

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2017

Pronounced on : 27.06.2018

C O R A M

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.2043 of 2007

1.Mrs.Govindammal

2.R.Yasoda

3.N.Gopi

...Appellants/Petitioners

Vs.

1.T.Sudhakar Reddy

2.The New India Assurance Co.Ltd.,

No.45, Moore Street, 5th Floor,

Chennai-2

(R-1 Exparte in Lower Court)

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal file under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree dated 14.12.2006 in M.C.O.P.No.1743 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-II, Madras.

For Appellants : Mr.G.Balaji Prasad

For RR2 : Mr.S. Ramalingam

JUDGMENT

This Civil Miscellaneous Appeal has been brought by the legal heirs of the deceased seeking enhancement of the award amount Rs.62,000/- together with interest at the rate of 7.5% per annum granted in M.C.O.P.No.1743 of 2002, by the Motor Accidents Claims Tribunal, Additional District Judge (Fast Track Court-II), Chennai.

2. The facts leading to the appeal are that on 17.11.2001, about 4.35 p.m., the deceased was travelling as a pillion rider in the scooter bearing Registration No.TN-01-E-8594. Mr.Dhanraj was riding the scooter which was proceeding from south to north at Errukancherry High Road near Ramalingam Temple. At that time the driver of the Tipper Lorry bearing Registration No.TN-01-Z-1638 which was coming behind the scooter in a rash and negligent manner hit the scooterist. The rider of the scooter and the pillion rider were thrown out and sustained grievous injuries. The pillion rider died on the way to hospital on 17.11.2001. According to the legal heirs of the deceased, at the time of accident, the deceased was 65 years old and as agriculturist and a real estate agent, earned Rs.5,000/- per month.

3. The New India Insurance Company, the 2nd respondent herein, denied the manner of accident. The Insurance Company submitted that the deceased travelled only as a pillion rider in the Scooter bearing Registration No.TN-01-E-8594 and in the absence of any policy coverage for pillion rider, insurance company is not liable to pay any compensation. According to the Company, the appellants/complainants have to prove that the driver of the vehicle had valid driving licence, at the time of accident. Without prejudice to the above, the Insurance Company has disputed the age, avocation, income of the deceased and the quantum of compensation claimed under various heads.

4. Before the Claims Tribunal, son of the deceased examined himself as PW1, PW2 has deposed in his evidence that he was riding the scooter. Ex.P1 is the Xerox copy of the F.I.R. Ex.P2 is the Rough Sketch of the place of occurrence. Ex.P3 is the Post-mortem certificate, Ex.P4 - Death certificate, Ex.P5 - Legal heir certificate, Ex.P6 is the Voters list, Ex.P7 is the Certified copy of the Sale Deed, Ex.P8 is the Kist receipt and Ex.P9 is the Charge sheet have been marked on the side of the appellants/claimants. No document has been marked on the side of the 2nd respondent/Insurance company.

5. After evaluation of pleadings and evidence, the Claims Tribunal, came to the conclusion that the driver of the tipper lorry bearing Registration No.TN-01-Z-1638, insured with the 2nd respondent-Insurance Company, was negligent in causing the accident. Even though the claimants have not produced any document to show the income of the deceased, after considering the age, avocation and determining the monthly income of the deceased, the Tribunal proceeds to fix compensation as per second schedule of Section 163(A) of Motor Vehicle Act wherein the notional income for compensation to those who have no income prior to accident is indicated as Rs.15,000/- per annum. After deducting 1/3rd for his personal expenses, determining the life income of the deceased, as Rs.50,000/-, computed the total compensation as Rs.62,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of deposit and costs, as hereunder:

Loss of Income (Rs.10,000/- X 5)	: Rs.50,000/-
Loss of love and affection	: Rs. 5,000/-
Transport charges	: Rs. 5,000/-
Funeral Expenses	: Rs. 2,000/-
Total	Rs.62,000/-

6. The learned counsel for the appellants/claimants submitted that the Claims Tribunal has erred in fixing the income of the deceased in spite of the documents filed on the side of the appellants i.e. Ex.P7 and Ex.P8, the kist receipt and sale deed and it has to be enhanced at least to a minimum of Rs.3,000/- per month. It is further submitted that the award passed under the other heads are also extremely low and the Tribunal has also not considered the loss of consortium to the wife and mental agony to the family members. Therefore, the same requires proportionate enhancement.

7. Heard the learned counsel for the appellants and the Insurance Company and perused the materials available on record as also the Judgment passed by the Tribunal.

8. Having regard to the age of the deceased as 65 years, the income that has been calculated by the Tribunal is appropriate one. Considering the age of the first petitioner who has lost her support at her age is entitled for a sum of Rs.25,000/- is quite reasonable one and the transport expenses has to be awarded at Rs.10,000/- and the sum awarded for Funeral expenses has to be properly enhanced to Rs.15,000/-.

9. Accordingly, this Court is inclined to modify the award passed by the Tribunal are as follows:-

Loss of income	: Rs.50,000/-
Loss of Consortium	: Rs.25,000/-
Transport charges	: Rs.10,000/-
Funeral Expenses	: Rs.15,000/-
Total	Rs.1,00,000/-

10. In the result, the appeal filed by the claimants, i.e., C.M.A.No.2043 of 2014 is partly allowed. The Insurance Company is directed to deposit the compensation amount determined in this appeal together with interest at 7.5% per annum from the date of claim petition till realisation in M.C.O.P.No.1743 of 2002 within a period of eight weeks from the date of receipt of a copy of this order after adjusting the amount, if any, already deposited. On such deposit, the claimants are entitled to withdraw the compensation amount determined in this appeal together with accrued interest. No costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

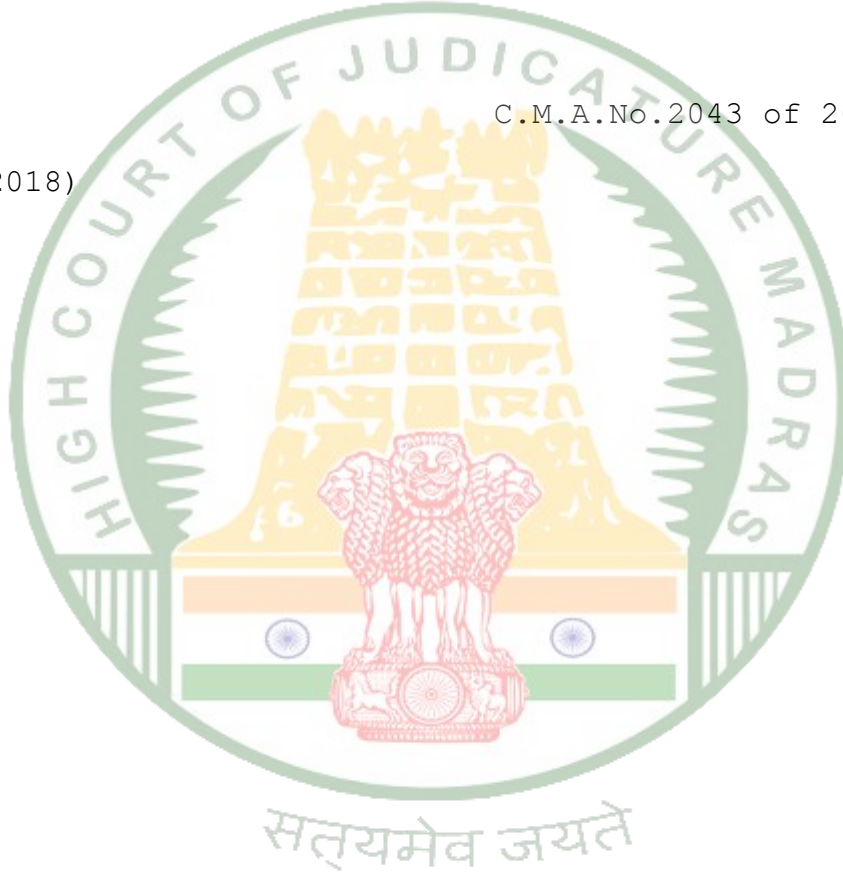
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To

- 1 The Motor Accidents Claims Tribunal,
Additional District Judge, Fast Track Court-II,
Madras.
 - 2 The Section Officer,
V.R.Section,
High Court, Madras.(2-copies)
- + 1 cc to Mr.S. Ramalingam, Advocate Sr.41158
+ 1 cc to Mr. Balaji Prasad, Advocate Sr.41132

C.M.A.No.2043 of 2007

MR(CO)
EU(30/07/2018)



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