

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
CMA.No.1972 of 2017
and CMP.Nos.20477 & 10635 of 2017

CMA.No.1972 of 2017

M/s.HDFC - ERGO General Insurance
Company Ltd.,
Rajanarayanan Towers,
Race Course Road,
Coimbatore - 641 018. Appellant

Vs

1. Ananthi
2. Ranjith Kumar @ Ranjith Respondents 1 & 2/
Petitioners 1 & 2
3. M.Arivalagan
4. Suvi Saran Respondents 3 & 4/
Respondents 1 & 2

PRAYER : Civil Miscellaneous Appeal filed against the
Judgment and decree dated 15.12.2016 made in
M.C.O.P.No.756 of 2014 on the file of the Motor Accidents
Claims Tribunal (In the Court of III Additional District
Judge) at Dharapuram.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.P.Shanmugasundaram

J U D G M E N T

(KRISHNAN RAMASAMY, J)

Aggrieved over the award passed by the Motor
Accidents Claims Tribunal, III Additional District Judge,
Dharapuram in MCOP. No. 756 of 2014 dated 15.12.2016,
the appellant herein, who is the third respondent in the
above said MCOP, has filed this Appeal.

2. Heard the learned counsel for the appellant
and the learned counsel for the Insurance Company.

3. The brief facts of the case are as follows:-

On 14.04.2014 at about 7:00 a.m. the deceased was driving the car and was travelling along with his family members in a Maruti Alto Car bearing Reg.No.TN 37 AY 3520 and met with an accident, when the first respondent drove the Nissan Terrano Car bearing Reg.No.TN 38 BX 0412 from West to East in a rash and negligent manner, without keeping the side or sounding horn or following the rules of the road in a high speed, the accident occurred. Due to the high speed, the first respondent lost control and dashed against the deceased Maruti Alto Car with great force. The deceased was driving the car from West to East on the Northern edge of the West-East Chettipalayam to Palladam main road near Maruthakaliamman Kovil, Chinnakalimedu. Due to the said accident the deceased S.Murugaraj was thrown off and sustained grievous injuries all over his body and died on the spot.

4. According to the claimants the age of the deceased was 45 years at the time of death and he was working as Senior Executive Manager in Absal India Limited and APS Agro Tech Limited, Madurai and was earning about Rs.2,00,000/- per month after meeting all the expenses.

5. The third respondent/Insurance Company filed its counter in MCOP denying that the accident occurred due to the negligent driving of the driver of the Nissan Terrano Car bearing Reg.No.TN 38 BX 0412 but only due to the negligent driving of the deceased Murugaraj ie., driver of the Maruti Alto Car bearing Reg.No.TN 37 AY 3520 and also denies the quantum of compensation. Hence, the claimants filed the claim petition.

6. The Tribunal after considering pleadings and evidences both oral and documentary, came to the conclusion that the accident occurred due to the negligent driving of the driver of the Nissan Terrano Car bearing Registration No.TN 38 BX 0412.

7. The Tribunal awarded a sum of Rs.1,21,09,513/- as compensation to the claimants against the claim amount of Rs.4,00,00,000/- and directed the Insurance Company to pay the amount to the claimants. Aggrieved over the said findings and award, the appellant/Insurance Company has come forward with the present appeal.

8. Now the issue for consideration, in this appeal, by this Court is that whether the compensation awarded by the Tribunal is just and fair?

9. The accident occurred on 14.04.2014. At the time of accident Maruthi Alto Car bearing Reg.No.TN 37 AY 3520 was driven by the deceased (S.Murugaraj). The first

respondent (before Tribunal) drove the Nissan Terrano Car bearing Reg.No.TN 38 BX 0412 from East to West without keeping the side or sounding horn or following the rules of the road in a high speed and dashed against the Maruthi Alto Car. The accident occurred due to the rash and negligent driving of the first respondent and the deceased (S.Murugaraj) died on the spot. In this regard FIR was registered in Crime No.74 of 2014 under Sections 279, 337, 338, 304 (A) IPC at Chettipalayam Police Station. The deceased S.Murugaraj left behind his daughter and son who are the legal heirs.

10. On behalf of the claimants, PW1 Ranjith Kumar was examined and Exhibits Ex.P.1 to Ex.P.35 were marked. PW2 who is an eye witness was travelling in the Maruti Alto Car at the time of accident. She deposed that she was sitting on the left side of the car and due to the negligent driving of the 1st respondent/driver of the Nissan Terrano Car bearing Reg.No.TN 38 BX 0412 the accident occurred. According to the eye witness the accident occurred due to the rash and negligent driving of the 1st respondent/driver. Therefore, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the Nissan terrano Car bearing Reg.No.TN-38-BX-0412 and we also concur with the findings of the Tribunal in this regard.

11. The learned counsel for the Insurance Company vehemently contended that the income determined by the Tribunal was not proper. As per the Bank statement (Axis Bank) of the deceased it clearly speaks that the deceased paid commission to various persons and further the appellant questioned the genuineness of the document filed by way of Ex.P.20 and Ex.P.21. The learned counsel raised the issue of genuinity also on the basis of the receipt of commission from two different companies and according to the learned counsel a person cannot work in more than one company. Further the learned counsel contended that APS Agro Tech Limited, Madurai did not issue any Form-16 A in respect of the amount credited to the current account which is marked as Ex.P.20 & Ex.P.21. Further the appellant questioned about the addition of 15% towards future prospects.

12. The age of the deceased was 45 years at the time of death, however Post mortem report, Ex.P2, states that the age of the deceased was 46 years. Therefore, the Tribunal fixed the age of the deceased as 46 years. We also concur with the finding of the Tribunal in this regard.

13. The Tribunal took the income of the deceased as Rs.1,25,233/- which was the amount the deceased was receiving before his death. According to the claimants the deceased was working as a Senior Executive Manager in

Absal India Limited and APS Agro Tech Limited, Madurai. By virtue of his employment he used to receive commission every month and all the commission amount have been shown in the books of accounts and also in Form-16 A income tax returns filed before the income tax authorities. All these said commissions were received from both Absal India Limited and APS Agro Tech Limited. Ex.P.16, 17 & 18 are the income tax returns of the deceased Murugaraj. Further, the income certificate was marked as Ex.P.19 and the claimants also marked Ex.P.20 & Ex.P.21, Axis Bank statement of account of the deceased for the year starting from 01.01.2013 to 12.04.2014. On a perusal of the bank statement, it shows that the commission of the deceased was credited to his bank account by both Absal India Limited and APS Agro Tech Limited. The income tax returns for the financial years 2010-2011, 2011-2012, 2012-2013 were filed. However for the financial year ended on 31.03.2014 income tax return was not filed due to the death of the deceased, but the claimants have filed the bank statement, wherein all the amounts of commission received by the deceased was duly reflected.

14. In the proof affidavit filed by PW1 - Ranjith Kumar at paragraph No.19, he deposed that the commission amount was credited by both Absal India Limited and APS Agro Tech Limited starting from April 2013 to March 2014. As per the averments stated in the proof affidavit at paragraph No.19, the total amount of commission received by the deceased up to March 2014, is Rs.14,49,494/-. This amount is after the deduction of 10% TDS. However the Tribunal took the income of the deceased as Rs.1,25,233/- per month which is the amount as reflected on 12.04.2014 in the bank account of the deceased.

15. The Tribunal while fixing the monthly income of the deceased, has also taken into consideration of the income of the previous year, based on the income tax return filed in Form 16 A. The deceased has filed the income tax returns and paid the tax duly in accordance with law for the financial year 2010-2011, 2011-2012, 2012-2013. In this regard the claimants marked Ex.P.16, 17 & 18. Since, for the financial year ended on 31.03.2014 no Form 16 A was filed, therefore, the Tribunal constrained to take the income of the deceased received in the last month i.e., for the month of March 2014. The Tribunal based on the bank statement took the income of the deceased for March 2014 as Rs.1,24,244/-. It is important to note that the deceased was working in two companies as stated above and from these two companies the deceased was receiving commission for his work which he can do, there is no prohibition on this issue. Hence, the contention of Insurance Company is that the deceased cannot work and receive commission under two different entities, cannot be accepted. A

perusal of the Form-16 A, it has come to the knowledge of this Court that the deceased was a commission agent and he had separate office and through that he was doing his commission agent business. A perusal of the income and expenditure account of the deceased which is attached along with the Form-16 A shows that the deceased has spent money out of the commission received towards accounting charges, bank charges, meeting expenses, staff salary and bonus, staff welfare expenses, telephone charges, travelling expenses, vehicle maintenance and depreciation. After deducting that, the deceased paid income tax on the net profit. Therefore the Tribunal assumed that the deceased was drawing the salary of Rs.1,25,244/- which is totally misconceived and the deceased was receiving only commission. Out of the commission, he spent some amount to carry on the commission business and after deducting all these amounts from the total commission received the deceased paid income tax which shows the deceased was receiving only commission and not salary. Therefore taking last month's commission before the death of the deceased as monthly income of the deceased for the purpose of calculating the compensation is not correct and we set aside the same.

16. Now the question is how to calculate the compensation. We have thoroughly examined the exhibits from Ex.P.1 to P.35, particularly the income tax returns marked as Ex.P.16,17 & 18, the proof affidavit filed by PW1 and the Axis Bank statement of the deceased filed in Ex.P.20 and P.21. All these records show that the said commission was received by the deceased and credited through his bank account every month. The commission was received by the deceased from two companies as stated above. However on perusal of the proof affidavit it only shows that the amount received from APS Agro Tech Limited alone is claimed and amount received from Absal India Limited is not claimed. Probably this may be due to the reason of oversight on the part of the claimants or may be wrong advice on the part of the expert in the legal field. Even when we perused the bank statement, it shows that more amount of commission was received by the deceased and the same was not reflected in the proof affidavit filed by PW1.

17. Therefore, it would be proper to take whatever the amount of commission received through the bank account of the deceased for the financial year starting from April 2013 to year ending March 2014, on the basis of Ex.P.20 & P.21. For the reason stated above, we have no hesitation to take the income of the deceased as Rs.14,49,494/- as indicated in the proof affidavit filed by PW1 which is based on Ex.P.20 & Ex.P.21 bank statements of the deceased. The said income, amounting to Rs.14,49,494/- shown in the proof affidavit is after the

deduction of 10% TDS amount. To find out the original income of the deceased received towards the commission, it is just and necessary to add 10% TDS deduction also. Therefore the total income of the deceased for the financial year 31.03.2014 is as follows:-

The amount received as commission after 10% TDS is Rs.14,49,494/-. The total amount of commission received including TDS is $\text{Rs.14,49,494} \times 100 / 90 = \text{Rs.16,10,548}$. We determine the total income of the deceased by way of receipt of the commission for the financial year 31.03.2014 is as Rs.16,10,548/-.

18. Since the deceased died at the age of 46 years, we add 25% towards future prospects as held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. Therefore we set aside 15% which was wrongly fixed by the Tribunal. Thus 25% of Rs.16,10,548/- will be a sum of Rs.4,02,637/-. The income of the deceased along with future prospects will be a sum of Rs.20,13,185/- p.a. We deduct 30% towards expenses which will be a sum of Rs.6,03,955/-. After deducting this amount of 30% towards expenses, the net profit will be Rs.14,09,230/-. From this, we have to calculate the income tax and deduct a sum of Rs.2,52,769/- towards income tax. After deducting income tax of Rs.2,52,769/- the income available for the dependants will be a sum of Rs.11,56,461/- (14,09,230 - 2,52,769). In the present case, the appellant made strong objection for taking the income based on Form 16 A. However, we do not find any weightage in the submission made by the learned counsel for the appellant and we decided to take income as disclosed in Form 16A which is a statutory document. Therefore, the appellant's objection cannot be accepted.

19. We deduct 1/3rd towards personal expenses of the deceased, as the number of dependants are two in the present case, as held in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. After deducting personal expenses of the deceased, the loss of income to the dependants will be a sum of Rs.7,17,974/- p.a. = (11,56,461 - 3,85,487). Since the age of the deceased was 46 years at the time of accident, by applying the multiplier "13" as held in Sarla Varma (cited supra) the total loss of income to the dependants of the deceased will be a sum of Rs.1,00,22,662/-. Therefore we fix a sum of Rs.1,00,22,662/- towards loss of dependency against the sum of Rs.1,20,44,513/- awarded by the Tribunal.

20. The Tribunal awarded Rs.50,000/- towards loss of love and affection, Rs.15,000/- towards Funeral expenses. Since this Court is of the view that the said

amounts awarded are just and proper we confirm the same. However as no amount was awarded towards "Loss of estate" and "transportation" by the Tribunal, a sum of Rs.15,000/- and Rs.10,000/- are fixed respectively under these captions.

21. Hence the total compensation payable to the claimants is as hereunder.

Head	Amount (Rs.)
Loss of income	Rs.1,00,22,662/-
Funeral expenses	Rs.15,000/-
Loss of love and affection to the 1 st claimant	Rs.25,000/-
Loss of love and affection to the 2 nd claimant	Rs.25,000/-
Loss of estate	Rs.15,000/-
Transportation	Rs.10,000/-
Total	Rs.1,01,12,662/-

22. The total amount of compensation shall be shared by the respondents 1 & 2 in the following manner:-

The daughter of the deceased who is the first respondent herein shall receive a sum of Rs.51,00,000/- and the son of the deceased who is the second respondent herein shall receive a sum of Rs.50,12,662/-.

23. The Insurance Company is directed to deposit the entire amount awarded by this Court, along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through NEFT or RTGS within a period of one week thereon. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court.

24. Accordingly, the Civil Miscellaneous Appeal is partly allowed by reducing the award of the Tribunal from Rs.1,21,09,513/- to Rs.1,01,12,662/- with interest and costs. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(Co)

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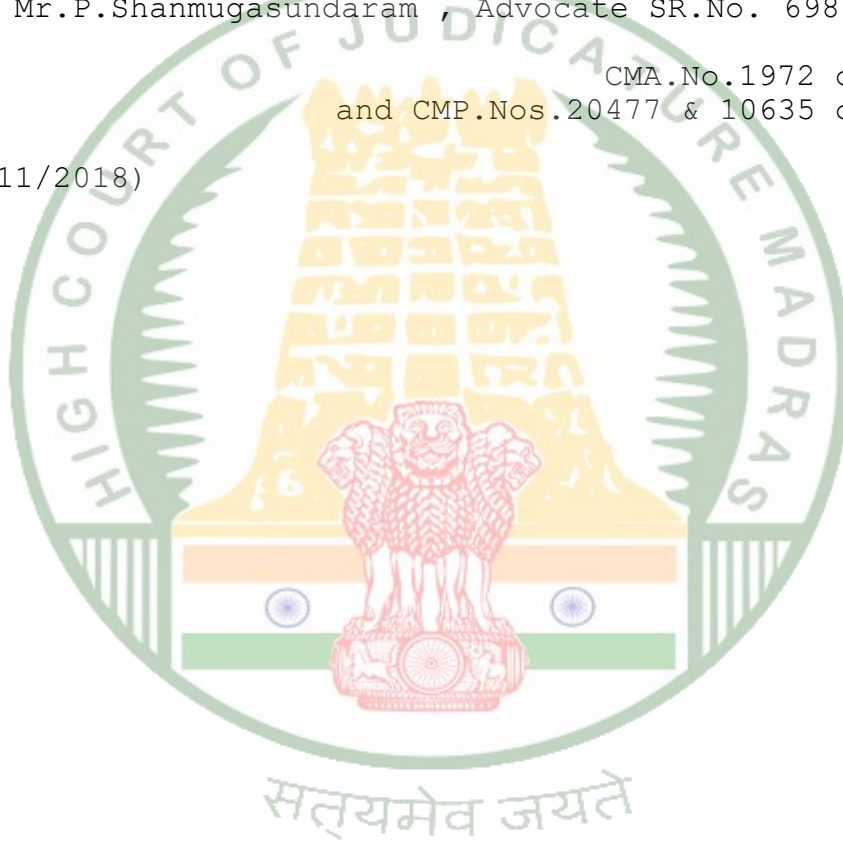
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To
The Motor Accident Claims Tribunal,
III Additional District Judge) at Dharapuram.

2. The section officer,
VR Section,
High court
Madras

+lcc to Mr.J.Michael Visuvasam , Advocate SR.No. 69452
+lcc to Mr.P.Shanmugasundaram , Advocate SR.No. 69805

CMA.No.1972 of 2017
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ASK(20/11/2018)



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