

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.K.SASIDHARAN
and
THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.645 of 2013
and
M.P.No.1 of 2013

M/s.Royal Sundaram Allianz Insurance
Co.Ltd.,
"Sundaram Towers",
45 & 46, Whites Road,
Chennai .. Appellant/2nd Respondent

Vs.

1.M.Thenmozhi
2.Pranava Raajan(minor)
3.R.Malini Sree(Minor
rep.by their mother and
next friend M.Thenmozhi .. Respondents 1 to 3
(Claimants)

4.N.Kumar,
(R-4 Set exparte lower Court) .. 4th Respondent(1st Respondent)

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the judgment and decree dated 13.08.2012 in
M.C.O.P.No.2642 of 2008 on the file of the Motor Accidents
Claims Tribunal (Chief Court of Small Causes), at Chennai.

For Appellant .. Ms.R.Sreevidhya

For Respondents.. Mr.K.V.Muthuvisakan for R1 to R3

JUDGEMENT

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

Challenge in this appeal is to the award of
Rs.36,39,685/- as compensation for the death of one Rajan, in a
motor accident that took place on 14.02.2008.

2.The claimants, who are the wife, minor daughter and son of the deceased, had contended before the Tribunal that when the deceased was riding a two wheeler on Konnur High Road, a lorry bearing Registration No.TN-32-T-7564 came in the opposite direction and dashed against the two wheeler, causing grievous injuries and the resultant death of the rider of the two wheeler, namely, M.Rajan. Contending that the said Rajan was working in a bank, drawing a monthly salary of Rs.20,530/-, the claimants sought for a compensation of Rs.50 lakhs.

3.The claim was resisted by the Insurance Company contending that there was no negligence on the part of the driver of the lorry and the accident occurred only due to the rash and negligent driving of the driver of the two wheeler. It was also contended that the two wheeler, in fact, dashed against the rear right wheel of the lorry, resulting in accident. On the quantum, the Insurance Company had contended that the salary and other particulars have been exaggerated to claim high compensation.

4.The Tribunal concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry. To come to the said conclusion, the Tribunal relied upon the copy of the First Information Report, which was marked as Ex.P1 and the evidence of eyewitness-P.W.3. The Tribunal also took note of the fact that the said lorry was almost on the middle of the road when the accident occurred. To disprove the negligence on the part of the lorry, the Insurance Company examined R.W.2, the driver of the lorry, who had deposed that the two wheeler, which was coming in the opposite direction, hit against the rear right wheel of the lorry, causing the accident.

5.We have gone through the evidence of both P.W.3 as well as P.W.1. We find that the evidence of P.W.3, has not been belittled in cross-examination. The rough sketch, which is available, would show that the two wheeler was also on the middle of the road when the accident occurred. We are, therefore, of the opinion that the two wheeler rider, viz., the deceased Rajan had also contributed to the accident to some extent. The Criminal Court had acquitted the driver of the lorry from the charges. The narration of above facts would go to show that the accident occurred due to the contributory negligence on the part of the two wheeler rider also. Considering the overall evidence, both oral and documentary, we are of the considered opinion that the contribution by the deceased to the accident can be fixed at 10%.

6.On the quantum, the Tribunal has taken the monthly income at Rs.24,615/- and has added 30% towards future prospects. Thus, the monthly gross income of the deceased was

arrived at Rs.32,000/- and the annual income at 3,84,000/- and by deducting 20% towards Income Tax and 1/3rd for his personal expenses, the Tribunal has arrived at the annual pecuniary loss at Rs.2,04,800/- and by adopting the multiplier 15, the Tribunal has arrived at the total loss of dependency at Rs.30,72,000/-.

7.Mrs.Srividya, the Learned counsel appearing for the Insurance Company, would contend that though the other figures adopted by the Tribunal are proper, the Tribunal erred in adopting the multiplier 15, on the other hand, it should have been 14, as per the judgment of the Supreme Court in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another (2009(2) TNMAC 1)

8.We also find that the multiplier adopted at 15 is incorrect. Therefore, adopting the multiplier of 14, the total loss of dependency would be Rs.28,67,200/-. The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium. The Tribunal has also awarded a sum of Rs.20,000/- towards loss of love and affection for the two minor children. In view of the Larger Bench judgment of the Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others (2017 (2) TN MAC 271), the amount awarded under the head loss of consortium is increased to Rs.40,000/- and the amount awarded towards loss of love and affection to the children, is enhanced to Rs.80,000/-, at Rs.40,000/- each. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, the same is enhanced to Rs.15,000/-. In addition, a sum of Rs.15,000/- is awarded towards loss of estate and Rs.5000/- towards Transportation. The Tribunal has awarded a sum of Rs.4,77,685/- towards Medical expenses based on Bills and the same is sustained. The Tribunal has awarded Rs.30,000/- towards pain and suffering. Since the deceased was hospitalised for a period of at least 90 days before his death and was in coma for major part, we do not see any reason to reduce the said sum. The Tribunal has not awarded any amount towards attender charges. Admittedly, the deceased was hospitalised for at least 90 days before his death. Therefore, we award a sum of Rs.50,000/- towards attender charges. Thus, the total compensation is arrived at as follows:

Loss of dependency	: Rs.	28,67,200/-
Loss of Consortium	: Rs.	40,000/-
Loss of Love and affection	: Rs.	80,000/-
Funeral Expenses	: Rs.	15,000/-
Loss of Estate	: Rs.	15,000/-
Towards Transportation	:Rs.	5,000/-

Medical Expenses	:Rs.	4,77,685/-
Pain and suffering	:Rs.	30,000/-
Attender charges	:Rs.	50,000/-

		Rs.35,79,885/-

Since we have found that the deceased had contributed 10% to the accident, he is entitled to only 90% of the said sum i.e. a sum of Rs.32,21,896/- and the same is rounded off to Rs.32,22,000/- (Rupees Thirty Two Lakhs Twenty Two Thousand only) with 7.5% p.a. interest and proportionate costs. The compensation is apportioned as follows:

The first claimant/widow is entitled to Rs.12,22,000/- (Rupees Twelve Lakh Twenty Two Thousand only) with proportionate interest and entire cost. The second and third claimants, i.e. the minor daughter and son, would take a sum of Rs.10,00,000/- (Rupees Ten Lakh only) each with proportionate interest.

9.It is seen from the records that the second claimant, viz., Pranava Raajan has attained majority. The Insurance Company has deposited 40% of the award amount. The Insurance Company is directed to deposit the balance amount, as per the modified award, within six weeks from the date of receipt of copy of the judgment. On such deposit, the First and second claimants, who are majors, are entitled to withdraw their shares of compensation and the Tribunal is directed to invest the share of the 3rd claimant/minor R.Malini Sree in an interest earning Fixed Deposit in any one of the Nationalised Banks, till she attains majority. The mother/first claimant would be entitled to withdraw quarterly interest from the Fixed Deposit for the maintenance of the minor daughter-R.Malini Sree.

In fine, the Civil Miscellaneous Appeal is partly allowed as above. There shall be no order as to costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
(Chief Court of Small Causes), at Chennai

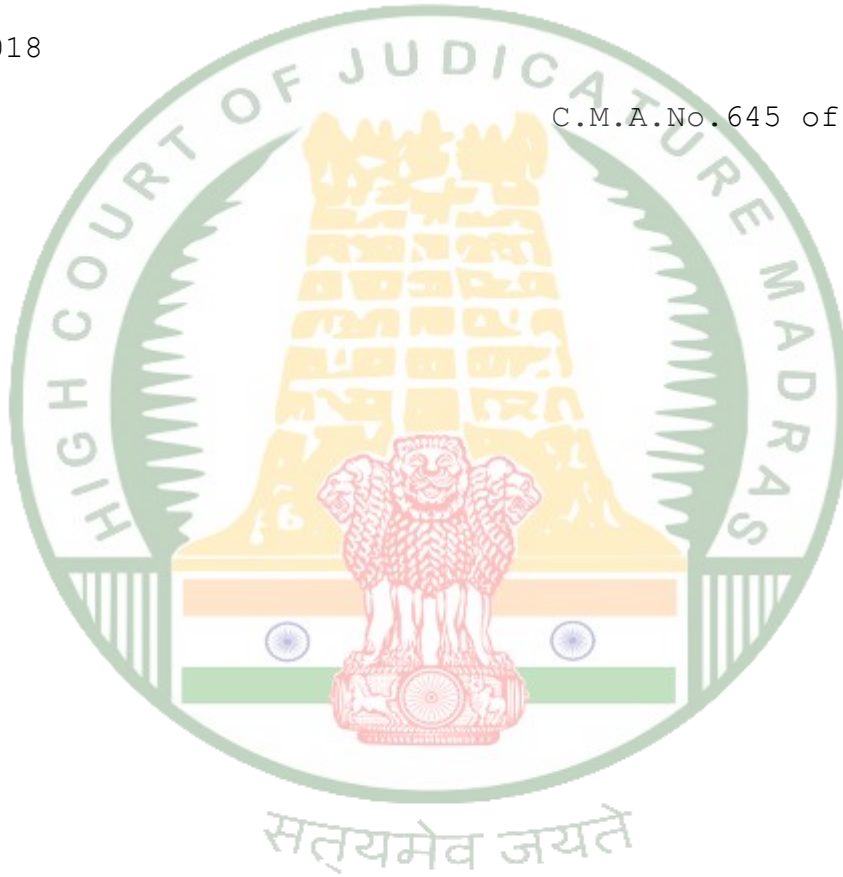
2.The Record Keeper, V.R.Section,
High Court, Madras.

+lcc to Ms.R.Sreevidhya, Advocate SR.NO.65270

+lcc to Mr.K.V.Muthuvisakan, Advocate SR.NO.65363

SV(CO)
sm:1.11.2018

C.M.A.No.645 of 2013



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