

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

CORUM

The Hon'ble Mr.Justice R.Subbiah
and
The Hon'ble Mr.Justice P.D.Audikesavalu

C.M.A.No.3338 of 2013

1.Jayachitra @ Chitra
2.P.C.Mahitha(minor aged 8 years)
rep by mother and next friend Jayachitra
3.T.N.Meenakshi
4.Thanikachalam ... Appellants

Vs.

1.Uma Vijayakumar
2.HDFC CHUBB General Insurance
Company Limited,
Raheja Towers, No.177, Anna Salai,
Chennai - 600 002. ... Respondents

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree passed by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, made in M.C.O.P. No.1493 of 2008, dated 19.09.2013.

Appearance_

For Appellants : Mr.F.Terry Chellaraja
For Respondent-1 : Set Ex Parte
For Respondent-2 : Ms.C.Harini
for Mr. M.B.Gopalan

JUDGMENT

Judgment of the Court was delivered by R.Subbiah, J.,)

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court), Chennai, in and by the award dated 19.09.2013 in M.A.C.T.O.P.No.1493 of 2008, the present Appeal

has been filed by the claimants seeking for enhancement of the compensation.

2. Since the present Appeal is filed by the claimants only questioning the quantum of compensation, it is not necessary for us to traverse into the other aspects of the award passed by the Tribunal.

3. The claimants are the wife, minor daughter, mother and father of the deceased Prakash respectively. It is the case of the claimants that on 09.12.2006, at about 5.15 p.m while the said Prakash was travelling as a passenger in a Car bearing Registration No.TN-09-AK-2165, from Chennai to Pondicherry near Sikkanankuppam, the driver of the car drove the same in a rash and negligent manner and as a result of which it hit against a Transport Bus, which was coming from the opposite direction. In the said accident, the said Prakash sustained fatal injuries and died on the spot. Hence, the claimants made a claim of Rs.1,00,00,000/-.

4. Before the Tribunal, in order to prove the claim, the first claimant examined herself as P.W.3 besides examining four other witnesses as P.W.1, P.W.2, P.W.4 and P.W.5 and marked thirty five documents as Exs.P.1 to P.35. On the side of the Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and six documents were marked as Exs.R.1 and R.6.

5.The Tribunal on evaluation of both oral and documentary evidence placed on record came to the conclusion that the accident had occurred owing to the rash and negligent driving of the driver of the car belonging to the first respondent/owner and insured with the 2nd respondent/Insurance Company. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total compensation amount of Rs.44,84,856/-, out of which a sum of Rs.44,09,856/- was awarded under the head of loss of dependency alone. The break up details of the compensation amount awarded by the Tribunal are as follows :-

Loss of Dependency	:	Rs.44,09,856
Loss of Consortium	:	25,000
Love and Affection	:	Rs. 20,000
Funeral Expenses	:	Rs. 10,000
Transportation	:	Rs. 5,000
Loss of Estate	:	Rs. 10,000

Total Rs. 44,84,856/-

Not being satisfied with the quantum of compensation, the claimants have filed the present Appeal seeking for enhancement of the compensation amount.

6. The learned counsel appearing for the appellants/claimants has contended that deceased Prakash was working as a Manager in ICICI Bank and earning a sum of Rs.60,000/- per month. Hence, based on the said salary, they made a claim for a sum of Rupees One Crore as compensation. In order to prove the claim, on the side of the claimants, the General Manager of ICICI Bank, in which the deceased was working, was examined as P.W.4, through whom the salary certificate of the deceased marked as Ex.P.32. Based on his evidence, the Tribunal has fixed the monthly income of the deceased as Rs.26,174/- and thereafter, by adding 30% towards future prospects, arrived at a sum of Rs.34,026/- ($26174 + 7852 = 34026$) as total monthly income of the deceased. Thereafter, by deducting 10% amount towards income tax, arrived at a sum of Rs.30,624 (i.e. $34026 - 3402$). Thereafter, by applying the multiplier '16' and deducting $1/4$ towards the personal expenses, the Tribunal has awarded a sum of Rs.44,09,856/- towards the Loss of Dependency.

7. Now, it is the main contention of the learned counsel for the appellants that the Tribunal, while determining the loss of income, added only 30% amount towards future prospects instead of 50% amount. Therefore, amount awarded under the head of Loss of Dependency has to be re-calculated by adding 50% of the compensation amount.

8. The learned counsel appearing for the respondent/Insurance Company made his submission supporting the award passed by the Tribunal.

9. Keeping the submissions made on either side, we have carefully gone through the award passed by the Tribunal. We find some force in the arguments advanced by the learned counsel appearing for the appellants/claimants. Therefore, we are of the opinion that the compensation has to be recalculated by adding 50% of the monthly salary towards future prospects of the deceased. Thus, if a sum of Rs.26,174/- is fixed as monthly income of the deceased, as taken by the Tribunal, and if 50% of the monthly income is added towards the future prospects, i.e. Rs.13,087/-, the total monthly income works out to Rs.39,261/- ($26174 + 13,087 = 39261$). Then, 10% amount has to be deducted towards tax, which comes to Rs.3,926/-. If a sum of Rs.3,926/- is deducted from the monthly income of Rs.39,261/-, the balance amount works out to Rs.35,335/- which could be taken as actual monthly income of the deceased. As the dependants are four in numbers, $1/4$ th amount has to be deducted towards personal expenses and if so deducted, the monthly loss of contribution to the family works out to Rs.26,502/-. As the deceased was aged 32 years at the time of death, the correct multiplier that

has to be applied in this case is 16. If the multiplier 16 is applied, the total loss of dependency works out to Rs.50,88,384/- (26,502 x 12 x 16). Hence, the compensation amount of Rs.44,09,856/- awarded by the Tribunal under the head of loss of dependency is hereby modified and enhanced to Rs.50,88,384/-. Except this modification, the compensation amounts awarded by the Tribunal under other heads remain unaltered as the same appear to be just and proper compensation. Consequently, the total compensation amount of Rs.44,84,856/- awarded by the Tribunal is hereby modified and enhanced to Rs.51,63,384/-. The breakup details of the modified/enhanced compensation amount are as follows:-

Loss of Dependency	:	Rs.50,88,384/-
Loss of Consortium	:	Rs.25,000/-
Love and Affection	:	Rs.25,000/-
Loss of Estate	:	Rs.10,000/-
Transportation	:	Rs.5,000/-
Funeral Expenses	:	Rs.10,000/-
		
Total	:	Rs.51,63,384/-
		

10. In fine, the Civil Miscellaneous Appeal is partly allowed and the total compensation amount of Rs.44,84,856/- awarded by the Tribunal is hereby modified and enhanced to Rs.51,63,384/-. The 2nd respondent/Insurance Company is directed to deposit the entire modified/enhanced compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants 1, 3 and 4/claimants 1, 3 and 4 are entitled to withdraw the respective share as apportioned by the Tribunal with proportionate interest, by making necessary application before the Tribunal. The compensation amount payable to the minor 2nd claimant is directed to be deposited in any one of the Nationalised Banks in fixed deposit till the minor attains majority. Out of such deposit, the first claimant/mother is permitted to withdraw accrued interest once in three months. No costs.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

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

+1cc to Mr.Malar, Advocate, S.R.No.13166

C.M.A.No.3338 of 2013

RJ (CO)
GSP (27/06/2018)



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