

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

CMA No.518 of 2017

1. S. Bose
2. B. Chitra
(minor rep. by father
& nf S.Bose)
3. B. Seventhi Ammal
4. B. Periasamy
5. B. Selvi Appellants/Petitioner

-vs-

1. G. Selvakumar
2. New India Assurance Co. Ltd.,
Motor Third Party Claims HUB
Bombay Mutual Buildings
6th Floor, No.232, NSC Bose Road
Chennai - 600 001. Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of M.V. Act, 1988, against the judgment and decree dated 19.09.2016 made in M.A.C.T.O.P No.2900 of 2015 on the file of the Chief Judge, Motor Accidents Claims Tribunal, [Court of Small Causes] Chennai.

For Appellants : Ms. P.T. Saleem Fathima

For Respondents : Mr. M. Krishnamurthy for R2

R1 - set ex-parte in trial court

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

The father, step-mother, step-brother and step-sisters of deceased B.Ramu, who died in a motor accident that occurred on 10.02.2015, are the appellants.

2. It is the case of the claimants that when the deceased was standing on the eastern side of the Chennai-Madurai National Highway along with TVS XL Moped, at about 15.30 hours on 10.02.2015, the car bearing Registration No.TN-58-X-5455 driven in a rash and negligent manner, dashed against him. Due to the multiple injuries sustained by him, he died in the hospital on

the same day. The appellants filed the claim petition in M.A.C.T.O.P No.2900 of 2015, seeking a compensation of Rs.36,00,000/-.

3. The 1st respondent who is the owner of the car, remained ex-parte before the Tribunal. The 2nd respondent Insurance Company contested the claim denying the manner in which the accident occurred and contended that the deceased also contributed to the accident. It is further contended that all the claimants are not the legal heirs of the deceased. The quantum of compensation claimed was also questioned as excessive.

4. The Tribunal on a consideration of the evidence on record found that the rash and negligent driving of the driver of the car is the cause for the accident and thus answered the question of negligence against the appellant insurance company. The Tribunal also held that except the 1st and 3rd appellants, who are the father and step-mother of the deceased, other appellants are not entitled for compensation.

5. The Tribunal had awarded a sum of Rs.10,22,000/- as compensation to the appellants 1 and 3, for the death of their son B.Ramu, on the following heads :-

Sl.No.	Description	Amount
1.	Loss of pecuniary benefits	Rs. 9,72,000.00
2.	Loss of Love & Affection for Appellants 1 & 3	Rs. 20,000.00
3.	Funeral Expenses	Rs. 25,000.00
4.	Transport Expenses	Rs. 5,000.00
	Total	Rs.10,22,000.00

Aggrieved by the award of the Tribunal, the claimants are before us seeking enhancement.

6. Heard Ms. P.T.Saleem Fathima, learned counsel for the appellants and Mr.M. Krishnamoorthy for the 2nd respondent Insurance Company.

7. Ms. P.T. Saleem Fathima, learned counsel for the appellants would contend that the Tribunal is not right in fixing the monthly income as Rs.6000/-. She would add that the Tribunal should have been taken the monthly income as Rs.12,000/-, considering the fact that the accident occurred during the year 2015. She would also claim that the amount of Rs.10,000/- awarded towards loss of love and affection to the parents of the deceased is on the lower side.

8. Per contra, Mr. M. Krishnamurthy, learned counsel for the respondent Insurance Company would submit that fixation of monthly income at Rs.6000/- and deduction of 50% of the income towards his personal expenses is justifiable.

9. We have considered the rival submissions. Taking into account the date of accident and the occupation of the deceased as Agriculture Cooly, we are of the view that the monthly income can be fixed at Rs.9000/- instead of Rs.6000/- and by adding 40% of the income towards future prospects, the income is arrived at Rs.12,600/- per month. The deceased being a bachelor, 50% should be deducted for his personal expenses. As per the judgment in Sarala Varma & Other Vs. Delhi Transport Coporation & another reported in 2009(2) TNMAC 1, the appropriate multiplier to be adopted in this case is '18' and so calculated the pecuniary loss would be Rs.13,60,800/- [Rs.6300 x 12 x 18]. As per the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 27, a sum of Rs.25,000/-each is awarded for loss of love and affection to the appellants 1 and 3. The compensation of Rs.30,000/- awarded by the Tribunal under the other heads viz., funeral expenses and transport charges, is sustained. A sum of Rs.15,000/- is awarded towards 'loss of estate'. Therefore, the claimants would be entitled to a compensation of Rs.14,55,800/- which is rounded of to Rs.14,56,000/- with proportionate interests and costs.

10. In the result, the appeal is allowed in part. The appellants 1 and 3, father and step mother alone, are entitled for the compensation, along with an interest of 7.5% per annum and proportionate costs. So far as the other claimants are concerned, the claim petition stands dismissed.

11. The 2nd respondent Insurance Company is directed to deposit the entire award amount, less the amount if any already deposited, within a period of six weeks from the date of receipt of the copy of this order. On such deposit the appellants 1 and 3 are entitled to withdraw their shares. Out of the enhanced compensation amount, the Tribunal is directed to pay a sum of Rs.4,00,000/- with proportionate interests and costs to the first appellant, the father and the balance amount to the third appellant, the step-mother with proportionate interests and costs. There will be no order as to costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Chief Judge
Court of Small Causes
Chennai.

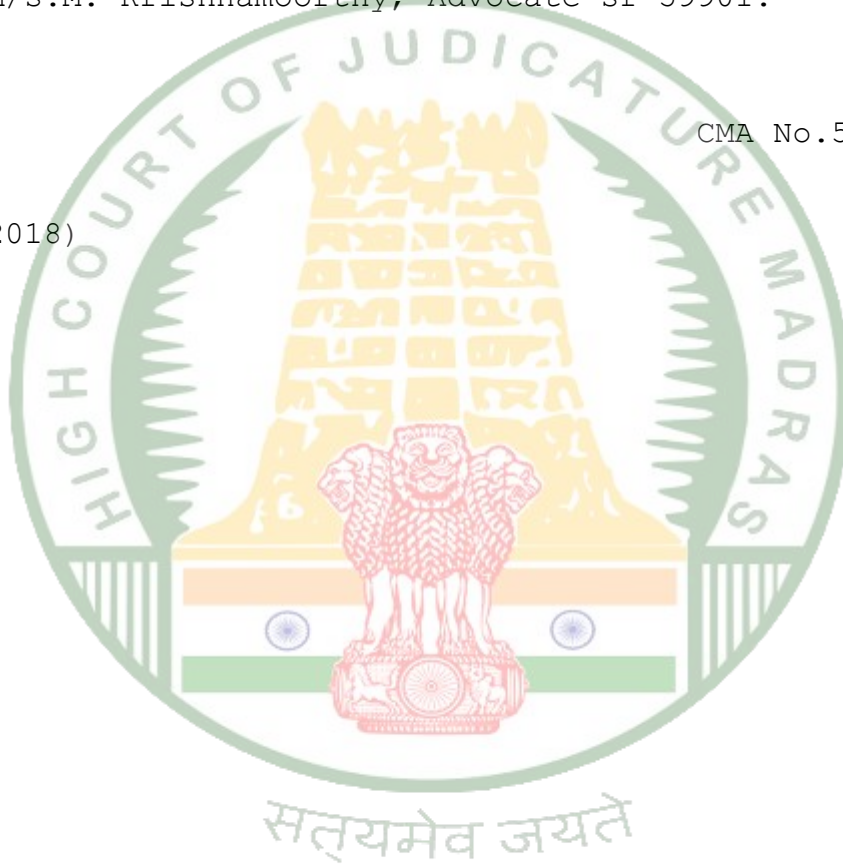
2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.M. Swamikannu, Advocate sr 59890.

+1 CC to M/s.M. Krishnamoorthy, Advocate sr 59901.

CMA No.518 of 2017

MP (CO)
SP (15/10/2018)



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