

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.1881 of 2013

R.Manohar (Since deceased)

1.M.Murugeswari

2.M.Manoj Kumar

3.M.Madhan Kumar

...Appellants/ Petitioner

vs.

1.M.Sumit Mahajan

(set ex-parte before the Trial Court)

2.United India Insurance Co.Ltd.,

New No.50, North Usman Road,

T.Nagar, Chennai 600 017. ...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 16.02.2012 passed in MACTOP.No.461 of 2008 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellants : Mr.C.Munusamy for
M/s C & K Law firm

For Respondents : Mr.J.Micheal Visuvasam for R2
R1 Ex-parte

JUDGMENT

The appellants are the claimant in M.C.O.P. No.461 of 2008, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai. They filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.6,00,000/- for the injuries sustained by one R.Manohar (deceased) in a road accident that took place on 05.12.2007.

2.The case of the claimants is that on 05.12.2007 at about 22.30 hours, while the deceased Manohar was crossing the Tharamani 100 feet road, opposite to IBP Petrol Bunk, a motor cycle bearing Regn.No.TN-09-AT-4365 came in a rash and negligent manner and dashed against the said Manohar (deceased). As a result, the said Manohar sustained grievous injuries and later died.

3. According to the appellant/claimant, the motorcycle bearing Registration No. TN-09-AT-4365 belonging to the first respondent and insured with the second respondent, the United India Insurance Company Limited, is responsible for the accident and hence, both of them are jointly and severally liable to pay compensation to him.

4. The first respondent remained absent before the tribunal and therefore, he was set ex-parte. The second respondent contested the claim petition by filing a counter. The learned Judge, IV Court of Small Causes, Chennai, after analysing the evidence on record, awarded compensation of Rs.71,000/- together with interest at the rate of 7.5% per annum to the appellants/claimants. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present appeal seeking for enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988.

5. Mr. C. Munusamy, learned counsel appearing for the appellants would contend that the Tribunal has awarded a very meager amount. It is the specific contention that no amounts were awarded under the heads "loss of amenities" and "loss of income."

6. The learned counsel appearing for the second respondent would contend that, since in the present case, the accident took place only in the year of 2007, awarding a sum of Rs.71,000/- is very reasonable. Hence, there is no need to interfere with the same.

7. It is seen that the accident was due to the first respondent's vehicle. The Court below has clearly held that the death was not due to the accidental injuries. But, as per Ex.P2 Discharge Summary, the deceased sustained fracture of bilateral ZMC and nasal bone and had taken treatment as inpatient from 07.12.2007 to 22.12.2007, open reduction and internal fixation was done. Ex.P3 OP card issued by Sri Balaji Medical College hospital shows that the deceased is a diabetic patient for 5 years and he had taken treatment for black discoloration of distal part of left little toe. Ex.P4 Discharge Summary shows that he has taken treatment as inpatient at Govt Rajaji Hospital from 21.08.2008 to 18.09.2008 and surgery was done on 08.09.2008. Under such circumstances, the appellants 2 to 4 are entitled to compensation only for the actual expenses incurred by the deceased / first appellant under the heads transportation, extra nourishment, cost of attendant and medical expenses. It is admitted as per Ex.P.2 and P.4, the deceased took treatment as inpatient for 44 days. So, there is possibility of incurring a huge amount towards transportation and extra nourishment. Someone might have attended the deceased during his treatment period. So there is a possibility of incurring

expenses towards attender charges. Certainly, he might have incurred some medical expenses. He has marked the medical bills for Rs.15,274.07/- as Ex.P.6. Accordingly, the Tribunal has awarded the compensation under various heads extracted is hereunder:

S.No	Head	Amount granted
1.	Transportation to Hospital	Rs.5,000/-
2.	Extra Nourishment	Rs.25,000/-
3.	Medical Expenses	Rs.16,000/-
4.	Cost of attendant charges	Rs.25,000/-
	Total	Rs.71,000/-

8. It is seen that the Tribunal has awarded a sum of Rs.5,000/- towards "Transportation", Rs.25,000/- towards "Extra Nourishment". Rs.16,000/- towards "Medical Expenses" and a sum of Rs.25,000/- towards "attender charges", which are all just and reasonable and the same are hereby confirmed. The Tribunal did not award any amount towards "pain and sufferings", "loss of income" and "Damages to clothes". Hence, this Court is inclined to award a sum of Rs.25,000/-, 18,000/- and Rs.1,000/- respectively. The enhanced compensation under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income	Rs.18,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.25,000/-
5.	Medical Expenses	Rs.16,000/-
6.	Attender Charges	Rs.25,000/-
7.	Damages to clothes	Rs.1,000/-
	Total	Rs.1,15,000/-

Thus, the appellants/claimants are entitled to a sum of Rs.1,15,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum awarded by the tribunal is enhanced from Rs.71,000/- to Rs.1,15,000/-.

(iii) The appellants/claimants are directed to pay the

court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv) The second respondent is directed to pay the entire enhanced compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.461 of 2008, on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellants/claimants are at liberty to withdraw the same, as per the apportionment made by the Tribunal after following due process of law.

Sd/-
Asst.Registrar (CSV)

/true copy/

Sub Asst. Registrar

sbn

To

1.The Motor Accidents Claims Tribunal,
IV Court of Small Causes,
Chennai.

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

1 cc to MR.C. Munuswamy, Advocate, Sr. 4311

1 cc to MR.J. Micheal Visuvasam, Advocate, Sr. 4149

CMA.No.1881 of 2013

NMI (CO)
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