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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2046 of 2012

B. Merlin Metilda ...Appellant/Petitioner

Vs.

1.G. Raja

2. The Oriental Insurance Company Ltd.,
No.8, Esplanade Road,
Chennai - 600 108.
(Now Operating from New No.216,
Old No.115, PRakasam Salai ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 from the Judgment and Decree dated 29.07.2011 in M.C.O.P.No.3714 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of small causes, Chennai.

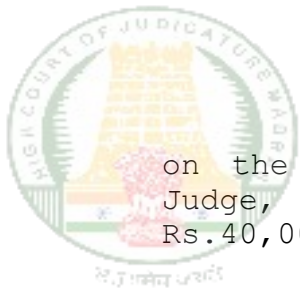
For Appellant : Mr.S. Gangaram Prasad

For Respondents : Mr.R. Sree Vidhya for R2
R1 - exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.3714 of 2007, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small causes, Chennai, and she has filed this civil miscellaneous appeal seeking enhancement of compensation.

2. It is the case of the claimant that on 29.07.2007 at about 15:30 hours, when the victim was riding his motor cycle bearing Regn.No.TN-05-S-0248 from west to east on Konnur High Road opposite to Daya Sadhan, Chennai, the first respondent's Lorry bearing Registration No.TN-23-AC-8416 was driven by its driver in a rash and negligent manner from behind and dashed against the motor cycle and as a result of which, the deceased fell down and the lorry ran over his head, resulting in his death on the spot, besides damages to the motor cycle and the accident was occurred only due to the rash and negligent driving of the driver of the first respondent's lorry. Hence, the only legal heir of the deceased viz., wife of the deceased has filed the above M.C.O.P.No.4714 of 2007,



on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of small causes, Chennai, claiming a sum of Rs.40,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, the appellant examined herself as P.W.1, one Mr.Ravi, who is the eye witness to the occurrence, was examined as P.W.2 and Mr.Parasuraman was examined as P.W.3 and 12 documents were marked as Exs.P.1 to P.12. On the side of the respondents before the Tribunal, neither oral nor documentary evidences was let in.

4. The Tribunal, after considering both oral and documentary evidence adduced on the side of the claimant, has awarded a sum of Rs.17,56,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of payment. Having not satisfied with the award passed by the Motor Accidents Claims Tribunal, the appellant, who is the wife of the deceased, has preferred this appeal before this Court seeking enhancement of compensation.

5. Heard both sides and perused the materials available on records.

6. It appears from the evidence of P.W.1 that the deceased was working as Assistant Sales Manager in O.S.L. Shipping Agencies India Private Limited and earned a sum of Rs.25,000/- per month plus future increments. The Tribunal has fixed the monthly salary of the deceased as Rs.15,500/-. Taking note of the fact that the deceased had completed 45 years, as per the decision of the Constitution Bench of the Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 25% of monthly salary i.e., Rs.3,875/- has to be added towards future prospects and it comes to Rs.19,375/- and after deducting 1/3 amount i.e., Rs.6,458/- towards personal expenses of the deceased, the annual dependency is calculated at Rs.1,55,004/- [Rs.12,917/- x 12 = Rs.1,55,004/-]. As the deceased had completed 45 years, following the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)], appropriate multiplier of 13 has to be adopted and the loss of pecuniary benefits is calculated at Rs.20,15,052/- [Rs.1,55,004/- x 13 = Rs.20,15,052/-].

7. Further, the Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium to the claimant and the same is enhanced to Rs.40,000/-. The Tribunal has not awarded any amount towards Loss of Estate and hence, this Court awards a sum of Rs.15,000/- towards loss of estate. Further, the Tribunal has awarded a sum of Rs.10,000/- towards transport to hospital expenses and the same is confirmed. Furthermore, the Tribunal has not awarded any amount towards funeral expenses and hence, this Court awards a sum of Rs.15,000/- under the head of funeral expenses and under the head of medical expenses, the Tribunal has not awarded any amount and hence,



this Court awards a sum of Rs.5,000/- towards medical expenses. Consequently, the compensation of Rs.17,56,000/- awarded by the Tribunal is hereby enhanced and Tabulated hereunder:-

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Pecuniary benefits	Rs.17,36,000/-	Rs.20,15,052/-
Loss of Consortium	Rs. 10,000/-	Rs. 40,000/-
Loss of Estate	-Nil-	Rs. 15,000/-
Transportation charges	Rs. 10,000/-	Rs. 10,000/-
Funeral Expenses	-Nil-	Rs. 15,000/-
Medical expenses	-Nil-	Rs. 5,000/-
Total	Rs.17,56,000/-	Rs.21,00,052/- Rounded off to Rs.21,00,000/-

8. In the result,

I. This Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.17,56,000/- to Rs.21,00,000/-.

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

III. The second respondent-insurance company is directed to deposit the enhanced 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 appellant/claimant is permitted to withdraw the entire award amount with proportionate interest, by filing proper application.

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

VI. No order as to costs.

Sd/-

Assistant Registrar (CS-V)

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To

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

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

+1cc to Mr. Mr. R. Sree Vidhya, Advocate SR.No.32856

+1cc to Mr. G. Balaji Prasad, Advocate SR.No.32375

C.M.A.No.2046 of 2012

VBA (CO)
GMY (19/11/2019)