

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.07.2019
DELIVERED ON: 20.08.2019
CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2402 of 2019

1.S.Umavathi

2.Sundararajan ... Appellants/ Petitioners

Vs

1.A.Kumar

2.Royal Sundaram Insurance Company Limited,
4A, 4th Floor, Thirumalai Towers,
723, Avinashi Road,
Coimbatore - 641 018. ... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.09.2017 made in M.C.O.P.No.388 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

For Appellants : Mr.R.Nalliyappan
For R2 : Mr.S.Manohar
R1 : Exparte before the TRibunal

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 07.09.2017 made in M.C.O.P.No.388 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. Aggrieved against the award of the Tribunal at Rs.14,97,860/- as compensation against the claim of Rs.20,00,000/-.

2.The brief facts is as follows:

On 17.07.2012 at about 06.15 PM the deceased Prakash was travelling in his TVS XL Super Moped bearing Reg.No.TN-10-M-5308 at Coimbatore to Avinashi Road at Peelamedu Pudur Junction in the direction to West to East at the left extreme end of the road. At that time a Tata Ace goods vehicle bearing Reg.No.TN-38-BL-3956 which was coming in the same direction, the driver of the said Tata Ace with high speed and with rash and negligent manner, dashed the deceased Prakash TVS XL Super, which caused the deceased to fell down and sustained serious head injury. Immediately, one Sidharanjan and some local people made arrangement to admit the deceased Prakash at KMCH Coimbatore, on 18.07.2012 he was admitted at Coimbatore Medical College Hospital, Coimbatore and on 19.07.2012 the deceased Prakash was died. The claimants claimed a sum of Rs.20,00,000/- as compensation for the death of their son.

3.The 2nd respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that the accident happened only due to the carelessness of the deceased. The deceased riding his motorcycle bearing Reg.No.TN-10-M-5308 from south to north direction and without noticing the vehicle which was coming from west to east direction, turned his vehicle towards east and he himself dashed the backside of the hook of the van and fell down into the road. There is no fault or mistake on the part of the driver of the Tata Ace van bearing Reg.No.TN-38-BL-3956. The driver of the Tata Ace van drove his vehicle in a normal speed by following all the traffic rules and regulations. Further contended that the deceased did not hold any valid and effective driving license at the time of the accident. The deceased drove his motorcycle in a rash and negligent manner and not able to control his vehicle and hit against the Tata Ace and hence the accident is only due to negligent driving of the deceased. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

4.The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the said Tata Ace van and also awarded a sum of Rs.14,97,860/- as compensation under the following heads:

Loss of income	Rs.12,45,400/-
Loss of love and affection	Rs.1,80,000/-

Loss of income	Rs.12,45,400/-
Medical bills	Rs.42,135/-
Car rental bills	Rs.5,325/-
Funeral expenses	Rs.25,000/-
Total	Rs.14,97,860/-

Aggrieved against the said award the claimants have preferred this appeal.

5.In the grounds of appeal, the appellants have contended that the Tribunal ought not to have awarded meagre amount of Rs.14,97,860/- against the claim of Rs.20,00,000/- for the death of 27 year old person, which is not sustainable under law. The deceased was earning a sum of Rs.11,975/- per month, the Tribunal has taken the said monthly income without considering the future prospects which is also not sustainable and the multiplier adopted by considering the age of the mother is also not sustainable. Further the Tribunal ought to have awarded sum under the head loss of estate, attendant charges, mental agony and distress. Hence the appellants sought for enhancement of compensation by setting aside the judgment and decree of the Tribunal. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Heard Mr.R.Nalliyappan, learned counsel appearing for the appellants and Mr.S.Manohar, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7.On perusal of the records, it is observed that before the Tribunal three witness were examined on the side of the petitioner Ex.P1 to Ex.P17 and on the side of the respondents one witness was examined as RW1 and documents Ex.R1 to Ex.R3 were marked. The claimants/parents of the deceased claimed a compensation for the death of their son Prakash, who died in the accident, while he was travelling in his two wheeler from west to east at the left side of the road and at that time the vehicle belong to the 1st respondent Tata Ace van bearing Reg.No.TN-38-BL-3956 it is a goods vehicle driven in a rash and negligent manner and hit at the vehicle driven by the deceased Prakash and caused the accident and the deceased also died on 19.07.2012. The Tribunal has also examined the witness and also the documents Ex.P1/FIR, Ex.P2/charge sheet and Ex.P3/rough sketch and observed that the deceased was proceeding from north to south road. The 1st respondent vehicle also moving in the same direction hit at the vehicle driven by the deceased and he

sustained injuries and he died subsequently. Based on the evidence and documents, the Tribunal has fixed the negligence on the part of the driver of the 1st respondent vehicle and since the said vehicle is insured with the 2nd respondent/Insurance Company, the Tribunal has directed both the 2nd respondent/Insurance Company as well as the 1st respondent to pay compensation.

8. On the side of the respondent Ex.R1 to Ex.R3 were marked and Ex.R1 is the policy, which shows that the said vehicle is a goods vehicle and the said vehicle is also registered as a goods vehicle and it is proved by Ex.R2. The driving license of the 1st respondent vehicle driver was produced and it is seen that as per the said license he cannot drive the goods vehicle he was not issued with license for driving the goods vehicle. But the Tribunal observed that as per Ex.R2, the said Tata Ace vehicle is a light motor vehicle. Hence the driving license which was holding by the driver is enough to drive the said vehicle. Hence the Tribunal fixed the negligence on the part of the driver of the Tata Ace van and made Insurance Company is liable to pay compensation.

9. While determining the compensation the claimants in the claim application claimed that the deceased was aged 27 years at the time of accident. The deceased was a Sales Engineer in S & T Engineers Private Limited, Coimbatore and was earning a sum of Rs.12,000/- per month. To prove the avocation and income of the deceased, the documents Ex.P14/ offer letter, Ex.P15/appointment order, Ex.P16/attendance register and Ex.P7/pay slip of the deceased were marked. Based on the postmortem certificate the deceased was aged 27 years. While fixing the multiplier the Tribunal has taken the average age of the parents of the deceased and adopted the multiplier as '13'. Therefore, it is the grievance of the appellants that the Tribunal has committed an error by taking the age of the parents of the deceased for determining the loss of income. In this aspect, this Court is of the view that the average age of the parents is taken by the Tribunal for adopting multiplier is highly improper and against the decision of the judgment of the Hon'ble Apex Court reported in National Insurance Company v. Pranay Sethi reported in 2017 (2)TNMAC 609 (SC), wherein, it has been clearly stated that the multiplier has to be applied on the basis of the age of the deceased. Hence in the present case, considering the age of the deceased who was 27 years, the correct multiplier would be '17' and after deducting 50% towards personal expenses of the deceased, the amount granted by the Tribunal towards loss of dependency is modified to Rs.17,10,030/- [(Rs.11,975/- + 4,790 (Rs.11,975/- of 40%) x 12 x 17 x 50%)]. Since the sum awarded by

the Tribunal towards loss of love & affection and funeral expenses are excessive, the same are reduced to Rs.40,000/- and Rs.15,000/- respectively under those heads. It is seen that the Tribunal has not awarded any sum towards loss of estate and hence this Court grants a sum of Rs.15,000/-. The sum awarded by the Tribunal towards medical bills and transport receipts are properly considered by the Tribunal and the same does not require any midification. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	Rs.12,45,400/-	Rs.17,10,030/-
2.	Loss of love and affection	Rs.1,80,000/-	Rs.40,000/-
3.	Medical expenses	Rs.42,135/-	Rs.42,135/-
4.	Transport expenses	Rs.5,325/-	Rs.5,325/-
5.	Funeral expenses	Rs.25,000/-	Rs.15,000/-
6.	Loss of estate	-	Rs.15,000/-
	Total	Rs.14,97,860/-	Rs.18,27,490/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,97,860/- is hereby enhanced to Rs.18,27,490/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

11.The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, jointly and severally, less the amount already deposited if any, within a period of six

weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

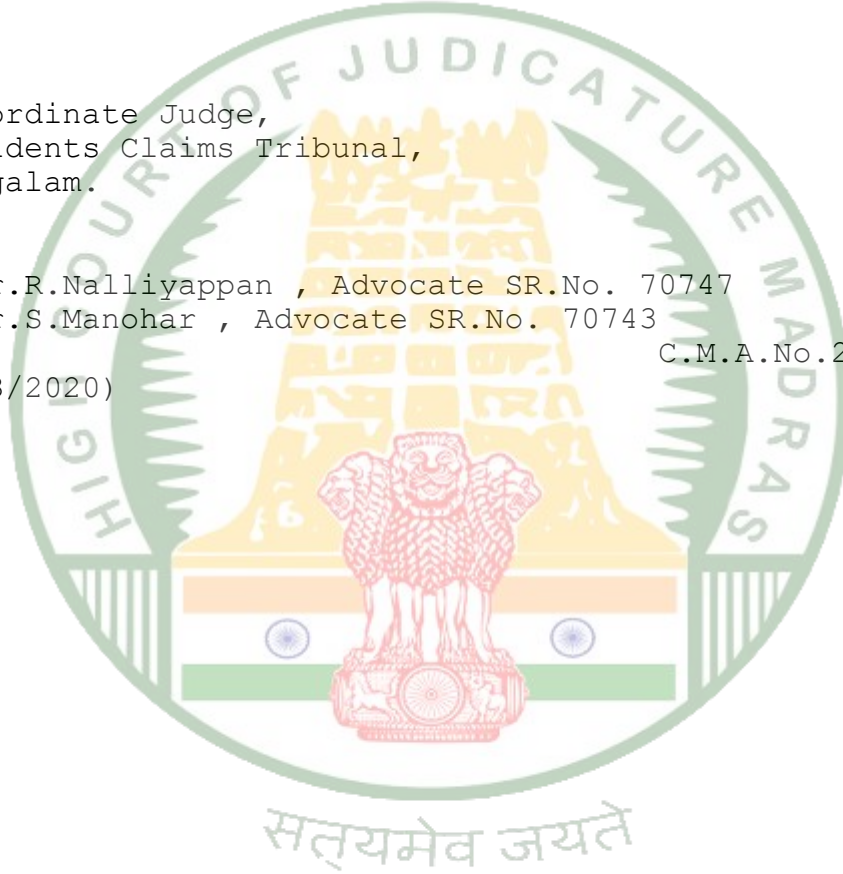
mtl
To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sathyamangalam.

+1cc to Mr.R.Nalliyappan , Advocate SR.No. 70747
+1cc to Mr.S.Manohar , Advocate SR.No. 70743

C.M.A.No.2402 of 2019

A.SK(12/03/2020)



WEB COPY