

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2585 of 2017
and
C.M.P.No.14096 of 2017

The United Insurance Company Limited
7A, Varadanar Street
Vedachalan Nagar
Chengalpattu.

... Appellant

vs.

1.J.Raikirthi @ Vijayalakshmi

2.J.Aravindhan

3.J.Krishna Swetha @ Abrajitha

4.P.Tharabai.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2016 passed in M.C.O.P.No.4180 of 2007 on the file of the Motor Accidents Claims Tribunal, (Chief Judge, Small Causes Court) Chennai.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : Ms.R.J.Radhika for R1 to R3

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the Insurance Company challenging the award dated 16.11.2016 passed by the Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court) Chennai in M.C.O.P.No.4180 of 2007.

Brief facts leading to the filing of the instant appeal:

2. A person by name Sathish Kumar died on 16.02.2005, as a result of an accident that happened on 11.02.2005 caused by a Lorry, bearing Registration No.TCH 1251 owned by the 4th respondent and insured with the appellant Insurance Company. The accident happened when the deceased was riding his Motorcycle, bearing Registration No.TN-10-F-3593 at GST Road, Malrojjapuram, Kanchipuram District and proceeding towards Chengalpattu, when the Lorry bearing Registration No. TCH 1251 proceeding in the same direction came from behind and dashed against the Motorcycle and the deceased was thrown out his Motorcycle and he sustained fatal injury and died in the hospital on 16.02.2005. The dependents of the deceased are his unmarried brother and unmarried sisters. They preferred a claim before the Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court) Chennai in M.C.O.P.No.4180 of 2007 against the fourth respondent as well as the appellant Insurance Company, seeking a compensation of Rs.20,00,000/- (Rupees Twenty lakhs only) for the death of Sathish Kumar.

3. The Motor Accident Claims Tribunal by its award dated 16.11.2016 passed in M.C.O.P.No.4180 of 2007, directed the appellant Insurance Company to pay the claimants a sum of Rs.18,74,700/- (Rupees Eighteen Lakhs Seventy Four Thousand and Seven Hundred only) together with interest at 7.5% p.a. from the date of numbering of the claim petition i.e., from 23.11.2007 till the date of realization.

4. Aggrieved by the award dated 16.11.2016 passed in M.C.O.P.No.4180 of 2007, this appeal has been filed by the Insurance Company.

5. Heard Mr.A.Dhiraviyanathan, learned counsel for the appellant and Ms.R.J.Radhika, learned counsel for respondent Nos.1 to 3.

Discussion:

6. The appellant Insurance Company has questioned only the quantum of compensation assessed by the Tribunal and they have not challenged the adverse finding of negligence on the part of the insured Lorry. Hence, the adverse finding of negligence on the part of the insured lorry by the Tribunal has attained finality.

7. The appellant has challenged the award on the ground that the compensation awarded by the Tribunal is excessive. According to them, the notional monthly income of the deceased fixed by the Tribunal at Rs.10,000/- is excessive, as the deceased was only a student at the time of the accident.

According to them, the accident happened in the year 2005 and therefore, the assessment of the notional monthly income of the deceased at Rs.10,000/- is very high. Further, it is their case that the claimants are not dependents of the deceased, as they are only the brother and sisters. It is also their case that the compensation awarded by the Tribunal under various other heads are also excessive.

8. Furthermore, it is their case that the Tribunal ought not to have added 50% towards loss of future prospects as the deceased was only a student.

9. This Court has perused and examined the impugned award as well as the evidence and materials available on record.

10. Before the Tribunal, the claimants have filed 21 documents, which were marked as Exs.P1 to P21 and three witnesses were examined as P.W.1 to P.W.3. On the side of the appellant Insurance Company neither any witness was examined nor any document filed.

11. Ex.P14 is the copy of the Secondary school leaving certificate of the deceased, which proves that the age of the deceased, at the time of the accident, was 24 years. Ex.P-15 is the copy of the B.Sc. degree certificate of the deceased and Ex.P-16 is the M.B.A. identity card of the deceased, which proves the educational qualification of the deceased. The parents of the accident victim predeceased him. Ex.P-18 is the copy of the death certificate of the father of the deceased and Ex.P-19 is the copy of the death certificate of the mother of the deceased. Ex.P-20 is the legal heir certificate of the deceased, which proves that the dependents are unmarried brother and unmarried sisters of the deceased, who are the claimants. All of them being unmarried and having lost their parents, the claimants are certainly dependents of the deceased as each of them depend upon the other for their livelihood. Therefore, the contention of the appellant Insurance Company that the claimants are not dependents is rejected.

12. No documentary evidence has also been produced by the claimants before the Tribunal to prove that the deceased was earning Rs.15,00,000/- (Rupees Fifteen lakhs only) per year through agricultural income. The Tribunal has rightly rejected the said contention, after examining the sale deeds, which were marked as Ex.P.11, on the ground that the evidence produced by the claimants is not acceptable one, since a father will not normally sell the property to his son instead of executing the settlement deeds. The Tribunal has also observed that a person cannot spend more stamp duty for transferring the lands to his son. The Tribunal has also taken note of the fact that the

source of income of the deceased for purchasing the lands under sale deeds (Ex.P11) has also not been produced. The Tribunal has rightly observed that holding of large extent of lands will not prove the income from the said lands and it has to be proved separately. In our view, the Tribunal has rightly rejected the contention of the claimant that the deceased was earning a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) through the agricultural lands and rightly fixed the notional monthly income of the deceased as Rs.10,000/- (Rupees Ten Thousand only).

13. The Tribunal has added 50% towards loss of future prospects. It has to be reduced as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. The Tribunal ought to have assessed the loss of future prospects of the deceased only at 40%, as the deceased was only a student at the time of the accident.

14. The Tribunal has rightly applied the multiplier '18' for assessing the loss of dependency to the claimants as the deceased was 24 years at the time of the accident, following the judgment of the Hon'ble Supreme Court in the case of Sarla Verma & Ors Vs. Delhi Transport Corporation & Anr reported in 2009 (2) TN MAC page No.1.

15. Further, the Tribunal has rightly deducted 50% towards personal expenses of the deceased.

16. The compensation awarded by the Tribunal under the heads loss of love and affection, medical expenses and funeral expenses does not suffer from any infirmity and the same is confirmed.

17. In the result, the impugned award of the Tribunal is modified in the following manner:

Heads	Amount awarded by the Tribunal	Amount modified by this Court
Loss of dependency	Rs.16,20,000/- (Rs.10,000 + 50% = 15,000-50%= 7,500 x 12 x 18 = 16,20,000)	Rs.15,12,000/- (Rs.10,000 + 40% = 14,000 - 50%= 7,000 x 12 x 18 = 15,12,000)
Loss of Love and affection to respondents 1 to 3 (Rs.10,000/- each)	Rs.30,000/-	Rs.30,000/-

Heads	Amount awarded by the Tribunal	Amount modified by this Court
Medical Expenses	Rs.1,99,700/-	Rs.1,99,700 /-
Funeral Expenses	Rs. 25,000/-	Rs.25,000/-
Total	Rs.18,74,700/-	Rs.17,66,700/-

18. In view of our finding, the amount awarded by the tribunal is reduced from Rs.18,74,700/- (Rupees Eighteen Lakhs Seventy Four Thousand and Seven Hundred only) to Rs.17,66,700/- (Rupees Seventeen Lakhs Sixty Six Thousand and Seven Hundred only). Out of the said amount, each of the respondent Nos.1 to 3 are entitled to get equal share.

Conclusion:

19. In the result, the appeal is partly allowed by modifying the award passed in MCOP.No.4180 of 2007 by the Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court), Chennai by reducing the compensation amount from Rs.18,74,700/- (Rupees Eighteen Lakhs Seventy Four Thousand and Seven Hundred only to Rs.17,66,700/- (Rupees Seventeen Lakhs Sixty Six Thousand and Seven Hundred only). However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

20. The Appellant Insurance Company is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.4180 of 2007 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the share of the respondents 1 to 3 through RTGS within a period of four weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

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

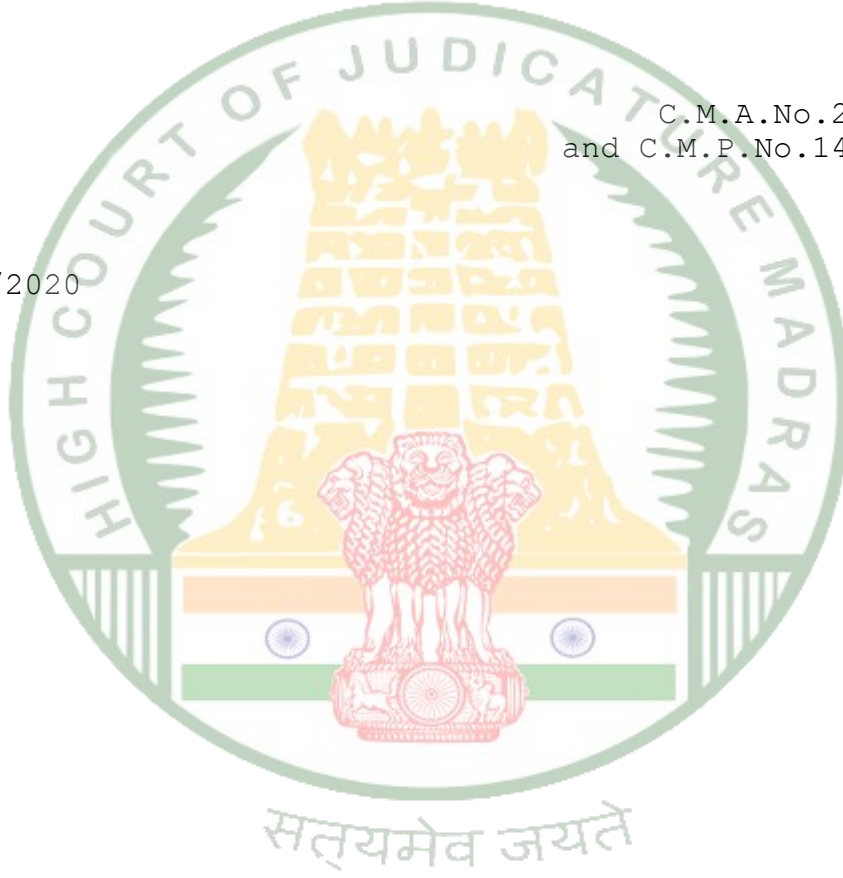
2.The Section Officer,
VR Section, Madras High Court.

+lcc to M/s.A.Dhiraviya Nathan, Advocate Sr.84036

+lcc to M/s.R.J.Radhika, Advocate Sr.83890

C.M.A.No.2585 of 2017
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vsn II[co]
srg 04/03/2020



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