

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM:

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

CMA No.894 of 2018

and

CMP No. 7456 of 2018

United India Insurance

Co. Ltd.,

Sulur.

.... Appellant/3rd Respondent

-vs-

1. S. Sivaperumal

2. S. Parameshwari

3. S. Thangaraj

4. K. Somasundaram

..Respondents/Petitioners

.... Respondents/1st & 2nd Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of M.V. Act, 1988, against the award and decree dated 26.10.2016 made in M.C.O.P No.548 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur.

For Appellant : Mr. S. Arun Kumar

For Respondents: Mr. Ma.P. Thangavel for R1 & R2

RR3 & 4 : Exparte

J U D G M E N T

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

The Insurance Company is on appeal challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Chennai dated 26.10.2016 made in MCOP.No.548 of 2011.

2. The respondents 1 and 2 had filed the claim petition seeking a compensation of Rs.40,00,000/- for the death of their son S. Dinesh Kumar in a road accident on 08.02.2011. It is the case of the claimants/ respondents 1 and 2 that the deceased was riding a motor cycle bearing registration No.PY-01-E-9160 at about 11.00 hours on 08.02.2011 on Palladam to Pollachi Main Road. While so, the van bearing Registration No.TN-33-Y-5577 driven by one S. Thangaraj/ 3rd respondent, which was proceeding from Udumalpet to Palladam, dashed against the motor cycle. Due to the said accident, the rider of the motor cycle sustained grievous injuries on the head and right hand and died on the way to hospital. Claiming that the accident took place due to the

rash and negligent driving of the driver of the van belonging to the 4th respondent insured with the appellant Insurance Company, the parents of the deceased filed a claim petition seeking a sum of Rs.40,00,000/- as compensation.

3. The 3rd and 4th respondents herein, driver and owner of the vehicle, remained ex-parte before the Tribunal. The Insurance Company resisted the claim denying all the grounds raised by the claimants and contending that the rider of the motor cycle viz., deceased Dinesh Kumar also contributed to the accident because of his rash and negligent driving, which is proved by the Motor Vehicle report. It was also contended that the compensation claimed is highly excessive.

4. The Tribunal on a consideration of the evidence on record found that the accident had occurred due to the rash and negligent driving of the van belonging to the 2nd respondent, insured with the 3rd respondent.

5. The deceased was an Engineering Graduate and was doing business along with his father. The Tribunal took his monthly income at Rs.30,000/- per month and after deducting 50% towards his personal expenses, arrived at a monthly loss of income as Rs.15,000/- per month. The Tribunal applied multiplier 18 and arrived at a monetary loss of dependency as Rs.32,40,000/-. Awarding a sum of Rs.10,00,000/- towards Loss of love and affection, Rs.25,000/- towards loss of dress, Rs.25,000/- for transport expenses and Rs.50,000/- for funeral expenses, the Tribunal granted a total compensation of Rs.43,40,000/- as compensation. Aggrieved, the Insurance Company has come forward with this Appeal.

6. Mr. Arun Kumar, learned counsel appearing for the appellant Insurance Company would contend that fixation of monthly income at Rs.30,000/- per month is on the higher side. He would further contend that the award granted under the head of Loss of Love and Affection, Loss of Dress, Transportation as well as Funeral Expenses are also on the higher side.

7. Mr. Ma. P. Thangavel, learned counsel appearing for the claimants respondents would contend that though the award under various heads appear to be on the higher side, on the overall analysis, in view of the fact that the deceased was an Engineering Graduate, the award is justifiable.

8. We have considered the rival submissions. Since the deceased was assisting his father in the business, there is no record or evidence to show the income. Considering the fact that the deceased was an Engineering Graduate, we take the monthly income as Rs.20,000/-. Taking into consideration the age of the deceased, the future prospects to be added is 40% on

the monthly income. The deceased being a bachelor 50% is to be deducted towards his personal expenses. Since the age of the deceased was only 26 years at the time of accident, the appropriate multiplier to be adopted is 17. Therefore, the pecuniary loss is Rs.28,56,000/- [Rs.20,000 + 8,000 - 14,000= 14,000 x 12 x 17].

9. As rightly submitted by the learned counsel for the appellant Insurance Company, award of a sum of Rs.10,00,000/- towards loss of love and affection is on the higher side. The larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) has held that the conventional damages like loss of consortium and loss of love and affection cannot be above Rs.40,000/-. Therefore, we find that the award of Rs.10,00,000/- towards loss of love and affection cannot be sustained. Considering the amounts granted under the other conventional heads, the sum of Rs.25,000/- awarded towards loss of dress, is set aside. For the foregoing reasons, the award of the Tribunal is modified as follows:

S.No.	Heads	Amount
1.	Pecuniary Loss	Rs.28,56,000.00
2.	Loss of Love and affection	Rs. 50,000.00
3.	Funeral expenses	Rs. 15,000.00
4.	Loss of Estate	Rs. 15,000.00
	TOTAL	Rs.29,36,000.00

10. In view of the above, the appeal is partly allowed and the award of the Tribunal is modified granting a sum of Rs.29,36,000/- as compensation with interest at 7.5% from the date of the claim petition till date of payment and proportionate costs. The first respondent is the father and the second respondent is the mother of the deceased. The father will be entitled to Rs.10,36,000/- and the mother for a sum of Rs.19,00,000/-, with proportionate interest. The Insurance Company is directed to deposit the balance award amount within a period of eight weeks from the date of receipt of a copy of this order. There will be no costs in this appeal. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Chief Judicial Magistrate
The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court, Tiruppur.

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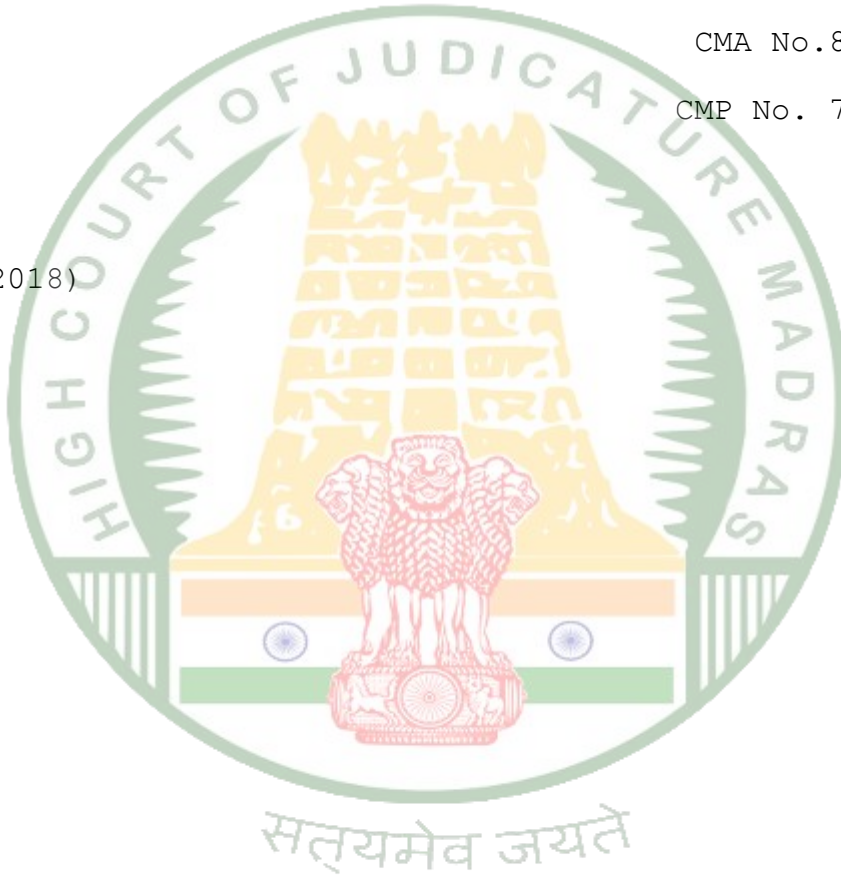
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S. Arunkumar, Advocate sr 58977.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 58921

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VGI (CO)
SP (28/09/2018)



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