

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.3018 of 2011

- 1.G.Manjula
- 2.N.Parthiban (Minor)
- 3.N.Kishore Kumar (Minor)

(Minor rep. by their mother and
next friend G.Manjula 1st petitioner)

- 4.Hamsammal
- *2nd Appellant was declared as
Major on 10.02.2011 vide M.P.1170 of 2011
...Appellants/Petitioners

Vs.

- 1.K.Valarmathi
 - 2.Royal Sundaram Alliance Insurance Co. Ltd.,
"Sundaram Towers"
45 & 46, Whites Road,
Chennai - 600 014.
- *(1st Respondent was set exparte in the
Trial Court) ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 27.08.2010, in M.C.O.P.No. 164 of 2007, on the file of the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants : Mr.K.V.Muthuvisakan

For Respondents : Mr.N.Vijayaraghavan for R2
R1 - Ex-parte

JUDGMENT

The appellants are the claimants in M.C.O.P.No. 164 of 2007, on the file of the Chief Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chenani. They have filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and

Rule 3 of MACT Rules seeking compensation of Rs.20,00,000/- for the death of one R.Narasimhan in a road accident that took place on 06.10.2006. The claimants are the wife, sons and mother of the deceased.

2. It is represented that the fourth appellant, the mother of the deceased, namely, Hamsammal, died on 28.07.2011, and as such, the first, the second and the third appellants are being recorded as the legal representatives of the deceased fourth appellant.

3. The brief case of the appellants/claimants is as follows:

(i) The deceased was aged 44 years and was working as machine operator in M/s. Brakes India Limited, Sholinghur earning a sum of Rs.9,700/- per month, and apart from that, by distributing Amway products, he was earning a sum of Rs.3,000/- per month from Amway.

(ii) On 06.10.2006, at about 23.30 hours, when the deceased was riding his TVS 50 at Sholinghur - Arakonam main road, near Karaikkal coot road, Vellore District, from Arakonam to Sholingur, the first respondent's lorry bearing Registration No. KA 01 C 5069, proceeding in the opposite direction, driven by its driver in a rash and negligent manner, at a great high speed, came into the wrong side of the road, and dashed against the TVS 50, thereby, the deceased was thrown out and sustained multiple injuries and died on the way to the hospital.

(iii) According to the appellants/claimants, the rash and negligent driving of the driver of the said lorry was the cause of the accident and therefore, they claimed a compensation of Rs.20,00,000/- from the respondents who are the owner and the insurer of the vehicle involved in the accident.

4. The owner of the said lorry remained absent before the Tribunal and therefore, he was set ex-parte. The Royal Sundaram Alliance Insurance Company Limited contested the claim petition. They filed a permission petition under Section 170 of the Motor Vehicles Act, 1988 in M.P.No. 5386 of 2010 and the same was allowed. On behalf of the appellants/claimants, PW1 to PW3 were examined and Exs. P1 to P4 were marked. On behalf of the Insurance Company, RW1 & RW2 were examined. Based upon the oral and documentary evidence, the Tribunal held that the accident happened due to the rash and negligent driving of the driver of the said lorry and also held that both the owner and the insurer of the lorry are jointly and severally liable to pay compensation of Rs.10,90,000/- to the appellants/claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

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

6. It is seen from the records that the deceased R.Narasimhan was working as a machine operator in M/s. Brakes India Limited, Sholinghur, earning a sum of Rs.9,700/- per month, for which, V.Nagarajan (PW2), a staff in the office of the said Company was examined and Identity card (Ex.P8) and Salary slips (Ex.P13) were marked. As per the Salary slips (Ex.P13), the monthly income of the deceased is found to be Rs.9,718/- per month, which was rounded off to Rs.9,535/- by the Tribunal. Complying with the ratio laid down in the decision in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 and taking note of the age of the deceased as shown in the Service Register, 30% of the salary has to be added towards future prospects of the deceased. Considering the date of the accident, the employment and salary of the deceased, the pecuniary loss sustained by the deceased is re-assessed as under:

Calculation:

Salary + Future Prospects of 30% = Rs.9,535/- + Rs.2,860.5/-
= Rs.12,395/-
After 1/4th deduction = Rs.9,296/-
Yearly Income + Multiplier = Rs.9,296/- x 12 x 14
= Rs.15,61,770/-

7. A sum of Rs.10,000/- awarded by the Tribunal towards 'loss of consortium' is enhanced to Rs.40,000/-. The Tribunal has awarded only a sum of Rs.10,000/- towards the 'loss of love and affection' for the second and third appellants, which is found to be very meagre. Therefore, the same is enhanced to Rs.80,000/- (Rs.40,000/- each). Since, no amount was awarded under the head 'loss of estate', a sum of Rs.15,000/- is awarded towards the same. The sum awarded under the head 'funeral expenses' is enhanced to Rs.15,000/-.

8. Accordingly, the award of the Tribunal in M.C.O.P.No. 164 of 2007 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits	Rs.10,67,920/-	Rs.15,61,770/-
2.	Loss of consortium	Rs.10,000 /-	Rs. 40,000 /-
3.	Loss of love and affection	Rs.10,000/-	Rs.80,000/-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
4.	Funeral expenses	Rs.2,080/-	Rs.15,000/-
5.	Loss of estate	NIL	Rs.15,000/-
	Total	Rs.10,90,000/-	Rs.17,11,770/-

The compensation awarded by the Tribunal is enhanced from Rs.10,90,000 /- to Rs.17,11,770 /- which shall carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.10,90,000/- to Rs.17,11,770/- which shall carry interest at the rate of 7.5% per annum.

(iii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent - Royal Sundaram Alliance Insurance Company Limited is directed to deposit the entire compensation of Rs.17,11,770/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 164 of 2007, dated 27.08.2010, on the file of the Chief Judge, the Motor Accidents Claims Tribunal, Small Causes Court, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) Since, the fourth appellant herein has already died, her share of compensation is hereby re-alloted to the first, the second and the third appellants equally.

(vi) It is represented by the learned counsel appearing for the appellants that the second and third appellants have become major and hence they are declared major.

(vii) The apportionment made by the Tribunal shall be kept intact.

(viii) On such deposit being made, the appellants are permitted to withdraw the entire compensation awarded to them, as apportioned by the Tribunal, after following due process of law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

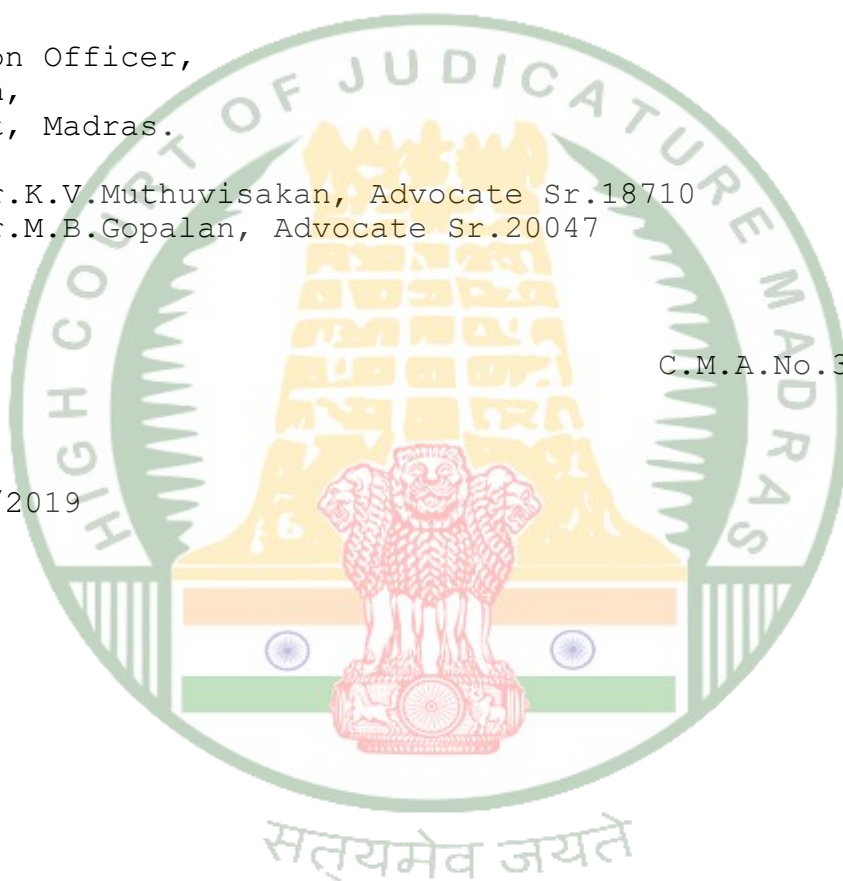
Copy to

The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.K.V.Muthuvisakan, Advocate Sr.18710
+lcc to Mr.M.B.Gopalan, Advocate Sr.20047

C.M.A.No.3018 of 2011

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