

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.8.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.1558 OF 2016

1 N.SHANJEEV RAO
2 S.MAHIMA ..Appellants/Petitioners

versus

1 S.RAJAKUMAR
(Set exparte before the tribunal court)
2 ORIENTAL INSURANCE CO LTD
MOTOR THIRD PARTY CLAIMS-HUB NO.216
PRAKASAM SALAI BROADWAY
CHENNAI-108. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 19.2.2016 in MACT O.P.No.5665 of 2014 on the file of the Chief Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For appellant : Mrs.P.T.Salim Fathima
For respondents : Mr.M.Krishnamoorthy, for R-2

J U D G M E N T
(made by R.SUBRAMANIAN, J.)

The parents of the deceased Aswin, who was aged about 21 years at the time of the accident that occurred on 29.7.2014, have come forward with this appeal, seeking enhancement of the compensation.

2. The case of the appellants is that on 29.7.2014 at about 17.30 hours while the deceased was travelling as a pillion rider in the motorcycle bearing registration no.TN 06 J 2441 from north to south direction in GST Road near Karanai Puducherry Road Junction, the bus bearing registration no.TN 20 CB 0598 came in a rash and negligent manner from behind and dashed against the motorcycle, due to which the deceased sustained grievous injuries and succumbed to the same.

3. According to the appellants, the deceased was a graduate in business administration and had plans to pursue his Post Graduation. The appellants had claimed a sum of Rs.46 lakhs as compensation for death of their only son in the accident.

4. The claim was resisted by the Insurance Company contending that the deceased was responsible for the accident inasmuch as he was not wearing helmet. The Tribunal however found that it was the bus owned by the first respondent and insured with the second respondent that was responsible for the accident and awarded a compensation of Rs.17,00,000/-. Challenging the same, the present appeal has been filed by the appellants.

5. Mr.N.Krishnamoorthy, learned counsel appearing for the Insurance Company would attempt to canvas the question of negligence. But inasmuch as the Insurance Company has not filed any separate appeal, we do not think we could go into the same.

6. While computing the quantum of compensation, the Tribunal took the monthly income of the deceased at Rs.10,000/- and adding 50% to his future prospects, and deducting 50% towards personal expenses and applying multiplier of 18, worked out the pecuniary loss at Rs.16,20,000/-. The Tribunal awarded a sum of Rs.50,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.5,000/- for transport expenses. In all, the Tribunal awarded a sum of Rs.17,00,000/- as compensation.

7. Mrs.Salim Fathima, learned counsel appearing for the appellants would contend that considering the age and qualification of the deceased, the Tribunal should have fixed the notional income at Rs.15,000/- and deducted future prospects at 40% as per the judgment of the Larger Bench in National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(16) SCC 680.

8. We have considered the rival submissions.

9. Considering the age and the educational qualification of the deceased, we are of the opinion that monthly income could be safely fixed at Rs.12,000/-. Adding 40% to the said sum i.e. Rs.4,800/- towards future prospects, the total income works out to Rs.16,800/-. Since the deceased was a bachelor, 50% should be deducted towards his personal expenses. The balance of Rs.8,400/- is taken as the monthly pecuniary loss to the family. Total pecuniary loss is Rs.8,400/- x 12 x 18 = Rs.18,14,400/-. We find that the Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection. We feel that the same is on the lower side. We enhance it to Rs.80,000/-. The amount awarded at Rs.5,000/- towards transport expenses is sustained. The Tribunal has not awarded any amount towards the loss of estate. The same is fixed at Rs.15,000/-. The funeral expenses awarded at Rs.25,000 is sustained. Thus, the total compensation comes to Rs.19,39,400/- and the same is rounded off to Rs.19,40,000/-. The said compensation of Rs.19,40,000/- shall be paid with interest at 7.5%.

10. The award of the Tribunal is modified. The compensation is fixed at Rs.19,40,000/- with interest at 7.5% from the date of petition till the date of payment. It is brought to our

notice that the award amount has been paid over to the claimants. The balance amount shall be paid within a period of four weeks. The compensation amount shall be shared by the appellants equally.

11. The appeal is disposed of accordingly. No costs. Consequently, C.M.P.No.1558 of 2016 is closed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

The Chief Judge, Motor Accidents Claims Tribunal
(Court of Small Causes), Chennai.

+ 1 cc to Mr.M. Krishnamoorthy, Advocate Sr.59371

+ 1 cc to Mr. Swamikannu, Advocate SR.59675

C.M.A.No.1558 OF 2016

MR(CO)
EU 30/10/2018



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