

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1418 of 2013

1.Mrs.V.Ramani
2.Mr.A.Mohan
3.Mrs.Saraswathi ... Appellants/ Claimants

Vs.

1.Mr.M.Gopal
2.M/s.Relaiance General Insurance Company Ltd.,
Heavitree, Unit No.1, 3rd Floor, No.23, Spur Tank Road,
Chetpet, Chennai - 600 031.
(The 1st respondent exparte in lower court,
hence notice may be dispense with) ... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 17.08.2012 made in M.C.O.P.No.2481 of 2009 On the file of the Motor Accident Claims Tribunal, (XV Additional Judge) Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : R1 - Exparte
Mr.E.Rajadurai for R2
for Mr.M.B.Raghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants aggrieved by the judgment and decree dated 17.08.2012 made in M.C.O.P.No.2481 of 2009 On the file of the Motor Accident Claims Tribunal, (XV Additional Judge) Chennai.

2.The case of the Appellant is that on 18.04.2009 at about 10.30 hours when the deceased was travelling in the autorickshaw bearing Registration No.TN-73-Z-0936 in Arakonam Thiruvallur High Road from Arakonam towards Cheyyur village, the driver of the said auto drove the vehicle in a rash and negligent manner and due to over speed lost control and went to the extreme wrong side and hit against the motorcycle bearing Registration No.TN-73-Z-0519 which was coming in the

said road in the opposite direction, due to this impact the auto capsized and the victim sustained grievous multiple injuries and died.

3.The Insurance Company contested the case by filing a counter before the Tribunal wherein it is stated that the claimants have to prove the validity of the driving license and other vehicular records. Further, age and avocation of the deceased was also questioned, thereby sought to dismiss the claim petition.

4.Considering the pleadings and contentions on either side, the Tribunal has awarded a sum of Rs.2,89,000/- as compensation to the claimants. Not being satisfied with the compensation, the appellants are before this Court.

5.The learned counsel for the appellants submitted that the decree and judgment of the lower court insofar as they relate to disallowed portion of compensation claimed are against the law the facts, the evidence and probabilities of the case. The learned Tribunal erred in awarding Rs.2,64,000/- only towards loss of pecuniary benefits to the estate of the deceased as against the claim of Rs.6,60,000/-. The learned Tribunal ought to have awarded the same as prayed for considering the appellants future aspect.

6.The learned counsel for the appellants further submitted that the learned Tribunal erred in fixing the monthly income of deceased Rs.3,000/- as against the claim of Rs.250/- per day. The learned Tribunal ought to have fixed deceased daily income as Rs.250/- as per oral evidences of P.W.1 to P.W.3. The learned Tribunal went wrong in awarding Rs.20,000/- only towards loss of love and affection as against the claim of Rs.75,000/-. The learned Tribunal went wrong in awarding Rs.5,000/- only towards funeral expenses as against the claim of Rs.15,000/- and pleaded to enhance the compensation.

7.Per contra, learned counsel for the Insurance Company submitted that the compensation awarded by the Tribunal is correct and reasonable and the same does not require any interference by this Court.

8.Heard the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record.

9.On perusal of records, it is observed that on the side of appellants, three witnesses were examined Mrs.Saraswathi as PW1, Mr.Sampath as PW2 and Mr.Ethiraj as PW3 and four documents were marked as exhibits P1 to P4. On the side of

respondents, neither any witness examined nor any document marked.

10.The Tribunal has awarded only a meagre amount towards loss of dependency, this Court taking into account of the fact that the deceased was a coolie and definitely he would have earned not less than Rs.5,000/- per month, is of the considered view that the loss of dependency alone needs interference. Accordingly, this Court fixes a sum of Rs.5,000/- as monthly income and as per Ex.P4 postmortem certificate, multiplier '11' is fixed as per schedule II of the Motor Vehicles Act. Hence, the loss of dependency is arrived at Rs.6,60,000/- and by deductions $1/3^{\text{rd}}$ towards his personal expenses, Rs.4,40,000/- is hereby awarded towards loss of dependency. The Tribunal has not awarded any amount towards loss of estate, this Court is of the considered view that reasonable amount shall be awarded under the head. Accordingly, a sum of Rs.5,000/- is hereby awarded as loss of estate.

11.In view of the above observations, the compensation awarded by the Tribunal is modified as follows:

S.No.	Description	Amount awarded by the Tribunal	Amount awarded/ modified by this Court
1.	Loss of dependency	Rs.2,64,000/-	Rs.4,40,000/- (Rs.5,000x12x11=Rs.6,60,000 - $1/3^{\text{rd}}$ personal expenses, i.e. Rs.2,20,000= Rs.4,40,000)
2.	Funeral expenses	Rs.5,000/-	
3.	Loss of love and affection	Rs.20,000/-	Rs.25,000/-
4.	Loss of estate	-	Rs.5,000/-
	Total	Rs.2,89,000/-	Rs.4,70,000/-

12.In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Accordingly, both the respondents are jointly and severally directed to deposit the modified amount awarded by this Court with interest at the rate of 7.5% per annum from the date of petition till the date of realization as fixed by the Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After the entire amount has been deposited by both the respondents, the Appellants can

withdraw their respective shares as apportioned by the Tribunal by filing a formal petition before the concerned Court.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
(XV Additional Judge) Chennai.

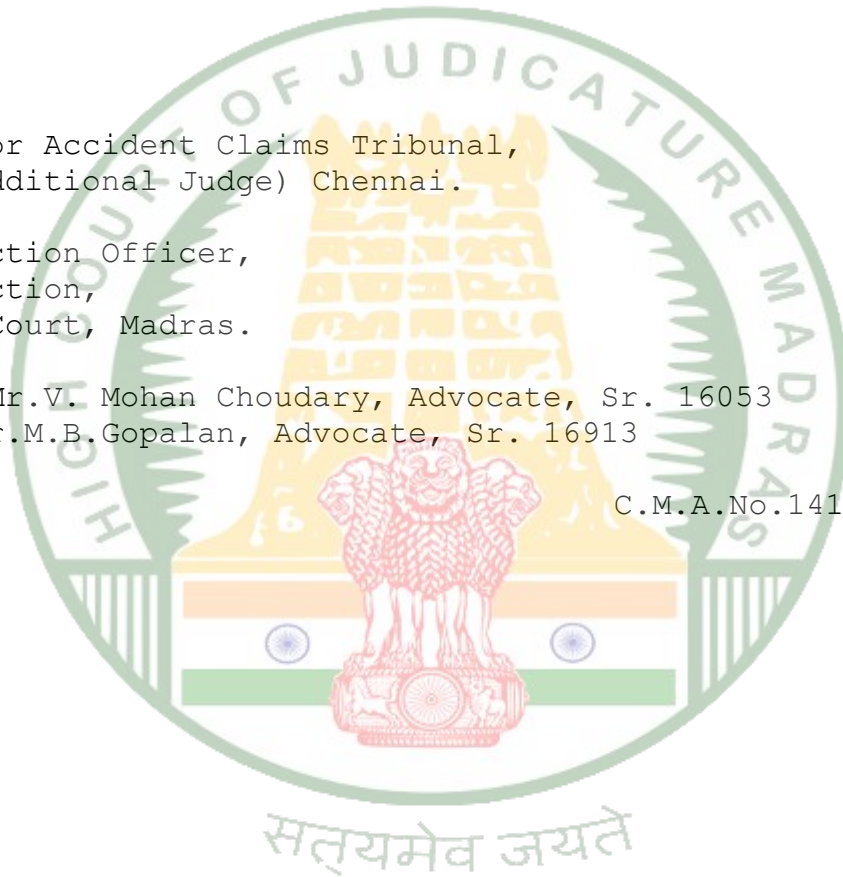
2. The Section Officer,
VR Section,
High Court, Madras.

2 ccs to Mr.V. Mohan Choudary, Advocate, Sr. 16053

1 cc to Mr.M.B.Gopalan, Advocate, Sr. 16913

C.M.A.No.1418 of 2013

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