

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.78 and 200 of 2017

1.C.Thangathai
2.Chithirai Siluvai
3.C.Devasagayaraj

..Appellants in C.M.A.No.78/2017/Claimants

1.Velammal
2.V.Subbaih
3.Mariammal

..Appellants in C.M.A.No.200/2017/Claimants

Versus

1.C.Gunasekar
2.Royal Sundaram Alliance Ins. Co. Ltd.,
No.6, 1st Floor, Lattice Bridge Road,
Adyar, Chennai - 20.

..Respondents 1 & 2 in both the appeal/
Respondents 1 & 2

(The 1st respondent ex parte in lower Court,
hence notice may be dispensed with)

Prayer: Civil Miscellaneous Appeals filed against the judgment and decree dated 30.11.2012 made in M.C.O.P.Nos.1138 and 1137 of 2011 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai, respectively.

For Appellants : Mr.K.Varadha Kamaraj
For Respondents : Mr.N.Vijayaraghavan [for R2]
Ex-parte [R1]

C O M M O N J U D G M E N T

The above Civil Miscellaneous Appeals are filed challenging the judgment and decree dated 30.11.2012 made in M.C.O.P.Nos.1137 and 1138 of 2011 respectively, on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai, respectively.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. In M.C.O.P.No.1138 of 2011 [C.M.A.No.78/2017], the case of the petitioners is that on 09.03.2011 at about 2.45 hours as the deceased Sundarraaj, was driving his car bearing Registration No.TN-18-L-0302 in Ambattur to Maduravoyal Bypass Road opposite to Dr.M.G.R.University, Chennai, a container lorry bearing Registration No.TN-73-A-7227 came at high speed driven in rash and negligent manner and as the driver of the lorry suddenly applied break, the tata van dashed against the rear side of the lorry, resulting in the death of the deceased Sundaraj and causing injuries to other persons. The accident occurred only due to rash and negligent driving by the said lorry driver. The lorry belongs to the 1st respondent and insured with the 2nd respondent. The deceased Sundaraj, aged 25 years, was employed as a driver in a private concern earning Rs.12,000/- per month. The petitioners who are the mother and brothers of the deceased contended that due to sudden demise of said Sundaraj his contribution to the family is lost. Hence, they seek a sum of Rs.10,00,000/- as compensation.

4. On the other hand, opposing the claim of the petitioners, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner as alleged by the petitioners. The place, date and time of the accident is denied. The claim of the petitioners about the age, avocation and income of the deceased is disputed. As the accident occurred only due to negligence of the deceased who was driving the said van, the petitioners are not entitled to ask for compensation. As the owner and insurer of the tata van bearing Registration No.TN-18-L-0302 are not made parties to the proceedings, the petition is liable to be dismissed for non-joinder of necessary parties. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. The petitioner in M.C.O.P.No.1137/2011 [C.M.A.No.200/2017], who are the parents and sister of the deceased Velmurugan contended that in the above said accident which took place on 09.03.2011, the deceased Velmurugan was travelling in the tata van and due to the negligence of the 1st respondent lorry driver, the accident occurred and the said Velmurugan suffered fatal injuries and died subsequently. The deceased was aged 25 years and was employed as load man as well as Salesman in a private concern earning Rs.8,000/- per month. As the petitioners were dependent on the earning of the deceased they seek a sum of Rs.10,00,000/- as compensation.

6. On the other hand, the 2nd respondent/Insurance Company,

opposed the claim of the petitioners, by filing counter, in M.C.O.P.Nos.1137 and 1138 of 2011 were taken up for joint trial and before the Tribunal, the petitioners examined P.W.1 to P.W.5 and produced documents Exs.P.1 to P.21 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record found the negligence of the 1st respondent lorry driver alone caused the accident and awarded a sum of Rs.5,28,000/- and Rs.5,67,000/- as compensation to the petitioners in M.C.O.P.No.1137/2011 [C.M.A.No.200/2017] and M.C.O.P.No.1138/2011 [C.M.A.No.78/2017] respectively. Being not satisfied with the quantum of the award, the petitioners in both the O.Ps' have come forward with the present appeals.

7. The learned counsel for the petitioners/claimants contends that the Tribunal failed to appreciate the evidence properly. The Tribunal fixed the monthly income of the deceased on the lower side without taking into consideration the oral evidence as well as the documentary evidence produced by them. Further, considering the age of the deceased, the multiplier fixed by Tribunal is not correct. The Tribunal awarded lesser amount under different heads. The Tribunal ought to have deducted only 1/3rd of the income towards personal expenses of the deceased instead of deducting 50%. The Tribunal ought to have fixed 50% of the income towards future prospects, but failed to provide any amount towards the same. The petitioners/claimants sought for enhancement of the award amount by entertaining the present appeals.

8. On the other hand, learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal has correctly appreciated the evidence on record and awarded just and fair compensation. According to the 2nd respondent/Insurance Company, there is no ground to interfere with the award passed by the Tribunal. Hence, they sought for dismissal of both the appeals.

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

10. The petitioners in M.C.O.P.No.1138/2011 [C.M.A.No.78/2017] examined the eye-witness to the occurrence as P.W.3 and he stated that on 09.03.2011 at about 2.45 hours, while he and Velmurugan were going in the Tata van bearing Registration No.TN-19-L-0302 driven by Sundaraj, the container lorry which was going ahead of the van suddenly stopped in the signal, due to which the tata van dashed against the container lorry on the back side, resulting in the death of the van driver Sundaraj and Velmurugan, on the spot itself, while P.W.3 sustained injuries. The police also registered Ex.P.1 - F.I.R

against the driver of the container lorry only. After investigation, the police laid Ex.P.10 - Charge sheet accusing the driver of the container lorry for the accident. The contents of Ex.P.1 - F.I.R is corroborated by the evidence of P.W.1 to P.W.3. Further, Ex.P.9 - Rough Sketch also clearly proves the claim of the petitioners. In the absence of any contra evidence let in by the respondent, it is apparent from the oral evidence P.W.1 to P.W.3 and the contents of Ex.P.1 - F.I.R and Ex.P.10 - Charge Sheet that the accident occurred only due to negligence of the container lorry driver. As such, the respondents who are the owner and the insurer of the said lorry are liable to pay compensation.

11. The petitioners in M.C.O.P.No.1137/2011 who are the petitioners/appellants in C.M.A.No.200/2017 clearly stated that the deceased was aged 25 years at the time of the accident. In Ex.P.2 - Post mortem report and Ex.P.3 - Death certificate, the age of the deceased Velmurugan is given as 25 years. The petitioner did not produce any other document regarding the age of the deceased. As such, on the basis of Exs.P.2 and P.3 the deceased age is fixed as 25 years. Admittedly, the deceased was a Bachelor. Hence 50% of his income to be deducted towards "Personal expenses". The deceased was employed as Salesman in a super market earning Rs.8,000/- per month. The petitioners also examined P.W.4 to prove the avocation and income of the deceased. Further, the attendance register and salary certificate of the deceased are marked as Exs.P.19 and P.16 respectively. The Tribunal after going through the said documents, for the reasons stated by it, fixed the notional income of the deceased at Rs.6,000/-. This, the petitioner contends that it is not proper for the Tribunal to reduce the monthly income of the deceased to Rs.6,000/- in spite of Ex.P.16 - Salary Certificate and the evidence of P.W.4 employer, by pointing out that the salary disbursement register is not produced and the admission of P.W.4 stated that he has no personal knowledge about the quantum of the salary received by the deceased. In such circumstances, considering the prevailing market situation and the fact, the deceased was employed as sales man in Chennai, this Court is of the view that notional monthly income of Rs.6,500/- per month could be fixed for the deceased Velmurugan.

12. Admittedly, the deceased was aged 25 years, thus 40% of the income has to be added towards future prospects and as the deceased was a Bachelor, 50% of income has to be deducted towards personal expenses and the multiplier to be applied is '18'. Hence, the loss of income is calculated as follows:-

$$[(Rs.6500 + 40\%) - 4550 \times 12 \times 18] = Rs.9,82,800/-$$

Thus, a sum of Rs.9,82,800/- is granted as compensation under the head "Loss of Income".

13. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate and funeral expenses, hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses.

14. Accordingly, the compensation awarded by the Tribunal in M.C.O.P.No.1137 of 2011 [C.M.A.No.200/2017] stands enhanced as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs. 4,68,000.00	Rs. 9,82,800.00
2	Love and affection parents	Rs. 40,000.00	-
3	Love and affection sister	Rs. 10,000.00	-
4	Funeral Expenses	Rs. 5,000.00	Rs. 15,000.00
5	Loss of Estate	-	Rs. 15,000.00
6	Transport	Rs. 5,000.00	-
7	Total	Rs. 5,28,000.00	Rs. 10,12,800.00

15. In M.C.O.P.No.1138 of 2011 [C.M.A.No.78/2017], in Ex.P.8 - Copy of the driving license of the deceased, the Date of Birth of the deceased is stated to 07.12.1988 and as the accident took place on 09.03.2011, the age of the deceased Sundarraaj is fixed as 22 years. Since the petitioner remained Bachelor, 50% of his income has to be deducted towards personal expenses. Taking into account, the age of the deceased as 22 years, 40% of the income has to be added towards future prospects and the multiplier to be applied is '18'. The Tribunal fixed the monthly income of the deceased at Rs.6,500/-,. Considering the fact that he is a driver, this Court is inclined to fix the monthly income at Rs.7,500/- and the loss of income is calculated as follows:-

$$[(Rs.7500+40\%)-5250*12*18] = Rs.11,34,000/-$$

Thus, a sum of Rs.11,34,000/- is granted as compensation under the head "Loss of Income".

16. The compensation has to be awarded towards funeral expenses and transport charges, hence, this court is inclined to grant a sum of Rs.5,000/- towards "funeral expenses" and Rs.5,000/- towards "Transport charges".

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs. 5,07,000.00	Rs. 11,34,000.00
2	Love and affection parents	Rs. 40,000.00	-
3	Love and affection sister	Rs. 10,000.00	-
4	Funeral Expenses	Rs. 5,000.00	Rs. 5,000.00
5	Loss of Estate	-	Rs. 5,000.00
6	Transport	Rs. 5,000.00	-
7	Total	Rs. 5,67,000.00	Rs. 11,44,000.00

17. In the result,

(i) Both the C.M.As' are Partly Allowed, by enhancing the compensation to Rs.10,12,800/- from Rs. 5,28,000/- in C.M.A.No. 200 of 2017 and to Rs.11,44,000/- from Rs.5,67,000/- in C.M.A.No.78 of 2017.

(ii) The award amounts will carry interest at the rate of 7.5% per annum from the date of respective claim petitions till the date of deposit.

(iv) The 2nd respondent/Insurance Company is directed to deposit the respective enhanced award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit, the respective petitioners/claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) Both the M.C.O.P.No.1137/2011 [C.M.A.No.200/2017] and M.C.O.P.No.1138/2011 [C.M.A.No.78/2017], the 1st and 2nd petitioners are entitled to 40% each of the award amount and the

3rd petitioner is entitled to 20%.

(vii) The respective petitioners/claimants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.
No costs.

Sd/-
Assistant Registrar (CS V)

//True copy//

bri
Sub Assistant Registrar

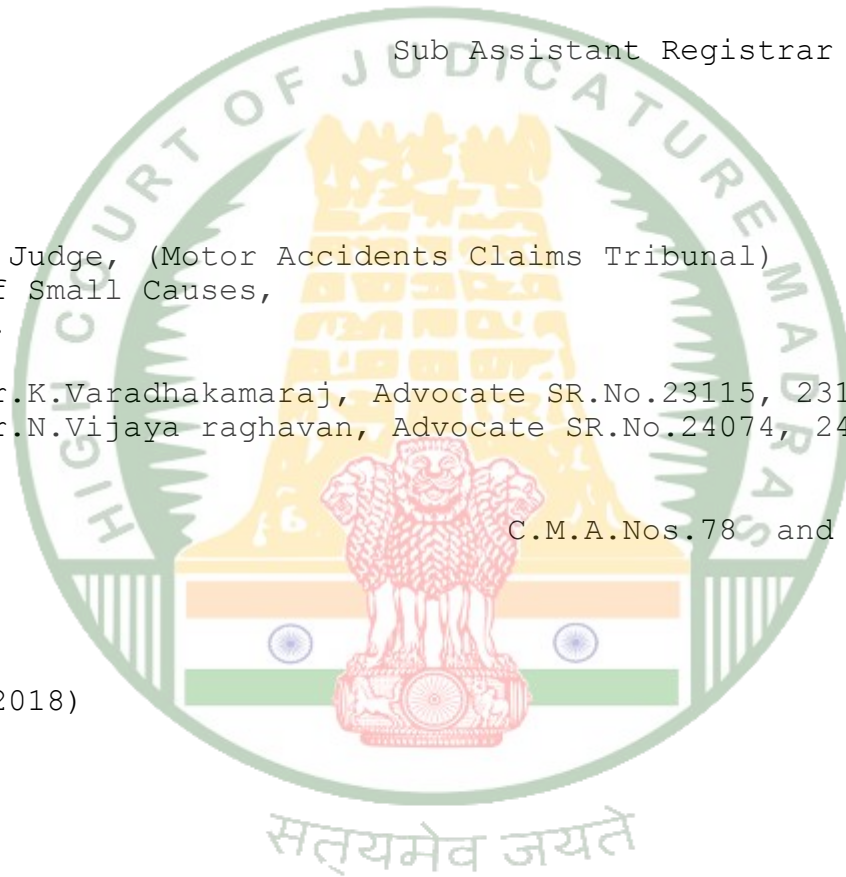
To

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

+2cc to Mr.K.Varadhakamaraj, Advocate SR.No.23115, 23116
+2cc to Mr.N.Vijaya raghavan, Advocate SR.No.24074, 24075

C.M.A.Nos.78 and 200 of 2017

TM (CO)
GN (16/05/2018)



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