

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 03.09.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.629 of 2016

1.N.Prakash
2.Komala

...Appellants/Petitioners

Vs

1.Renuka

2.Shriram General Insurance Co. Ltd.,
City Centre Complex, 2nd Floor,
No.66, Thirumalaipillai Road,
T.Nagar, Chennai-17.Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 09.09.2015 made in M.C.O.P.No.1617 of 2012 on the file of the Motor Accidents Claims Tribunal, (III Small Causes Court), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents: Mr.Dakshinamoorthy (for R2)
No Appearance (for R1)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 09.09.2015 made in M.A.C.T.O. P.NO.1617 of 2012 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The Appellants/Claimants are Petitioners 1 and 2, the 1st Respondent is 1st Respondent and 2nd Respondent is 2nd Respondent in M.A.C.T.O.P.NO.1617 of 2012, on the file of Motor Accident Claims Tribunal, in the Court of Small Causes, Chennai. According to the Appellants/ petitioners their daughter standing at in front of Lakshmi Temple at Chenjuraju Kandrige, Pichatur mandal, Chittoor District on 15.02.2012 at about 08.30.hours, at that time the load auto bearing Registration No.AP-03-TB-0933 driven by its driver and rash and Negligent manner hit the appellants daughter in this impact the appellants daughter died on spot due to grievous injuries. The deceased was 13 years at the time of death and she was a student. The 1st Respondent is owner of load auto bearing Registration No.AP-03-TB-0933 and 2nd

Respondent is insurer of load auto bearing Registration No.AP-03-TB-0933. The appellant claim a sum of Rs.6,00,000/- as compensation under section 166 of M.V.Act. The 1st Respondent was remained exparte.

3.The 2nd Respondent/insurance company filed counter statement and denied various allegations made by the appellant and pleaded the accident happened due to negligence of appellants daughter and denied liability on the score of the 1st Respondents driver not having license on the date of accident and denied the age and income of the deceased and prays for dismissal of above claim.

4.Before the Tribunal, the 1st appellant examined as PW1 and one Ramachandran examined as PW2 (eye witness) and marked 5 Documents as Exs.P1 to P5. On behalf of 2nd Respondent/Insurance company one Mrs.Vaisha Devi examined as RW1 and marked 3 document as Exs.R1 to R3.

5.The tribunal considering the pleadings ,oral and documentary evidence and evidence of PW1 and PW2 ,came to the conclusion that the accident occurred only due to rash and negligent driving of the 1st Respondent load auto and since no license by 1st Respondents driver direct the 2nd Respondent pay compensation to appellants and recover the same from 1st Respondent (owner of vehicle) held the respondents are liable. As per income concern fixed notional income Rs.15000/- per annum and applied multiplier 15 and awarded a compensation sum of Rs.3,40,600/- with 7.5% interest payable by 2nd Respondent behalf of 1st Respondent and recover the same from 1st Respondent. The details of compensation is as follows:-

Award of Heads

-----सत्यमेव जयते-----	
a) Loss of Income (15,000 X 15)	: Rs.2,25,600/-
b) Loss of love & affection to	
Appellants	: Rs.1,00,000/-
c) Funeral Expenses	: Rs. 15,000/-

Total Award	: Rs.3,40,600/-
	with 7.5% interest

6. Against the said award dated 09.09.2015 made in M.A.C.T.O.P.No.1617 of 2012, the present Civil Miscellaneous Appeal prepared by the appellants.

7. The learned counsel for the appellants contended that the Annual Income Rs.15,000/- fixed by the tribunal is very low and notional income should be fixed Rs.6,500/- per month as per rulings in Syed Sadiq Vs. United India Insurance Co. Ltd., 2014 (1) TNMAC 459 case. Hence, the award to be enhanced and appeal to be allowed. The learned counsel for appellants further contended that though the claim is very low may award more than claim amount under just compensation was awarded as per judgment in Sarala Varma and others Vs. Delhi Transport Corporation and another, 2009 (2)TNMAC 1 (SC).

8. The learned counsel for the 2nd respondent submitted that the tribunal considered all the materials is proper perspective and rightly allowed the claim under all heads and prayed for dismissal of the above Civil Miscellaneous Appeal.

9. Heard the learned counsel for the appellants and the learned counsel for the 2nd Respondent and perused the materials available on record.

10. I went through entire evidence of appellant and 2nd Respondent insurance company, I find is not correct the Annual Income Rs.15,000/- fixed by the tribunal is very low, because accident in the year 2012 and considering rulings in Syed Sadiq Vs. United India Insurance Co. Ltd., 2014 (1) TN MAC 459 case, I fix the monthly income Rs.6,500/- per month as notional income and deduct 50% income for personal expenses of the deceased. As such I calculated loss of dependency as under:

$$\text{Rs.6,500/-} \times 12 \times 15 \times 50/100 = \text{Rs.5,85,000/-}$$

11. I confirm the award of Rs.1,00,000/- towards loss of love and affection of appellants awarding Rs.50,000/- each since they lost their affectionate daughter and Rs.15,000/- towards funeral expenses.

12. I award Rs.15,000/- towards loss of estate as per the Hon'ble Apex Court judgment in National Insurance Company Ltd. Vs. Pranay Sethi.

13. I award Rs.5,000/- towards transport since the deceased body taken from house to hospital and hospital to house.

14. In view of above discussions, the modified award as follows:-

Heads

a) Pecuniary Loss	:	Rs.5,85,000/-
b) Loss of love & affection to appellants	:	Rs.1,00,000/-
c) Funeral Expenses	:	Rs. 15,000/-
d) Loss of Estate	:	Rs. 15,000/-
e) Transport	:	Rs. 5,000/-

Total Award = Rs.7,20,000/- with 7.5% interest

15.The interest awarded by the tribunal at the rate of 7.5% per annum is unaltered. The appellant is directed to pay the court fee for the enhanced amount, if any.

16.With the above detailed findings, this Civil Miscellaneous Appeal is allowed. No costs. The 2nd Respondent/ Insurance Company is directed to deposit the award amount as per modified award along with 7.5% interest, less the amount, if any, already deposited from the date of petition till the date of deposit within six weeks from the date of receipt of a copy of this order and recover the same from 1st Respondent. On such deposit, the Appellants are permitted to withdraw their share with proportionate interest as fixed by the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

vs

To

1.The III Judge,
The Motor Accidents Claims Tribunal,
(III Small Causes Court),
Chennai.

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

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.60470
+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.60372

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rrs 18/03/2019



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