

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HON'BLE Tmt. JUSTICE V.BHAVANI SUBBAROYAN,

C.M.A.No.257 of 2012

1.C.V.Ramakrishnan

2.Sakunthala

... Appellants/Petitioners

..vs..

1.Mr.C.Rajendra,

No.4103, Sub Registrar Road,

B-Block, 2nd Stage, Rajaji Naar,

Bangalore-560 010

(was set ex-parte in the trial court)

2.The New India Assurance Co. Ltd.,

Regional Office,

No.45, Moore Street, Chennai-1

.... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 28.02.2011 made in M.A.C.T.O.P.No.2198 of 2007 on the file of the Chief Judge, Motor Accident Claims Tribunal (Small Cause Court), Chennai.

For Appellants : M/s.C&K Law Firm for Mrs.M.Sudha

For Respondents: Mr.M.Krishnaswamy for R2
R1-set exparte---

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants, against the Judgment and Decree, dated 28.02.2011 made in M.A.C.T.O.P.No.2198 of 2007 on the file of the Chief Judge, Motor Accident Claims Tribunal (Small Cause Court), Chennai, by raising various grounds.

2. The above claimants, have filed the claim petition seeking for compensation in respect of the death of their son R.Paramasivam. The deceased R.Paramasivam was aged about 28 years at the time of accident, who had been working as Lorry Driver and earning more than a sum of Rs.7500/- as salary per month besides daily batta and died in an accident that took place on 08.04.2007 while he was riding a motor cycle bearing registration No.TN-22-M-3272 in ECR Road opposite to Royal College, Mamallapuram, the first respondent's car bearing registration No.KA-25-P-0003, came from Pondichery towards

Chennai in a rash and negligent manner and hit against the motor cycle. As a result, the deceased died on the spot. Claiming compensation for a sum of Rs.10,00,000/-, a claim petition has been filed by the petitioners/appellants before the Tribunal.

3. The Claims Tribunal, after considering the oral evidence and the materials available on record, has passed an award in favour of the claimants for a sum of Rs.2,63,000/- under the following breakup details:

Total Loss of Pecuniary benefits	
(adopting the multiplier 9)	-Rs.27,000/-X9=Rs.2,43,000/-
Loss of love and affection to Claimants	Rs. 10,000/-
Funeral expenses &	Rs. 10,000/-
Transportation expenses	

(rounded off to)-	Rs.2,63,000/-

4. The claimants had stated that even though, PW3, one Kannan has deposed that the deceased was working as Lorry Driver and earning a sum of Rs.7500/- per month, the Tribunal has erroneously fixed the monthly income of the deceased as Rs.4500/- per month. Further, the Judge ought to have deducted 1/3rd of the amount from the earnings of the deceased towards Personal expenses instead of deducting the same as 50% and the Court has to weigh the matter as per the dictums of the Hon'ble High Court and the Hon'ble Apex Court and prayed for awarding the compensation for a sum of Rs.10,00,000/-.

5. The second respondent has filed the permission petition under Section 170 of the M.V. Act. Counter affidavit has been filed by the second respondent denying the age, occupation and income of the deceased, place and date of accident. It is also denied by the respondent that the death occurred due to multiple injuries said to have been sustained by the deceased in the alleged accident and the appellant should prove the same.

6. Additional counter affidavit has been filed by the second respondent stating that PW3, one Kannan, the employer of the deceased/rider lodged a written complaint about the accident and FIR was registered under Cr.No.14/2007 at E1-Mamallapuram Police Station and after due investigation, the police officials have found that the deceased was at fault and closed the case on 12.04.2007 as charge abates. As per the police records, the police officials have not filed any charge sheet against the car driver and closed the same.

7. To prove their case, on the side of the appellants, they have examined PW1 to 3 and marked Ex.P1 to P6. On the side of the respondents, no witness has been examined. One Mr.V.Alavandhan, Special Sub Inspector of Police was examined as RW1 and marked Ex.R1, a photocopy of final report prepared by the Investigating Officer. A perusal of oral evidence of RW1 and documentary evidence Ex.R1, reveals that the above said final report was not filed before the concerned Magistrate's Court and the Court has not accepted the above said report and not closed the above said criminal case. Therefore, from both oral and documentary evidence, the lower Court has finally come to the conclusion that the petitioners therein are entitled to compensation for the death of the deceased and awarded compensation for a sum of Rs.2,63,000/-.

8. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the appellants herein have filed the present Appeal seeking for enhancement of compensation by raising above stated grounds.

9. Though it is the claim of the claimants that the deceased was earning a sum of Rs.7,500/-, however, in the absence of any material to establish the earning of the deceased, this Court is of the considered view that the monthly income of the deceased could be very safely fixed at Rs.4,500/-, as the Supreme Court in Syed Sadiq's case, has fixed the notional income of a vegetable vendor at Rs.4,500/-. Accordingly, fixing the monthly income of the deceased at Rs.4,500/- and adding 40% towards the future prospects of the deceased, the total notional monthly income of the deceased is quantified at Rs.6,300/- ($\text{Rs.4500} \times 40\% = \text{Rs.1800}$) after deducting 50% towards personal expenses of the deceased since he was a bachelor at the time of accident. Adopting the proper multiplier of 17, as fixed by the Supreme Court in Sarala Verma's case, the loss of income to the family is quantified at Rs.6,42,600/- ($\text{Rs.6300} \times 12 \times 17$).

10. This Court, on an overall appreciation of the entire materials on record is of the considered view that a sum of Rs. 10,000/- towards love and affection, a sum of Rs.10,000/- towards transport expenses and a sum of Rs.20,000/- towards pain and suffering would meet the ends of justice.

11. Accordingly, the total compensation payable to the claimants is quantified as under :-

Loss of monthly income	Rs. 6,42,600/-
Love & Affection	Rs. 10,000/-
Transport Expenses	Rs. 10,000/-
Funeral expenses	Rs. 20,000/-
Total	<u>Rs.6,82,600/-</u>

12. In the result, the award is enhanced to Rs.6,82,600/- and this amount of compensation shall be deposited less the amount already deposited along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. The claimants are not entitled to the interest for the default period. The share of the compensation amount shall be apportioned between the appellants / claimants, as per the ratio of proportion made by the Claims Tribunal. On such deposit being made by the second respondent / Insurance Company, (since all the appellants / claimants are majors), the claimants are permitted to withdraw their shares of compensation along with proportionate interests.

13. This Civil Miscellaneous Appeal is partly allowed.
No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.Chief Judge, Motor Accident Claims Tribunal
(Small Cause Court), Chennai

2. The Section Officer,
V.R.Section, Madras High Court,
Chennai 104.

C.M.A.No.257 of 2012

BS (CO)
GN(17/12/2020)

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