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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3256 of 2011 and

M.P.No.1 of 2011

The Manager,
M/s. Royal Sundaram Alliance
Insurance Co. Ltd.,
Sundaram Towers,
No.45 & 46, Whites road,
Chennai - 600 014.

...Appellant/2nd Respondent

Vs.

1.Meerammal
2.I.Musthappa

... Respondents/Petitioner & 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.04.2011, in M.C.O.P.No. 818 of 2009, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.III, Thiruvallur.

For Appellant : Mr.N.Vijayaraghavan
For Respondents: No appearance for R1
R2 - exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Royal Sundaram Alliance Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 818 of 2009, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.III, Thiruvallur. They have filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The brief case of the first respondent/claimant is as follows:

(i) The first respondent/claimant is the mother of the deceased Thangavelu, who was aged 38 years on the date of the accident. The deceased worked as a power loom maistry and power loom mechanic, earning a sum of Rs.10,000/- per month. The deceased was a bachelor.



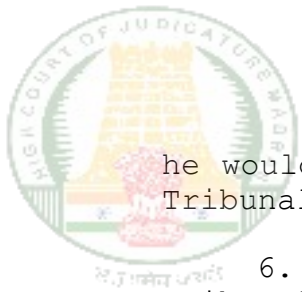
(ii) On 16.09.2005, at about 22.20 hours, the deceased Thangavelu was standing on Athimanjerypet - Pallipet main road. At that time, a lorry bearing Registration No. TN41 B 5979 belonging to the second respondent herein, came at a high speed and dashed against the deceased and he was also ran over by the said lorry and died on the spot.

(iii) According to the first respondent/claimant, the rash and negligent driving of the driver of the said lorry, belonging to the second respondent herein, was the cause of the accident, and that, since, the said lorry was insured with the Royal Sundaram Alliance Insurance Company Limited, both the owner and the insurer of the said lorry are jointly and severally liable to pay compensation of Rs.4,00,000/- to him.

3. The owner of the lorry bearing Registration No. TN41 B 5979 was absent before the Tribunal, and therefore, he was set ex-parte. The Royal Sundaram Alliance Insurance Company Limited contested the claim petition by filing a counter statement disputing the age, the avocation and the income of the deceased and contended that the quantum of compensation claimed by the first respondent/claimant is highly excessive. The Insurance Company has also filed a petition under Section 170 of the Motor Vehicles act, 1988 and the same was also allowed.

4. Before the Tribunal, the first respondent/claimant was examined as PW1 and an eye witness to the occurrence of the accident PW2 was examined and copy of FIR (Ex.P1), copy of post mortem certificate (Ex.P2), copy of death certificate (Ex.P3) and legal heirship certificate (Ex.P4) were marked. Taking into consideration, the oral and documentary evidences adduced before the court, the Tribunal has held that the accident has taken place only due to the rash and negligent driving of the driver of the said lorry and awarded a compensation of Rs.4,47,000/- together with interest at the rate of 7.5% per annum and directed the respondents 1 and 2 therein, to pay the compensation jointly and severally, to the first respondent/claimant. Aggrieved against the said orders passed by the Tribunal, the Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988, alleging that the quantum of compensation awarded by the Tribunal is on the higher side.

5. The learned counsel appearing for the appellant would contend that as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the correct multiplier to be adopted in the present case is 15. But, the Tribunal has wrongly adopted multiplier of 16 and awarded excessive compensation. Therefore,



he would contend that the quantum of compensation awarded by the Tribunal should be reduced.

6. After re-appreciating the evidences placed before the Tribunal and taking note of the evidence of Sekar (PW2), an eye witness to the occurrence of the accident, coupled with the legal heirship certificate (Ex.P4), this Court holds that the finding rendered by the Tribunal that, the accident has taken place only due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN41 B 5979, is perfectly in order and accordingly, the rash and negligent aspect is hereby confirmed. Since, the said lorry is insured with the present appellant, they are liable to pay compensation to the first respondent/claimant, and therefore, the Tribunal directed the present appellant and the owner of the said lorry to jointly and severally pay the compensation to the first respondent/claimant, which is also correct and accordingly, it is confirmed.

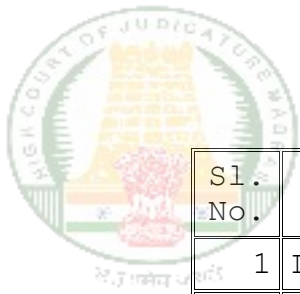
7. Quantum of compensation: It is the contention of the first respondent/claimant that, the deceased Thangavelu was working as a power loom maistry and power loom mechanic, earning a sum of Rs.10,000/- per month. However, no income proof was adduced by the first respondent/claimant, in support of the same. Therefore, the Tribunal fixed the notional income of the deceased as Rs.4,500/- per month, and since, the deceased was a bachelor, the Tribunal deducted 50% of his income towards the personal expenses of the deceased. The Tribunal has also adopted a multiplier of 16 and awarded a sum of Rs.4,32,000/- towards 'loss of dependency'. As per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the multiplier to be adopted in the present case is 15. Therefore, the multiplier of 16, adopted by the Tribunal is wrong and the same is hereby modified and multiplier of 15 is adopted.

Calculation:

$$\begin{aligned}\text{Loss of dependency} &= \text{Rs.4,500} \times \frac{1}{2} \text{ deduction} \times 12 \times 15 \\ &= \text{Rs.4,05,000/-}\end{aligned}$$

8. The Tribunal has awarded a sum of Rs.10,000/- towards the 'loss of love and affection' to the first respondent/claimant and for the funeral expenses of the deceased, a sum of Rs.5,000/- was awarded, and the same are just and reasonable. Accordingly, they are confirmed.

9. Accordingly, the award of the Tribunal in M.C.O.P.No. 818 of 2009 is modified as follows:



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Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of dependency	Rs.4,32,000/-	Rs.4,05,000/-
2.	Loss of love and affection	Rs.10,000/-	Rs.10,000/-
3.	Funeral expenses	Rs.5,000/-	Rs.5,000/-
	Total	Rs.4,47,000/-	Rs.4,20,000/-

The compensation awarded by the Tribunal is reduced from Rs.4,47,000/- to Rs.4,20,000/- which shall carry interest at the rate of 7.5% per interest.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.4,47,000/- to Rs.4,20,000/-.

(iii) The appellant - Insurance Company is directed to deposited the compensation awarded by this court, i.e., Rs.4,20,000/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No. 818 of 2009, dated 18.04.2011, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No. III, Thiruvallur within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the first respondent/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Additional District Court,
Fast Track Court No. III,
Thiruvallur.



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

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+1cc to M/s.M.B.Gopalan, Advocate sr.21648

C.M.A.No.3256 of 2011 and
M.P.No.1 of 2011

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