

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2519 of 2018

1.P.Thangarasu  
2.T.Malar

.. Appellants

Vs.

1.D.Ravichandran  
(was set exparte in Trial Court)

2.Oriental Insurance Co. Ltd.,  
Motor Third Party Claims - HUB,  
No.216, Prakasam Salai, Broadway,  
Chennai - 600 108.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree made in M.A.C.T.O.P.No.3927 of 2016, dated 01.03.2018, on the file of the I Special Subordinate Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

For Appellants : Ms.P.T.Saleem Fathima

For R1 : Mr.S.Manokar

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.A.C.T.O.P.No.3927 of 2016, dated 01.03.2018, on the file of the I Special Subordinate Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

2.By consent, the appeal itself is taken up for final disposal at the admission stage.

3.The appellants, who are the claimants, have filed M.A.C.O.P.No.3927 of 2016 on the file of the I Special Subordinate Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai, claiming a sum of Rs.49,00,000/- as compensation for the death of their son namely, T.Dharmaraj @ Dharmadurai, who died in the accident that took place on 15.05.2016.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Tipper Lorry belonging to the 1<sup>st</sup> respondent and directed the second respondent-Insurance Company to pay a sum of Rs.14,95,800/- as compensation to the appellants/claimants.

5.Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with this appeal seeking enhancement of the same.

6.The learned counsel appearing for the appellants contended that the deceased was working as a Supervisor in M/s.A.M.A.C. Pvt. Ltd., Bangalore and was earning a sum of Rs.25,000/- per month. The Tribunal without properly appreciating the evidence, erroneously fixed the notional income at Rs.9,000/- per month, which is too meager. The appellants have lost their son at an early age of 21. The Tribunal ought to have granted a sum of Rs.7,00,000/- towards loss of love and affection and a sum of Rs.50,000/- towards funeral expenses. He further contended that the deceased died after 1 ½ hour from the accident and would have suffered pain due to the injuries. Hence, the appellants are entitled to a sum of Rs.1,35,000/- towards pain and sufferings and prayed for enhancement of the compensation.

7.M/s.J.Chandran, takes notice for the second respondent. Heard the learned counsel for the appellants as well as the 1<sup>st</sup> respondent and perused the materials available on record.

8.From the materials on record, it is seen that the appellants have stated that their son was working as a Supervisor in M/s.A.M.A.C. Pvt. Ltd., Bangalore. The appellants have not examined anybody as employer of the deceased to substantiate their contention that the deceased was working as a Supervisor and was earning a sum of Rs.25,000/- per month. The Tribunal considering the failure on the part of the appellants to let in any oral and documentary evidence to substantiate their contention with regard to income of the deceased and also failure on their part to mention the educational qualification of the deceased, fixed the notional income of the deceased at Rs.9,000/- per month. There is no error in the said finding warranting interference by this Court.

9.The contention of the learned counsel for the appellants that the Tribunal ought to have awarded a sum of Rs.7,00,000/- towards loss of love and affection and a sum of Rs.50,000/- towards funeral expenses are contrary to the judgment of the Hon'ble Apex Court in the judgment reported in 2017(2)TNMAC 609 (SC) [National Insurance Company Ltd., Vs. Pranay Sethi and others].

10. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the amount awarded by the Tribunal. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the entire award amount of Rs.14,95,800/- with accrued interest and costs to the credit of M.C.O.P.No.3927 of 2016, passed by the I Special Subordinate Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are entitled to withdraw the award amount, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, with interest by making necessary application before the Tribunal. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk/gsa

To

1. The I Special Subordinate Judge,  
(Motor Accidents Claims Tribunal),  
Small Causes Court, Chennai.

Copy To

The Section Officer,  
V.R. Section, High Court,  
Madras. (2 copies)

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No. 76982

+1cc to Mr.S.Manohar, Advocate, S.R.No. 77115

CP(CO)  
GN(22/01/2019)

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