

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018

Delivered on : 08.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1830 of 2015

1.Malliga  
2.Murali  
3.Vanitha

.... Appellants/Petitioners

Vs

1. Atheeswaran  
2. New India Assurance Company Ltd.,  
No.45, Moore Street,  
Chennai - 600 001.

.... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 10.08.2009 passed in M.A.C.T.O.P.No.2749 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Small Causes Court), Chennai.

For Appellants : Mr.V.Velu

For Respondents : Mr.P.G.Padmanaban (for R2)

For A1 : Exparte

सत्यमेव जयते  
O R D E R

Being dissatisfied with the quantum of compensation of Rs.4,66,500/- awarded by the Tribunal in M.C.O.P.No.2749 of 2006 dated 10.8.2009 on the file of the II Judge, Small Causes Court, Chennai, the appellants/claimants have filed this Civil Miscellaneous Appeal seeking enhancement.

2. Brief facts are that on 27.5.2006 at about 8.20 P.M., when the deceased Pachiappan was walking by the side of G.N.T. Road at Thandalam, opposite to Rajalakshmi College, a car bearing registration No.TN-01 Y 2329, owned by the first respondent, insured with the second respondent, driven by its driver in a rash and negligent manner dashed against the

deceased. Due to the impact, the deceased sustained grievous injuries. Immediately after the accident, the deceased was admitted in Government Hospital, Sriperumbudur and succumbed to injuries on 27.5.2006. Regarding the accident, a criminal case in Crime No.268 of 2006 was registered by Sriperumbudur police against the driver of the car. At the time of accident, the deceased was aged 45 years and was earning Rs.4,500/- per month by working as watchman in Maharaja Educational Institute, Thandalam, Sriperumbudur. Stating that the accident was due to rash and negligent driving of the driver of the car, the claimants who are wife, son and daughter have filed the claim petition claiming compensation of Rs.5,00,000/-.

3. Denying the manner of accident, the second respondent insurance company filed counter stating that there was a delay in lodging the complaint and also registering the FIR by the police. It is stated that the claimants have to prove the insurance policy and also valid driving licence of the driver of the car at the time of accident. According to the second respondent, the accident occurred only due to the fault of the deceased to walk on the road in a zig zag manner, carelessly and negligently without following any rules and regulations. Thus, the deceased contributed to the negligence. Therefore, the second respondent is not liable to pay compensation to the claimants and prayed for dismissal of the claim petition.

4. Before the Tribunal, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to P4 were marked. No oral and documentary evidence was adduced on the side of the second respondent insurance company.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was due to rash and negligent driving of the car bearing registration No.TN-01 Y 2329. Since the first respondent has not proved valid driving licence of his driver at the time of accident, the first respondent is vicariously liable to pay compensation to the claimants. Since the second respondent has not disproved the insurance particulars, the Tribunal directed the second respondent insurance company to pay the compensation at the first instance and then recover the same from the first respondent. As far as quantum of compensation is concerned, the Tribunal awarded Rs.3,96,000/- towards loss of dependency. Adding conventional damages, the Tribunal awarded total compensation of Rs.4,66,000/-. Challenging the quantum, the claimants have filed the present appeal claiming enhancement. In the appeal, the claimants enhanced the claim to Rs.7,00,000/- and paid court fee thereon.

6. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the second respondent is liable to pay the compensation to the claimants at the first instance and then recover the same from the first respondent. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the second respondent to pay the compensation first and then recover it from the first respondent is confirmed.

7. Challenging the quantum, the learned counsel for the appellants submitted that the Tribunal ought to have awarded more amount under the heads love and affection; funeral expenses; loss of consortium and loss of estate. He would submit that the Tribunal ought to have awarded 30% of the income as future prospects. Adding future prospects, the learned counsel prayed for enhancement of compensation to Rs.7,00,000/-.

8. Per contra, the learned counsel for the second respondent contended that after analysing the oral and documentary evidence, the Tribunal awarded total compensation of Rs.4,66,500/- which is just and reasonable and the same need not be enhanced as there was no materials produced by the claimants for enhancement.

9. According to the claimants, at the time of accident, the deceased was working as Watchman in Maharaja Educational Institute, Thandalam, Sriperumbudur and was earning Rs.4,500/- per month. To prove the same, the claimants have examined P.W.3-Loganathan, the then Supervisor working in a Security Bureau. In his evidence, P.W.3 deposed that the deceased Pachiappan was deputed to Maharaja Educational Institute as Watchman and he was paid total salary of Rs.6,000/-, which is inclusive of allowances. P.W.3 produced Ex.P4-salary certificate. Since the claimants themselves stated in the claim petition that the deceased was earning Rs.4,500/- per month at the time of accident and Ex.P4-salary certificate issued inclusive of allowances, the Tribunal after deducting the allowances has taken the monthly income of the deceased at Rs.4,500/-, which in my considered opinion is reasonable and the same is maintained.

10. In the present case, the claimants have proved that at the time of accident the deceased was working as Watchman and was earning Rs.4,500/- per month. However, the Tribunal has failed to give any addition towards future prospects. Since the deceased was salaried person, the Tribunal ought to have give addition of atleast 30% of the income towards future prospects.



Considering the avocation of the deceased, this Court feels that it would be appropriate to give 30% addition of the income towards future prospects. Taking the monthly income at Rs.4,500/- and giving 30% addition, this Court calculated the monthly income of the deceased at Rs.5,850/- and the annual income at Rs.70,200/-. Deducting one-third towards personal expenses, the contribution to the family is calculated at Rs.46,800/- per annum.

11. In the claim petition, the claimants have mentioned that the deceased was aged 45 years at the time of accident. However, in Ex.P2-post-mortem certificate, the age of the deceased was mentioned as 55 years. Based on Ex.P2-post-mortem certificate, the Tribunal has taken the age of the deceased as 55 years. Apart from Ex.P2, the claimants have not produced any documents to show the age of the deceased. Since Ex.P2-post-mortem certificate is a valid piece of evidence, this Court is of the view that the Tribunal was right in fixing the age of the deceased as 55 years at the time of accident. For the age group 51 - 55 years, the multiplier to be adopted is "11" and the Tribunal has rightly taken multiplier "11" for awarding compensation. Adopting multiplier "11", the loss of dependency is calculated at Rs.5,14,800/-. Thus, a sum of Rs.5,14,800/- is awarded towards loss of dependency.

12. As far as conventional damages are concerned, the Tribunal awarded Rs.2,000/- towards extra-nourishment; Rs.2,000/- towards transportation; Rs.2,000/- towards medical expenses. Since the accident is of the year year 2006, the amounts of Rs.2,000/- towards extra-nourishment; Rs.2,000/- towards transportation; Rs.2,000/- towards medical expenses awarded by the Tribunal are reasonable and the same are maintained.

13. The Tribunal awarded Rs.50,000/- towards loss of love and affection. Since the claimants 2 and 3 have lost the love and affection of the deceased at their 20 and 19 years respectively, this Court finds that Rs.50,000/- awarded by the Tribunal towards loss of love and affection is reasonable and the same is maintained.

14. The Tribunal awarded Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. Since the aforesaid amounts awarded by the Tribunal are very low, this Court enhance the same to Rs.10,000/- towards funeral expenses and Rs.30,000/- towards loss of estate.

15. The Tribunal awarded Rs.10,000/- towards loss of consortium. Considering the age of the first claimant, who lost her husband at the age of 55 years, it would be appropriate

to enhance the same to Rs.40,000/-. Accordingly, Rs.10,000/- awarded by the Tribunal towards loss of consortium is enhanced to Rs.40,000/-.

16. In view of the above discussion, the total compensation of Rs.4,66,500/- awarded by the Tribunal is enhanced to Rs.6,50,800/- as under:

| Heads                      | Rs.         |
|----------------------------|-------------|
| Loss of dependency         | 5,14,800.00 |
| Extra-nourishment          | 2,000.00    |
| Transportation             | 2,000.00    |
| Medical expenses           | 2,000.00    |
| Loss of love and affection | 50,000.00   |
| Funeral expenses           | 10,000.00   |
| Loss of estate             | 30,000.00   |
| Loss of consortium         | 40,000.00   |
| Total                      | 6,50,800.00 |

17. The Tribunal awarded interest at the rate of 9.5% per annum from the date of petition till the date of realisation. This Court finds that the rate of interest awarded by the Tribunal is slightly excessive. Since the accident was of the year 2006, at the relevant point of time, the Courts/Tribunal awarded interest at the rate of 7.5% per annum, it would appropriate to award interest at 7.5% per annum. Thus, the rate of interest awarded by the Tribunal is reduced to 7.5% per annum.

18. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.4,66,500/- awarded by the Tribunal in M.C.O.P.No.2749 of 2006 dated 10.8.2009 is enhanced to Rs.6,50,800/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The enhanced compensation with interest is directed to be deposited by the second respondent before the Tribunal within a period of eight weeks from the date of receipt of a copy of this order at the first instance and then recover the same from the first respondent. Out of total compensation, the first claimant is entitled to get 60%; the second claimant is entitled to get 30% and the third claimant is entitled to get 10% with accrued interest. On

deposit of the enhanced compensation, the claimants are permitted to withdraw their respective shares along with accrued interest. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,  
II Judge, Small Causes Court,  
Chennai.

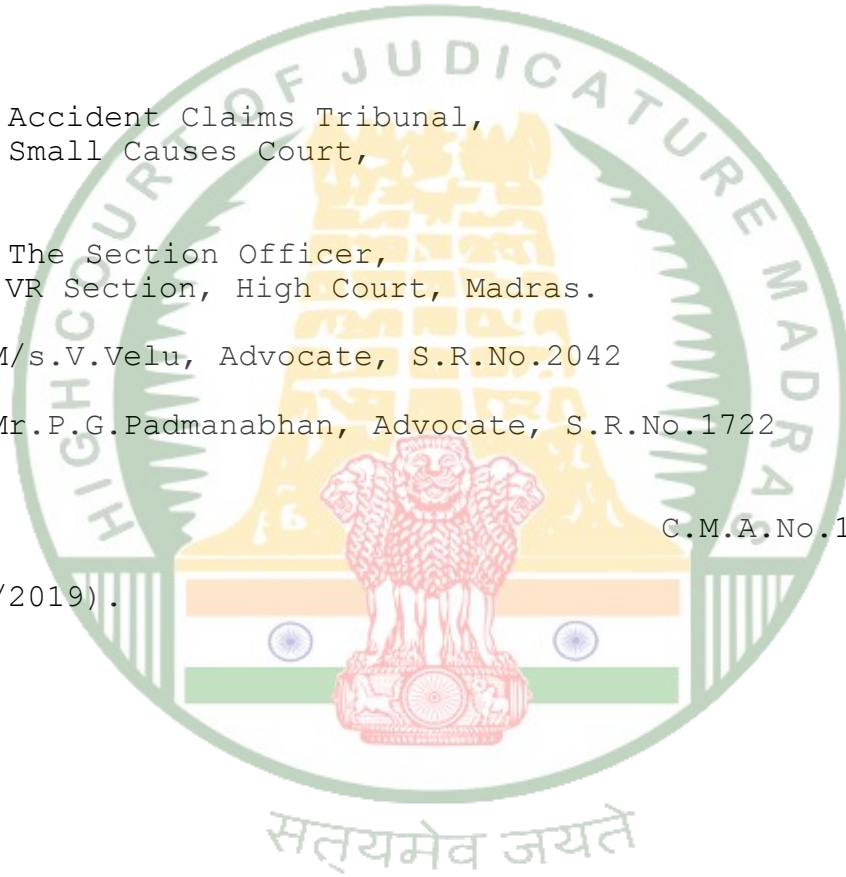
copy to: The Section Officer,  
VR Section, High Court, Madras.

+1 cc to M/s.V.Velu, Advocate, S.R.No.2042

+1 cc to Mr.P.G.Padmanabhan, Advocate, S.R.No.1722

C.M.A.No.1830 of 2015

PPA(CO)  
SSM(14/11/2019).



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