

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 2645 of 2016

1. N. Uma Maheswari
2. Mr.D. Natarajan ...Appellants(Claimants)

Vs.

1. Yasudha
2. National Insurance Co. Ltd.,
Motor 3rd Party Cell Claim,
No. 751, Mount Road,
Chennai - 600 002. ...Respondents(Respondets)

Prayer: Civil Miscellaneous Appeal filed U/S 173 of The Motor Vehicle Act 1988 as against the judgment and decree dated 13.04.2016 passed in M.C.O.P. No. 778 of 2013 by the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai.

For Appellants :: Mr.K. Varadha Kamaraj

For Respondents :: Mr.S. Arunkumar for R2

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J)

This Civil Miscellaneous Appeal has been preferred by the claimants as against the award of Rs.18,55,000/- passed on 13.04.2016, by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, in M.C.O.P. No. 778 of 2015, for the death of one R.Jayaraman, aged about 21 years, BCA degree holder, working as a Technical Executive in a Company, allegedly earning about Rs.24,000/- per month, in the accident, which occurred on 14.07.2012, when the victim, who was riding his motor cycle, was hit down by a van belonging to the 1st

respondent and insured with the 2nd respondent, driven rashly and negligently.

2. Heard Mr.K. Varadhakamaraj, learned counsel for the appellants and Mr.S. Arunkumar, learned counsel for the 2nd respondent.

3. The only question to be decided is with regard to the quantum alone as there is no appeal filed by the Insurance Company as against the award.

4. It was the case of the appellants before the Tribunal that the deceased was possessing BCA degree and he had just joined M.Sc(IT). To prove his educational qualification, Ex-P7 series was marked. Regarding the income, Exs-P8 and P9 have been marked through P.W.3, the authorized representative of the employer of the deceased. As per Ex-P9, salary certificate, the total earning of deceased was shown as Rs.24,090/- and the gross salary was mentioned as Rs.18,750/-. Though P.W.3 stated that salary payments were made through bank account only, he did not produce any bank statements showing the salary credited to the account of the deceased and therefore, the Tribunal disbelieved the version of P.W.3 and considering the educational qualification of the deceased, determined his monthly income at Rs.10,000/-. This determination is being questioned by the learned counsel for the appellants contending that when the salary certificate has been marked through the authorized representative of the company, there is no occasion for the Tribunal to reject the said piece of evidence for the reason that the bank statement was not produced.

5. A perusal of the salary certificate would reveal that the deceased was drawing Rs.7500/- as basic pay, Rs.3750/- as HRA, Rs.800/- as conveyance, Rs.5440/- as special allowance and Rs.6600/- towards NSS/on call, in all amounting to Rs. 24,090/-. When the authorized representative of the company adduced before the Court and produced the appointment order and salary certificate of the deceased, the same cannot be ignored. However, Rs.6600/- mentioned towards NSS/on call is not an amount, which he would receive regularly and it depends on requirement. Therefore, the said amount cannot form part of the salary and if the same is deducted, the salary of the deceased would be Rs.17,490/-. Therefore, this Court determines the monthly salary of the deceased at Rs.17,490/- based on Exs-P8 and P9.

6. Since the deceased was aged about 21 years, 40% has to be added towards "Future Prospects". Accordingly, adding 40%, the "total monthly income" would be Rs. 24,486/- (Rs.17490 + 40% (Rs.17490/-). As far as "Personal Expenses" is concerned,

50% has to be deducted as the deceased was a bachelor. Therefore, deducting 50% towards " Personal Expenses", the " Monthly Contribution of the deceased to his family" would be Rs.12,243/- (Rs.24,486/- (-) 50% (24,486/-). The deceased was aged about 21 years as proved by Ex-P6, Driving Licence, Ex-P7 Educational qualifications and therefore, the appropriate multiplier to be adopted, to calculate "Loss of Income" is 18. Applying the said multiplier, " Loss of Income" would be,

Loss of Income	::	Rs.12,243 x 12 x 18
	::	Rs.26,44,488/-

The sum of Rs.1,50,000/- awarded towards " Loss of Love and Affection" is reduced to Rs.50,000/-. So also, the amount awarded towards " Funeral Expenses", namely, Rs. 25,000/- is reduced to Rs.15,000/- and the amount awarded towards " Loss of Estate" is reduced to Rs.15,000/-. A sum of Rs.10,000/- is awarded towards "Transport Expenses" as there was no award of amount under that head. The total compensation payable to the appellants comes to Rs.27,34,488/- rounded off to Rs.27,35,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. The claimants shall pay additional court-fee for the enhanced amount, if any. The claimants are entitled to equal share in the award amount.

7. The 2nd respondent Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of the appellants to their bank account through RTGS within a period of one week thereon.

8. In the result, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal to the tune of Rs.18,55,000/- is enhanced to Rs. 27,35,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

nv

To

1. THE II COURT OF SMALL CAUSES,
THE MOTOR ACCIDENT CLAIMS TRIBUNAL,
CHENNAI.

COPY TO

The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.S.ARUNKUMAR, Advocate, S.R.No.36720

+1cc to Mr.K.VARADHAKAMARAJI, Advocate, S.R.No.36704

C.M.A. No. 2645 of 2016

SV(CO)
TR(17/07/2018)



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