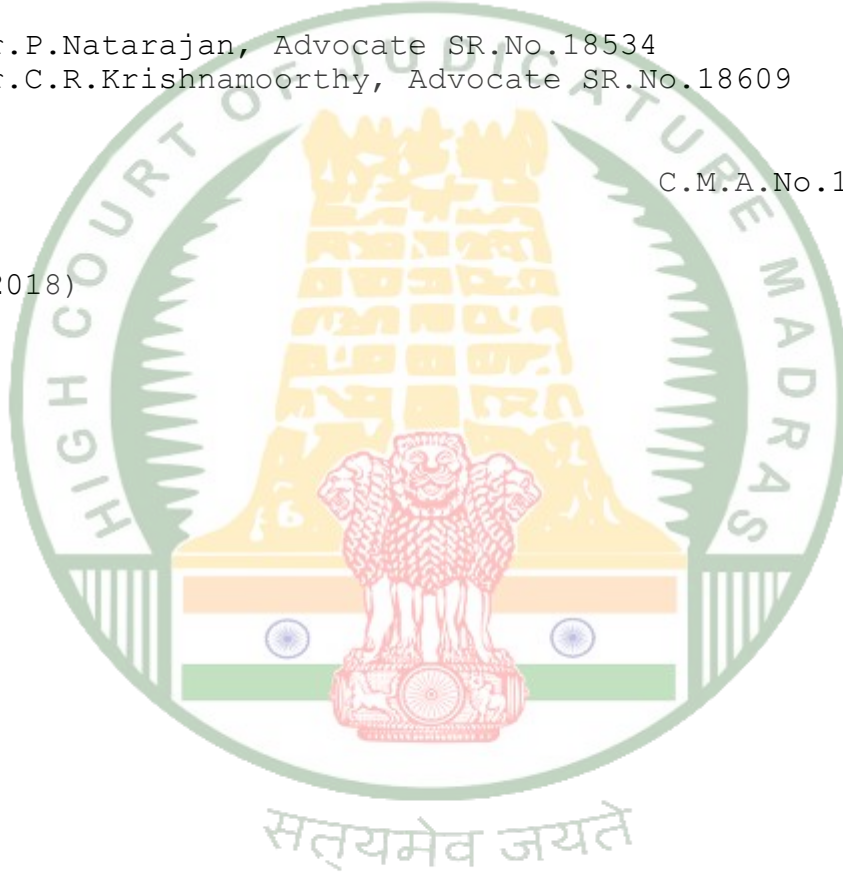
(for refunding excess Court Fee)

+1cc to Mr.P.Natarajan, Advocate SR.No.18534

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.No.18609

C.M.A.No.1011 of 2014

NRI (CO)
GN(11/06/2018)



WEB COPY