

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.595 of 2016
and C.M.P.No.4845 of 2016

The Branch Manager

United India Insurance Co.Ltd.,

Branch Office, Main Road Ooty

The Nilgiris

...Appellant/Respondent-3.

Vs

1.A.Madeena Beevi

2.M.Nasima Begum

3.A.Nisama Begum

4.A.Nagoor Basha

5.A.Sikkandar Basha

6.A.Kader Basha

...Respondents 1 to 6/
Petitioners 1 to 6

7.P.Saravanan

...Respondent No.7/1st respondent

8.B.Sairabanu

...Respondent No.8/2nd respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 17.08.2015 passed in M.C.O.P.No.1983 of 2013 by the Motor Accident Claims Tribunal (Special Subordinate Judge, Coimbatore).

For appellant सत्यमेव जयते : : M/s.I.Malar

For Respondents : :

for R1 to R6 : : Mr.R.Ramkumar

R7 & 8 set exparte at Lower Court

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the 3rd respondent before the Tribunal viz., the Insurance Company, against the judgment and decree dated 17.08.2015 passed in

M.C.O.P.No.1983 of 2013 by the Motor Accident Claims Tribunal (Special Subordinate Judge, Coimbatore).

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The averments in the claim petition are that on 09.05.2013 at 7.45 p.m., while the deceased Abubackar was going in his bicycle, in Mettupalayam to Sathyamangalam Main Road, a Tipper lorry bearing Reg.No.TN-43-B-7909 driven by the 1st respondent in a rash and negligent manner, hit against the deceased. Due to grievous injuries sustained by the deceased, he was taken to the Government Hospital, Mettupalayam, and thereafter to Government Hospital, Coimbatore, where he died. The petitioners who are the wife and children of the deceased claimed compensation of Rs.20,00,000/-.

3. On the other hand, the 3rd respondent/Insurance Company opposed the petitioners' claim by filing a detailed counter. It is stated that it is incorrect that the driver of the Lorry had driven the vehicle in a rash and negligent manner and caused the accident. The deceased cyclist had come across the four road junction without caring the plying traffic without any signal or indication. It is further stated that since the first respondent is not responsible for the accident, the petitioners are not entitled to any compensation. The LRs of the tortfeasor cannot claim any relief for his negligence. The compensation claimed by the petitioners is excessive. Thus, the 3rd respondent pleaded for dismissal of the petition.

4. To substantiate the claim before the Tribunal, the petitioners examined P.Ws.1 to 3 and produced Exhibits P.1 to P.9. The 3rd respondent/Insurance Company, neither examined any witness nor produced any documentary evidence.

5. After considering the available oral and documentary evidence, the Tribunal awarded compensation of Rs.7,78,000/- with interest at 7.5% p.a., from the date of petition till the date of deposit. The Tribunal categorically held that the accident occurred only due to rash and negligent driving of the first respondent and hence, the 2nd respondent/owner of the vehicle and the 3rd respondent/insurer of the vehicle are jointly and severally liable to pay compensation. It is further held that the 3rd respondent has to pay the entire compensation amount to the petitioner. The details of the compensation is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1.	Loss of dependency	Rs.6,48,000/-
2	Loss of consortium	Rs. 50,000/-
3	Loss of love and affection to petitioners 1 to 3 Rs.50,000/- each (Rs.50000 x3 =1,50,000)	Rs. 50,000/-
4	funeral expenses	Rs. 25,000/-
5	Loss of estate	Rs. 5,000/-
	Total	Rs.7,78,000/-

6. Aggrieved by the said conclusion arrived at by the Tribunal, the 3rd respondent/Insurance Company has filed the present Civil Miscellaneous Appeal contending that the Award passed by the Tribunal is on the higher side. It is further contended that the Tribunal has wrongly calculated the loss of income and adopted wrong multiplier. Hence, the 3rd respondent/appellant seeks to entertain the appeal.

7. On the other hand, the learned counsel for the Petitioners/claimants has contended that the Tribunal has properly appreciated the evidence and the finding of the Tribunal that the accident occurred only due to rash and negligent driving of the first respondent is perfectly in order and the quantum of compensation is just and proper and hence, needs no interference and the same may be confirmed.

8. Heard both sides and perused the materials available on record.

9. To prove the accident, the petitioners examined P.W.2 eyewitness who categorically deposed about the rash and negligent act of the first respondent at the time of accident. Further, Ex.P.1 FIR and the charge sheet filed in that Criminal Case against the first respondent was marked as Ex.P.5. Hence, the tribunal has rightly held that the accident occurred due to the rash and negligent driving of the first respondent.

10. As far as quantum of compensation is concerned, the tribunal, by going through Ex.P.7-identity card of the petitioner issued by Tamilnadu Welfare Board for Building Workers to the deceased showing as a painter, fixed Rs.8,000/- as notional monthly income and adopted multiplier 9 and deducted 1/4th towards personal expenses and calculated the loss of dependency as follows:-

Rs.8000 x 12 = Rs.96,000/-
Rs.96,000/- - 1/4 = Rs.72,000/-
Rs.72,000/- x 9 = Rs.6,48,000/-.

Considering the age of the deceased at the time of accident and the number of dependants and their age, particularly, the daughters and sons, who are above 30 years, this court is of the view that 1/3rd deduction should be made while calculating the loss of income. Accordingly, the loss of income for the family of the deceased could be arrived as under:-

Rs.8000/- x 12 x 9 = Rs.8,64,000/-
1/3rd deduction = Rs.2,88,000/-
Rs.8,64,000/- - Rs.2,88,000/- = Rs.5,76,000/-

It is contended by the learned counsel for the appellant/2nd respondent-Insurance Company that in view of the dictum laid down by the Constitution Bench of the Apex Court in the ruling reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], it is necessary to fix reasonable sums on conventional heads. In the said decision, it is held as follows:-

"It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads. "

Following the above said Apex court Ruling, towards loss of estate, loss of consortium and funeral expenses, this court is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000/-
Loss of consortium = Rs.40,000/-
Funeral Expenses = Rs.15,000/-

Further, this court is of the considered opinion that the amount awarded by the Tribunal, under the head "Loss of love and affection" is not sustainable and the same is liable to be set aside. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1.	Compensation for loss of dependency	Rs.6,48,000/-	Rs.5,76,000/-
2	Loss of consortium	Rs. 50,000/-	Rs. 40,000/-
3	Loss of love and affection	Rs. 50,000/-	---
4	funeral expenses	Rs. 25,000/-	Rs. 15,000/-
5	Loss of estate	Rs. 5,000/-	Rs. 15,000/-
	Total	Rs.7,78,000/-	Rs.6,46,000/-

11. In the light of the foregoing discussion, the award of the Tribunal is modified and the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed as stated infra:-

(1) The award granted by the Tribunal is reduced to Rs.6,46,000/- from Rs.7,78,000/-.

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) Since this court has already directed the appellant/Insurance Company to deposit the entire award amount passed by the Tribunal, the appellant/3rd respondent/Insurance Company is permitted to withdraw the excess amount, if any, after satisfying the order of this court. The apportionment of the modified award amount is as under:-

1st petitioner/wife is entitled to Rs.1,93,800/-
 2nd petitioner/daughter is entitled to Rs.1,93,800/-
 petitioners 3 to 6 are entitled to each Rs.64,600/-

The Petitioners/claimants are permitted to withdraw their respective share of award amount with accrued interest, by filing necessary application, less the amount if any already withdrawn by them.

(4) There will be no orders as to costs.

(5) Consequently, connected miscellaneous petition is closed.

Sd/-
 Assistant Registrar(CS II)

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Sub Assistant Registrar

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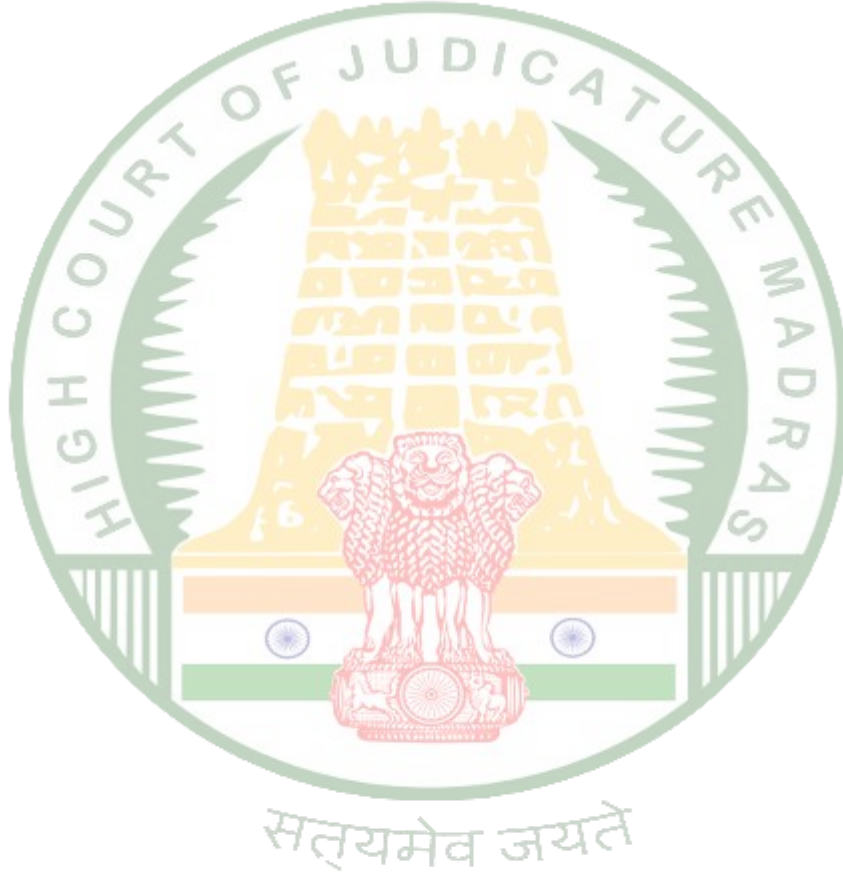
To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Coimbatore.

2.The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.595 of 2016

RSK (CO)
CS/06/03/18



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