

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HON'BLE MR. JUSTICE R. SUBBIAH
and
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No.1197 of 2014

1 R. Varadarajan

2 V. Sujatha Appellants/Petitioners 1 & 2

vs.

1 V. Balaraman

2 Shanthi

3 Divya

4 Royal Sundaram Alliance Insurance Company
21, Pattulos Road
Chennai 600 002 ... Respondents

5 V. Sri Balaji ... Respondents/3rd Petitioner

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 10.09.2013 passed in M.C.O.P. No.1019 of 2010 on the file of the IV Additional District Judge (Motor Accident Claims Tribunal), Coimbatore.

For appellants Mr. M. Sriram

For R4

Mrs. C. Harini
for Mr. N. Vijayaraghavan
Standing Counsel

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JUDGMENT

(Delivered by R. SUBBIAH, J.)

The claimants in M.C.O.P. No.1019 of 2010, feeling aggrieved by the quantum of compensation awarded vide judgment and decree dated 10.09.2013 passed by the Motor Accidents Claims

Tribunal (IV Additional District Court), Coimbatore (for brevity "the Tribunal") in the said claim petition, have preferred the instant Civil Miscellaneous Appeal.

2 For the sake of convenience, the parties are referred to as per their rank in the instant Civil Miscellaneous Appeal.

3 The facts in brief leading to the filing of this Civil Miscellaneous Appeal are as under:

3.1 On 04.01.2010, about 1.30 p.m., when Nithya, the daughter of the appellants, was travelling in the car bearing Registration No.TN 38 AQ 5200 owned and driven by one Sandeep, due to the rash and negligent driving of the said Sandeep, the said car dashed against a tree, on account of which, their daughter Nithya breathed her last. It is worth pointing out at this juncture that even Sandeep breathed his last owing to the said accident. Contending that the said Sandeep was responsible for the accident in which Nithya died, the parents and brother of Nithya filed a claim petition before the Tribunal arraying the parents of Sandeep as respondents 1 and 2, the wife of Sandeep as the third respondent and the insurer of the car, viz., Royal Sundaram Alliance Insurance Company Ltd. as the fourth respondent, seeking a total compensation of Rs.39 lakhs.

3.2 On the side of the appellants, 22 exhibits were marked and 3 witnesses were examined. On the side of the respondents, neither any document was marked nor was any witness examined.

3.3 The Tribunal, on consideration of the oral and documentary evidence, finding that the accident in question had occurred only due to the rash and negligent driving of Sandeep, the car owner-cum-driver, awarded a total compensation of Rs.15,18,000/-, the break up of which is as under:

S.No.	Heading	Amount awarded (Rs.)
1	Pecuniary loss	14,92,700
2	Loss of love and affection	15,000
3	Funeral expenses	5,000
4	Transport expenses	5,000
Total		15,17,720 rounded off to 15,18,000

3.4 Not being satisfied with the quantum of compensation

awarded by the Tribunal, the parents of the deceased Nithya have preferred the instant Civil Miscellaneous Appeal arraying their son/brother of the deceased Nithya as the fifth respondent/proforma party, in addition to the respondents 1 to 4 before the Tribunal.

4 As stated above, since this appeal has been preferred only seeking enhancement of compensation, this Court is not traversing into the other aspects of the impugned award.

5 Thus, coming to the quantum of compensation awarded by the Tribunal, it is the case of the appellants before the Tribunal that the deceased Nithya was working as Associate Software Engineer in a private concern, viz., Accenture Services Private Ltd. and was earning Rs.16,586/- per month. To substantiate the income of the deceased Nithya, the appellants examined one Srinivas, an officer of the company where the deceased Nithya was working, as P.W.3, through whom, Ex.P.6, salary certificate of Nithya, was marked. On the basis of the evidence of Srinivas, P.W.3, the Tribunal has fixed the annual income of the deceased Nithya as Rs.2,07,323/- and after deducting Rs.20,732/- being 10% of the salary towards income tax, which works out to Rs.1,86,591/- and after deducting 50% of Rs.1,86,591/- towards personal expenses of the deceased Nithya, the Tribunal has assessed the actual pecuniary loss to the family as Rs.93,295/- and by applying 16 multiplier, determined the pecuniary loss as Rs.14,92,720/-. Besides, the Tribunal has awarded a sum of 15,000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transport expenses.

6 The learned counsel for the appellants submitted that given the fact that the deceased Nithya was aged 23 years at the time of her demise, the proper multiplier to be applied is only 18 and not 16 as has been applied by the Tribunal and thus, the compensation awarded by the Tribunal has to be enhanced.

7 Per contra, the learned Standing Counsel for the fourth respondent Insurance Company submitted that the Tribunal has taken the annual income of the deceased Nithya, viz., Rs.2,07,323/-, but, her salary certificate marked as Ex.P.6, through Srinivas P.W.3, would show that she received only Rs.16,586/- per month and hence, only Rs.16,586/- ought to have been taken by the Tribunal as the monthly income of the deceased Nithya and the compensation under the head pecuniary loss has to be arrived at only on that basis.

8 This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

9 As rightly pointed out by the learned Standing Counsel for the fourth respondent Insurance Company, the salary certificate of the deceased Nithya which has been marked as Ex.P.6 would show that she was receiving Rs.16,586/- as monthly income. Thus, when Rs.16,586/- is taken as the monthly income of the deceased, her annual income works out to Rs.1,99,032/- and

from the said amount, if a sum of Rs.3,903/- being 10% is deducted towards income tax, the balance comes to Rs.1,95,129/- and when 50% is added towards future prospects, the value works out to Rs.2,92,693/-. Inasmuch as the deceased was a spinster, after deducting 50% towards her personal expenses, the pecuniary loss to her family owing to her demise works out to Rs.1,46,346/- per annum. By applying multiplier 18, the total pecuniary loss can be arrived at Rs.26,34,237/-. Ergo, the compensation of Rs.14,92,720/- awarded by the Tribunal under the head pecuniary loss is enhanced to Rs.26,34,237/-.

10 Further, considering the fact that the appellants have lost their daughter at her young age, the compensation of Rs.15,000/- awarded by the Tribunal towards loss of love and affection at the rate of Rs.5,000/- per claimant is enhanced to Rs.1,20,000/- at the rate of Rs.40,000/- per claimant. That apart, since no compensation has been awarded by the Tribunal under the head "loss of estate", an amount of Rs.15,000/- is awarded under the said head. Coming to funeral expenses, the amount of Rs.5,000/- awarded by the Tribunal is enhanced to Rs.15,000/- and the compensation of Rs.5,000/- awarded by the Tribunal towards transport expenses is maintained. Thus, the appellants and the fifth respondent are entitled to a total compensation of Rs.27,89,237/-. As far as the rate of interest is concerned, 7.5% per annum fixed by the Tribunal shall remain unaltered.

11 It is reported by the learned Standing Counsel for the fourth respondent Insurance Company that a sum of Rs.25 lakhs has already been deposited. In such view of the matter, the fourth respondent Insurance Company is directed to deposit the balance amount within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants are entitled to Rs.12 lakhs each and the fifth respondent is entitled to get the balance amount. The appellants and the fifth respondent are permitted to withdraw their respective share. सत्यमेव जयते

This Civil Miscellaneous Appeal stands allowed in the above terms. Costs made easy.

Sd/-
Assistant Registrar (CS III)

//True copy//

Sub Assistant Registrar

cad

To

The IV Additional District Judge
(Motor Accident Claims Tribunal)
Coimbatore

Copy to

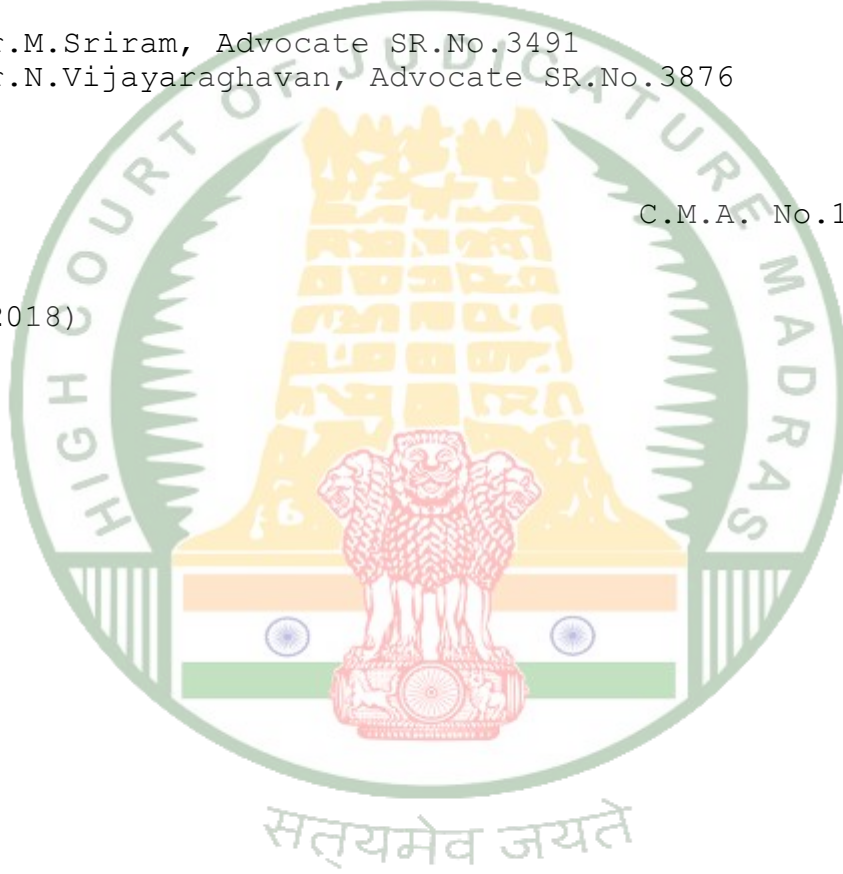
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M.Sriram, Advocate SR.No.3491

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.3876

C.M.A. No.1197 of 2014

SVI (CO)
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