



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.06.2018
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.M.A(MD) .No.218 of 2013

1.B.Vasantha Kohilam
2.B.Raguraman
3.B.Lakshmanan
4.B.Rengarajan
5.B.Pandurengan

.. Appellants / Petitioners / Claimants

Vs.

1.M/s.Standard, Poly Plast
Madurai (PVT) Ltd.,
by its Managing Director,
132, SIDCO Industrial Estate,
Kappalur, Madurai District.

2.United Indian Insurance Company,
by its Divisional Manager,
West Veli Street,
Madurai.

... Respondents / Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award, dated 27.07.2007, made in M.C.O.P.No.1014 of 2004 by the Motor Accident Claims Tribunal / III-Additional District and Sessions Judge (PCR), Madurai.

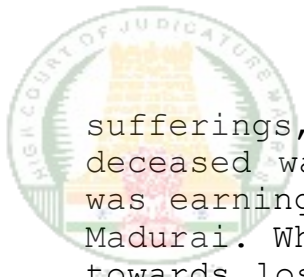
For Appellants	: Mr.K.Murugesan
For 1 st respondent	: Mr.M.E.Elango, for M/s.Ajmal Associates
For 2 nd respondent	: Mrs.Vijayakumari Natarajan

JUDGMENT

Heard the learned counsel appearing for both sides and perused the records carefully.

2. It is a case of fatal. The manner of the accident is not in dispute. The appellants / claimants have filed this appeal seeking to enhance the compensation awarded by the Tribunal.

3. The learned counsel appearing for the appellants / Claimants submitted that though the Tribunal has held that the death of the deceased was due to the rash and negligent driving of the driver of the first respondent's vehicle, which insured with the second respondent and that the deceased had sustained multiple injuries in the accident, the Tribunal has awarded only a sum of Rs.98,438/- towards medical expenses and Rs.50,000/- towards pain and



sufferings, totally Rs.1,48,438/-. He would further submit that the deceased was a goldsmith and that even at the age of 60 years, he was earning a sum of Rs.15,000/- p.m. by running a Jewellery shop at Madurai. While so, the Tribunal has failed to award any compensation towards loss of income. Even for funeral expenses, no sum has been awarded by the Tribunal. Thus, he prayed to enhance the compensation.

4. The learned counsel appearing for the respondents 1 and 2 in unison submitted that the claimants have failed to prove that the cause of the death of the deceased was only due to the injuries sustained in the accident and that postmortem has not been conducted on the body of the deceased and therefore, the Tribunal has not awarded any sum towards loss of income and therefore, the same need not be interfered with.

5. It is seen from the record that on 02.07.2003 at about 18.30 hours, while the deceased Balasubramanian was walking on the extreme left side corner of the North Veli Street, Madurai, the driver of the first respondent's van, who drove the vehicle rash and negligently, dashed against the deceased and due to this impact, he fell down and the van ran over his legs. Immediately, after the accident, the deceased was admitted in MIOT Hospital as inpatient and thereafter, he was taken to Appollo Hospital for further treatment and inspite of best treatment, he died on 09.07.2003.

6. Admittedly, postmortem has not been conducted on the body of the deceased. The Hon'ble Supreme Court and this Court have time and again held that the postmortem certificate is not a sine quo non for proving the cause of death. Therefore, non-production of postmortem certificate cannot be taken serious note of.

7. On the side of the claimants, only 4th appellant was examined as PW1 and no doctor was examined to speak about the cause of the death. However, Ex.P6 - Wound Certificate and Ex.P9 - Discharge Summary issued by MIOT Hospital would go to show that due to the accident on 02.07.2003, the deceased had sustained multiple fractures in both the legs, and head injury, which were stated as grievous in nature and the deceased was also underwent surgery on both the legs on 03.07.2003 in the MIOT Hospital, Madurai and his left leg was amputated and due to further complications, he was discharged on 05.07.2003 and referred to Appollo Hospital, Madurai for further treatment. Ex.P12 - Discharge summary of the Appollo Hospital would go to show that the deceased was discharged on 09.07.2003. Ex.P13 - Death Certificate would go to show that on reaching the home, the deceased died on 09.07.2003 itself and the deceased was aged about 60 years at the time of death. The totality of the above facts would go to show that due to the injuries sustained in the accident, the deceased was in very serious condition till his death and finally, he succumbed to the injuries.

8. Though the claimants have stated that the deceased was earning a sum of Rs.15,000/- by running a jewellery shop, they have

not produced any document to substantiate the same. Therefore, considering the year of the accident, this Court is inclined to fix Rs.4,500/- p.m. as notional income of the deceased. After deducting 1/3rd amount towards personal expenses, it comes to Rs.3,000/- p.m. and Rs.36,000/- per annum. As per the age of the deceased, the multiplier No.5 is applicable. If the annual income is multiplied with 5, the total loss of income comes to Rs.1,80,000/- (36,000 x 5). So far as the medical expenses are concerned, the Tribunal has awarded a sum of Rs.98,438/- based on the medical bills. This Court is not inclined to interfere with the same and therefore, the same is confirmed. In respect of other heads, this Court is inclined to award a consolidated sum of Rs.70,000/- on conventional head. Thus, the total compensation comes to Rs.3,48,438/- (Rs.1,80,000/- + Rs.98,438/- + Rs.70,000/-).

9. In view of the above, the award is enhanced from Rs.1,48,438/- to Rs.3,48,438/-. So far as the interest is concerned, the rate of interest i.e., 7.5% p.m. fixed by the Tribunal is confirmed. The respondents are directed to deposit the entire award amount, less the amount already deposited, with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellants / claimants are permitted to withdraw the deposited amount with accrued interests and costs, as apportioned by the Tribunal, without filing any formal petition before the Tribunal. The appellants are directed to pay the Court fee, if any to be paid, for the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment.

10. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The III-Additional District and Sessions Judge (PCR),
Motor Accident Claims Tribunal, Madurai.

2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.S.Natarajan, Advocate SR.No. 68375

+1cc to M/S.K.Murugesan, Advocate SR.No. 68287

C.M.A(MD).No.218 of 2013

14.06.2018

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JM/SKN RSK/SAR 2/05.07.2018/3P/6C