

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1482 of 2020
and
C.M.P.No.10835 of 2020

National Insurance Co. Ltd.,
Motor 3rd Party Cell,
No.751, Anna Salai,
Chennai-600 002. ... Appellant/2nd Respondent

Vs.

1. V.Krishnaveni, W/o Late B.K.Vasu
 2. V.Balaji, S/o B.K.Vasu
 3. Minor V.Anupriya, D/o B.K.Vasu
rep. by her mother and next friend V.Krishnaveni
 4. Kanthammal, W/o Krishnayya
 5. Krishnayya S/o Late Nagappa Naidu
 6. A.Jagan Mohan, S/o Annasamy
- ... Respondents/Petitioner 1 to 5/
6th Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the order and decree dated 17.09.2019 made in M.C.O.P.No.5423 of 2015 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For appellant : Mr.S.Arun Kumar

For respondents : Mr.C.Prabakaran for RR-1 to 5
R-6 set ex-parte before the Tribunal

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JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

Challenging the quantum of compensation awarded in and by award dated 17.09.2019 made in M.C.O.P.No.5423 of 2015 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai, the present appeal has been filed by the Insurance Company.

2. The respondents 1 to 5 herein are the claimants before the Tribunal. They are the wife, son, minor daughter and mother and father of the deceased B.K.Vasu, who had died in a motor accident that had occurred on 25.04.2015.

3. It is the case of the claimants before the Tribunal that on 25.04.2015 at about 3.05 pm., when the deceased was riding motor cycle bearing Reg.No.TN-22-BU-3528 on the Tambaram-Puzhal By-pass road from South to North direction, and was proceeding near Kavoore Jain Koil, Kundrathur, the driver of a Dost Goods van bearing Reg.No.PY-01-BY-3795, which was proceeding in front of the two-wheeler, suddenly applied brake without giving any signal or caution to the vehicles coming behind and as a result of which, the deceased hit on the rear side of the van and fell down and sustained grievous injuries. Immediately, he was rushed to S.R.M.C.Hospital for treatment. But, inspite of the treatment, he succumbed to injuries on 26.04.2015.

4. It is the further case of the claimants that the deceased was running a provision store under the name and style of Murugan Traders at Kadaperi, Tambaram, Chennai and earning a sum of Rs.40,000/-. Hence, the claimants have made a claim of Rs.75,03,000/- as compensation as against the owner of the van and its insurer, the appellant herein.

5. The said claim was resisted by the appellant-Insurance Company by filing a counter statement, stating that the accident had occurred only due to the rash and negligent riding of the two-wheeler by the deceased and the driver of the goods van is no way responsible for the accident. At the time of accident, the deceased was not having any valid driving licence. The deceased who was not conversant in riding the two-wheeler, without having any valid driving licence, ventured to ride it in the heavy traffic flow road, namely Tambaram - Puzhal by-pass road in a most reckless, careless and negligent manner, and invited his fate by dashing behind the goods van. The compensation claimed before the Tribunal by the claimants is highly excessive and thus, the Insurance Company prayed for dismissal of the claim petition.

6. In order to prove the claim on the side of the claimants, the wife of the deceased examined herself as P.W.1, besides examining one Ramu as P.W.2, who was an eye-witness to the accident and Exs.P-1 to P-13 were marked on the side of the claimants. On the side of the Insurance Company, no oral or documentary evidence was adduced.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident is due to rash and negligent driving of the van by its driver and awarded a compensation of Rs.43,95,800/- with the following break-up details:

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount awarded (in Rs).
1	Towards loss of dependency	39,91,309.92

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount awarded (in Rs) .
2	Loss of consortium to the first claimant	40,000.00
3	Loss of love and affection to the claimants 2 to 5	1,60,000.00
4	Loss of estate	15,000.00
5	Transport expenditure (ambulance)	10,000.00
6	Funeral expenses	15,000.00
7	Medical expenses	1,64,479.00
	Total	43,95,788.92 rounded off to Rs.43,95,800/-

The Tribunal awarded the above compensation with 7.5% interest per annum from the date of numbering of petition till the date of realisation. Challenging the said compensation, the Insurance Company has preferred the present appeal.

8. Now, it is the submission of the learned counsel appearing for the appellant/Insurance Company that the deceased was running a provision shop under the name and style of Murugan Traders and eking out his livelihood by earning Rs.40,000/- per month. On the side of the claimants, absolutely, there is no evidence to show that after the death of the deceased, the business was closed. They have also not denied the fact that the business of the deceased was succeeded by them. In support of his submissions, the learned counsel appearing for the appellant-Insurance Company relied on a decision of the Supreme Court reported in 2012 (1) TN MAC 371 (SC) = 2012 (3) SCC 613 (New India Assurance Co. Ltd. Vs. Yogesh Devi).

9. It is the further submission of the learned counsel appearing for the appellant-Insurance Company that now, due to the death of the deceased, the family has to engage some competent person to run the provision shop. Therefore, the amount required for engaging the service of the said competent person alone can be taken as the loss of income. Under such circumstances, the Tribunal ought not to have taken a sum of Rs.27,291/- as the monthly income of the deceased based on the Income Tax Returns produced on the side of the claimants. Thus, the learned counsel appearing for the appellant-Insurance Company submitted that by fixing a sum of Rs.10,000/- as the monthly loss of income, the amount awarded by the Tribunal could be re-calculated.

10. Per contra, the learned counsel appearing for the respondents 1 to 5 / claimants made submissions in support of

the award passed by the Tribunal.

11. Keeping in mind the submissions made on either side, we have carefully gone through the entire materials available on record.

12. As contended by the learned counsel appearing for the appellant/Insurance Company, on the side of claimants, absolutely no evidence was produced to show that they have closed the provision shop, which was run by the deceased. At the same time, to run the business, they have to engage a person and pay him salary. On that account, there is loss to the claimants in their monthly income.

13. Hence, taking into account the facts and circumstances of the case, a sum of Rs.2,75,000/- could be fixed as the annual loss of income and if it is so fixed, the monthly loss of income works out to Rs.22,917/-. If 25% is added towards future prospects and if 1/4 is deducted towards personal expenses, and by applying multiplier "13", the loss of dependency works out to Rs.33,51,556/- $(2,75,000 + 25\% - 1/4 \times 13)$. Thus, Rs.39,91,309.92 awarded by the Tribunal under the head loss of income, is hereby reduced to Rs.33,51,556/-.

14. The Tribunal awarded Rs.10,000/- towards transportation and the same is hereby enhanced to Rs.15,000/- by adding Rs.5,000/-, taking into consideration the expenses that would have incurred by the claimants towards transportation of the deceased to hospital by way of ambulance.

15. Except the above modification, the amounts awarded by the Tribunal under the other heads are hereby confirmed, the same being just and proper to the facts and circumstances of the case.

16. Thus, the break-up details of the compensation awarded by the Tribunal and this Court are as follows:

Sl. No.	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Loss of income	39,91,309.92	33,51,556.00
2	Loss of consortium to the first claimant	40,000.00	40,000.00
3	Loss of love and affection to the claimants 2 to 5	1,60,000.00	1,60,000.00
4	Loss of estate	15,000.00	15,000.00
5	Transport expenses (ambulance)	10,000.00	15,000.00
6	Funeral expenses	15,000.00	15,000.00

Sl. No.	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
7	Medical expenses	1,64,479.00	1,64,479.00
	Total	43,95,788.92 rounded off to 43,95,800.00	37,61,035

17. Thus, the compensation of Rs.43,95,800/- awarded by the Tribunal is hereby reduced to Rs.37,61,035/-, which shall carry interest at the rate of 7.5% per annum from the date of numbering the claim petition being 13.07.2015 till the date of realisation. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs as awarded by the Tribunal, less, the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw their respective share of the award amounts, along with accrued interest and costs as awarded by the Tribunal, less the amount if any already withdrawn, by filing necessary application before the Tribunal. As far as the share of the minor claimant (third claimant) is concerned, the same shall be deposited in any one of the Nationalised Bank, in the interest bearing Fixed Deposit scheme, till the minor attains majority and the natural guardian of the minor, namely the mother, being the first claimant, is permitted to withdraw the accrued interest thereon once in three months. The proportion of allocation of shares adopted by the Tribunal shall stand confirmed.

18. With the above observations and directions, the appeal is partly allowed. No costs. Consequently, C.M.P. is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

CS

To

The Judge V,
The Motor Accident Claims Tribunal,
Chennai.

Copy To :

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

+1cc to Mr.S.Arun Kumar, Advocate SR.No.34166

+1cc to Mr.C.Prabakaran, Advocate SR.No.33726

+1cc to Mr.S.Arun Kumar, Advocate SR.No.33650 (05/07/2021)

C.M.A.No.1482 of 2020

KK (CO)
GMY (05/05/2021)



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