

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2018

CORAM:

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

C.M.A.No.3020 of 2017
& C.M.P No.18144 of 2017

The Manager,
Royal Sundaram Alliance General Insurance Co., Ltd.,
Rep., by its Manager,
Pattullos Road, Chennai-600 002.

...Appellant/2nd Respondent

Vs.

1.Maheswari,
W/o late Raveendran

2.Minor Visagan
S/o Late Raveendran

3.Minor Jothika
D/o late Raveendran
(R2 & R3 minor respondents are rep., by
their natural guardian mother Maheswari R1)

4.Saroja
W/o Palanisamy
All are residing at Veppadipalakkadu Village,
Gengavalli Taluk, Salem District.

..... 1 to 4 Respondents/Petitioners

5.A.Chandrasekaran
S/o Arumugasamy,
No.39,MVM Nagar, 2nd Street,
Dindugal.

...5th Respondents/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 01.03.2017 made in MCOP No.502 of 2012 on the file of the Principal District Judge, Motor Accidents Claims Tribunal, Dharmapuri, Perambalur.

For Appellant : Mr.G.Vasudevan

For Respondents : Ms.R.Janagi for
M/s A.A.Venkatesan for R1 to R4
No appearance for R5

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN,J.)

The Civil Miscellaneous Appeal has been filed as against the award dated 01.03.2017 made in MCOP No.502 of 2012 on the file of the Principal District Judge, Motor Accidents Claims Tribunal, Perambalur.

2. The Insurance Company, which suffered an award for a sum of Rs.19,60,000/- granted as compensation for the death of one Raveendran in a motor accident that occurred on 10.06.2011, is the appellant. According to the claimants, the said Raveendran apart from working as Driver, was also owning a Mahindra Tractor and was earning about Rs.9,000/- per month. He died leaving behind his wife and two minor children. The claimants sought for a compensation of Rs.20,00,000/-.

3.The claim petition was resisted by the Insurance Company contending that the deceased also contributed to the accident inasmuch as three persons were travelling in a two wheeler at the time of accident. The age, occupation and income of the deceased were not disputed. The Tribunal, on a consideration of the evidence on record, concluded that the fact that three persons travelled in the motor cycle was not the cause of the accident. On such finding, relying upon the First Information Report, the Tribunal concluded that the lorry belonging to the fifth respondent insured with the appellant Insurance Company bearing registration No.TN-57-AA-5599 was driven in a rash and negligent manner by its driver and caused the accident.

4. On the quantum, the Tribunal took the monthly income of the deceased at Rs.8,000/- and added 50% towards future prospects and deducted $\frac{1}{4}$ of his income towards his personal expenses and arrived at total loss of income by applying multiplier of 16 as Rs.17,28,000/-. The Tribunal has also awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife, Rs.1,00,000/- towards loss of love and affection to the minor children. In addition to that, the Tribunal has awarded a sum of Rs.20,000/- towards funeral expenses, Rs.10,000/- towards transportation and Rs.2,000/- towards damage to the clothing. Thus, the Tribunal has awarded Rs.19,60,000/- as compensation.

5. We have heard Mr.G.Vasudevan, learned counsel appearing for the appellant-Insurance Company and Ms.R.Janagi, learned counsel appearing for Mr.A.A.Venkatesan, for the claimants-respondents 1 to 4.

6. Though the fifth respondent has been served, he has neither entered appearance through counsel nor does he appear in person.

7. Mr.G.Vasudevan, learned counsel for the appellant, would contend that the fact that three persons travelled in the motor cycle itself would amount to contributing to the accident.

8. We are afraid such a submission cannot be accepted. Unless it is proved that the very fact that three persons travelled in the motor cycle was a cause for the accident, no contributory negligence can be assigned for the mere fact that three persons travelled in the motor cycle. The Insurance Company has not let in evidence in proof of the same. Hence, we do not find any ground to interfere with the finding of the Tribunal on the ground of negligence.

9. As regards quantum, Mr.G.Vasudevan, learned counsel for the appellant-Insurance company would contend that the Tribunal is wrong in adopting 50% as future prospects, inasmuch as the deceased was self employed, it should have adopted only 40% towards future prospects. He would further contend that the fixation of monthly income by the Tribunal at Rs.8,000/- is on the higher side.

10. We find that there is enough evidence to support the conclusion of the Tribunal that the deceased would have earned atleast Rs.8,000/- per month. P.W.4 has been examined to show that he was employed under the deceased and paid Rs.300/- per day. Therefore, we do not see any error in the fixation of the monthly income by the Tribunal at Rs.8,000/-. Adding 40% towards future prospects, the monthly income works out to Rs.11,200/-. Out of the above sum of Rs.11,200/-, 1/4 has to be deducted towards personal expenses of the deceased. Considering the age of the deceased, the Tribunal has adopted the multiplier of 16 and the same can be safely adopted. Thus, the total loss of dependency would be Rs.16,12,800/- (Rs.11,200/- - 1/4 x 12 x 16 = 16,12,800/-).

11. The Tribunal has granted Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection. In view of the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) Law Weekly 331, the amount awarded towards loss of consortium is reduced to Rs.40,000/-

and the amount awarded towards loss of love and affection is reduced to Rs.80,000/-. The compensation awarded under the heads of funeral expenses, transportation and damage to the clothing is sustained. The Tribunal has not awarded any amount under the head loss of estate, hence, a sum of Rs.15,000/- is awarded towards loss of estate and thus, the total compensation works out to Rs.17,79,800/-

12. The details of the modified compensation as per the above discussion are as under:-

Loss of income	Rs.16,12,800/-
Loss of consortium	Rs. 40,000/-
Loss of love and affection	Rs. 80,000/-
Funeral expenses	Rs. 20,000/-
Transportation	Rs. 10,000/-
damage to the clothing	Rs. 2,000/-
Loss of estate	Rs. 15,000/-

Total Rs.17,79,800/-

The same is rounded off to Rs.17,80,000/-.

13. The Civil Miscellaneous appeal is partly allowed and the award of the Tribunal is modified to Rs.17,80,000/- (Rupees seventeen lakhs and eighty thousand only) as against the compensation of Rs.19,60,000/- awarded by the Tribunal with proportionate interest at 7.5% from the date of petition till the date of deposit. It is stated that the Insurance company has deposited 50% of the compensation amount pursuant to the interim order. The Insurance company is directed to deposit the remaining award amount within a period of four weeks from the date of receipt of the copy of this order. The apportionment between respondents 1 to 4 is as follows:

The first respondent-wife and respondents 2 and 3-minor children are entitled to Rs.5,00,000/- each with proportionate interest;

The fourth respondent-mother of the deceased is entitled to Rs.2,80,000/-with proportionate interest.

On such deposit, the claimants 1 and 4/respondents 1 and 4, being the wife and mother of the deceased, are permitted to withdraw their shares with proportionate interest as per the apportionment made above. The Tribunal is directed to deposit the shares of the minor claimants in a Nationalised Bank in interest earning fixed deposit till they attain majority. The first respondent-mother of the minor children is permitted to

withdraw accrued interest once in three months for the maintenance of the children. There will be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

raa

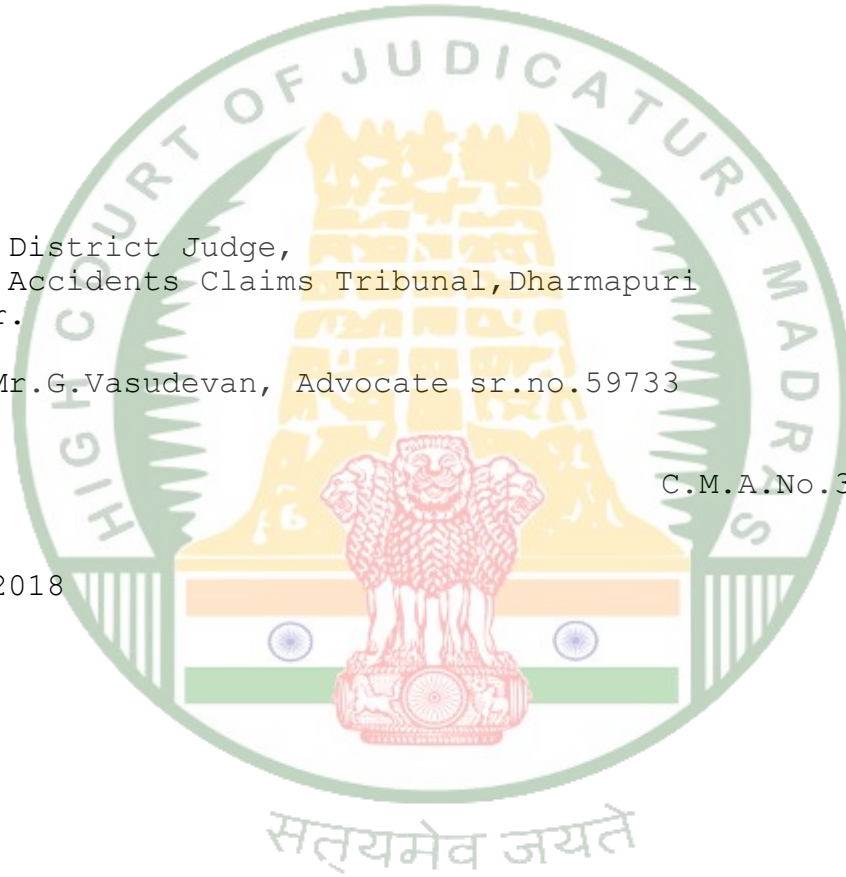
To

Principal District Judge,
The Motor Accidents Claims Tribunal, Dharmapuri
Perambalur.

+1cc to Mr.G.Vasudevan, Advocate sr.no.59733

C.M.A.No.3020 of 2017

sj(co)
nr 23/10/2018



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