

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2019

PRONOUNCED ON : 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1187 of 2012

1.M.Padmavathy

2.M.Manoharan

... Appellants/Claimants

... Vs ...

1.E.Madasamy,

2.United India Insurance Company Limited,

No.52, General Muthiah Street,

Sowcarpet, Chennai - 79.

(Now operating from),

Slinghi Building,

No. 134, Greams Road,

Chennai - 600 006.

...Respondents/Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 23.02.2011 made in M.C.O.P.No.2705 of 2007 on the file of the Motor Accidents Claims Tribunal, learned Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.S.Gangaram Prasad

For R1 : Ex-parte

For R2 : Mr.S.Arunkumar

JUDGMENT

The claimants are the appellants herein and challenging the award passed in M.C.O.P.No.2705 of 2007, on the file of the Motor Accidents Claims Tribunal, learned Chief Judge, Court of Small Causes, Chennai, they have come up with the present appeal.

2 The appellants herein /claimants are the parents of the deceased viz., M.Arun, and they filed the above MCOP stating that on 21.05.2007, at about 21.15, hours, the deceased was riding his motor cycle bearing registration No.PY-01-AD-1008 with a pillion rider and were proceeding from South to North in Old Mahapalipuram road opposite to Senja Company, Chennai. At that time, the first respondent's tipper lorry bearing

registration No.TN-28-A-1914 was driven by its driver in a rash and negligent manner and dashed against the motor cycle from behind, due to which the deceased sustained grievous injuries and later succumbed to the injuries on the way to the hospital and the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle. The deceased was aged 21 years and he was a III year B.E. Student in Hindustan College of Engineering, Chennai and his notional future estimated income was assessed at Rs.20,000/- per month and they claimed compensation of Rs. 18,00,000/- from the respondents, who are the owner and the insurer of the vehicle involved in the accident. The first respondent who is the owner of the vehicle remained exparte. On the side of the second respondent, a permission petition was filed under Section 170 of the Motor Vehicles Act and the same allowed in M.P.No. 1181 of 2011, dated 09.02.2011.

3 The second respondent herein/Insurance Company filed counter statement denying and disputing the age, avocation and the alleged income of the deceased boy and also disputed the insurance coverage at the time of the accident.

4 To prove the case of the claimants, one Mr.M.Manoharan was examined as PW1 and Mr.Jaya Sathish was examined as PW2 and documents Ex.P1 to P10 were marked. On behalf of the respondents, no oral or documentary evidence adduced.

5 On consideration of both the oral and documentary evidence, the Tribunal held that the accident had taken place due to the rash and negligent driving of the driver of the first respondent's offending vehicle and the said vehicle was insured with the second respondent herein/Insurance Company. At the time of accident, there is a valid policy coverage for the said vehicle and has held that both the respondents 1 and 2 are jointly and severally liable to pay the compensation in the absence of any challenge to the said finding.

6 Regarding the factum of the accident, manner of the accident, rash and negligence on the part of the driver of the first respondent, in the absence of any challenge, the same is here by confirmed.

7 On the point of quantum, both the parties were heard.

8 The father of the deceased examined himself as PW1 and marked Ex.P7/Higher Secondary Course Marks Sheet, P8/B.E. Mark Sheet, Ex.P9/Condonation letter from the Hindustan Engineering College and based upon the said document, it is seen that the deceased boy was studying III year B.E. Course in the Hindustan College of Engineering and he was aged about 21 years at the

time of accident.

9 The Constitution Bench of Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), has held that, in the matter of a bachelor dying in the accident, the age of the deceased alone shall be the criteria and not the age of the parents to be taken as the criteria for assessment of compensation. Accordingly, multiplier is fixed at 18% and 40% of the salary has to be added as future prospects.

10 The learned counsel for the appellants relied on the judgment reported in 2014 (1) TN MAC 657 (DB) - [R.Harrish Vs. G.Divakaran and others] in CMA.Nos.1077 of 2012 and [Oriental Insurance Company Limited Vs. R.Harish] in CMA.No.1258 of 2013, wherein, this Court was fixed the notional income of the deceased boy at Rs.12,000/- per month and in another case, the notional income of the boy is fixed at Rs.10,000 per month as per the judgment reported in 2018(2) TN MAC 407 (DB) in CMA.No. 626 of 2018 - [K.Bannarisamy and other Vs.Anbalagan and others] and the Division Bench of this Court has fixed the notional income at Rs.15,000/- per month.

11 Taking into consideration that the deceased boy is in the pre-final year of the professional Course and also the ratio laid down by the Division Bench of this Court in the above referred citations, this Court is of the considered view that the notional income of the deceased could be safely fix at Rs.10,000 per month and 40% has to be added towards future prospects and accordingly,
 $(10,000 + 40\% \text{ of } 10,000) \times 18 \times 12 \times 1/2 = \text{Rs.}15,12,000/-$
Being the parents of the deceased, the appellants herein / claimants are entitle to Rs.50,000/- towards love and affection and Rs.15,000/- towards loss of amenities, Rs.15,000/- towards funeral expenses. Accordingly, the compensation awarded by the Tribunal is re-assessed as under:

Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
Loss of Income	6,30,000.00	15,12,000.00
Love and affection	10,000.00	50,000.00
Loss of amenities	-	15,000.00
Funeral expenses	10,000.00	15,000.00
Total	6,50,000.00	15,92,000.00

12 In the result,

I. This Civil Miscellaneous Appeal is partly allowed accordingly by enhancing the compensation from Rs.6,50,000/- to Rs.15,92,000/- with proportionate costs.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The respondents before the Tribunal are directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, the claimants are permitted to withdraw the entire award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any.

V. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Chief Judge,
The Motor Accidents Claims Tribunal,
learned Chief Judge, Court of Small Causes, Chennai.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate SR.No.65625

+1cc to Mr.G.Balajiprasad, Advocate SR.No.65241

C.M.A.No. 1187 of 2012

SV (CO)
GMY (07/11/2019)