



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.08.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.1247 of 2016
& C.M.P.No.9453 of 2016

Royal Sundaram Alliance Insurance Company Limited,
Sundaram Towers,
No.46, Whites Road,
Chennai - 600 014.
Chennai District. Appellant/3rd Respondent

/versus/

1. Kamarunnissa, W/o.Jaffer @ Sherif Jaffer,
No.110/4, Ibrahim Mansion,
Alms House Road,
Ooty Post, Nilagiri District.
Now residing at,
No.18, Pallivasal Street,
Vellakovil Post, Kangayam Post,
Tiruppur District.1st Respondent/Petitioner
2. Ramraj, S/o.Vellaisamy,
No.4/355, Masinagudi Camp,
Masinagudi Post, Gudalur Taluk,
Nilgiri District.
3. Jameel,
S/o.Basha Bai,
No.12/628, Marthuma Nagar,
Gudalur Post & Taluk,
Nilgiri District. .. Respondents 2 & 3/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.730 of 2010, dated 27.10.2015, on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram.

For Appellant : Ms.Harini,
for Mr.M.B.Gopalan

For Respondents: No appearance

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant.

2. The award of the Tribunal granting the compensation of Rs.6,34,500/- for the death of J.Sadiq Basha, aged about 28 years in the motor road accident is challenging in this Appeal by the Insurance company.

3. The brief facts of the case is that Mr.J.Sadiq Basha, son of the claimant was working as a Manager in a private College at Ooty and earning Rs.1,20,000/- per year. On 14.06.2009, at about 10.00p.m while riding the motorcycle bearing registration No.TN/43 B 9720, towards North on the Western edge of the North South Stephen church to hill bunk near Municipal guest house, the lorry bearing registration No.TN 43 Z 4644 driven by one Ramraj, who is the 1st respondent, rash and negligently hit the two wheeler and caused grievous injury to J.Sadiq Basha. The injured died on the way to hospital. Seeking Rs.16,00,000/- as compensation, the claim petition was filed.

4. The Tribunal, after considering the claim petition and the defence taken by the Insurance Company, awarded Rs.8,46,000/- as compensation. The breakup is stated as below:-

Rs.8,000/- x $\frac{1}{2}$ x 12 x 17	= Rs.8,16,000/-
Loss of Love and affection	= Rs.20,000/-
Funeral Expenses	= Rs.10,000/-

5. The contention of the respondents regarding the negligence of the deceased taken note by the Tribunal and had reduced 25% of the award towards contributing negligence. In this appeal, the Insurance Company emphasis that the accident took place due to the negligence of the victim. The sketch would clearly indicate that it was the fault of the motorcycle rider who came on the wrong side of the road and colluded with the lorry. Therefore, reduction of 25% towards the contributing negligence is very less. Further, fixation of income at Rs.8,000/- per month is also questioned in this appeal on the ground that there is no satisfactory evidence to fix at Rs.8,000/- per month.

6. On perusing the evidence and records, this Court finds that the claimant who is the mother of the deceased has examined herself as a witness and 11 Exhibits were marked to substantiate their claim. No doubt, there is evidence to show that the accident had occurred due to negligence of the deceased, which has prompted the tribunal to deduct 25% of the

award amount. Few percentage more for contribution on the part of the deceased might have been added but the Tribunal taking note of the terrain, which is a ghat road, restricted the contribution to 25%. This Court take into consideration the total amount of compensation given for the death of 28 years old unmarried son.

7. In the light of the facts placed before the Tribunal, the accident took place on 14.06.2009, at that time, the law prevailing did not provide for any future prospects for a self employed and fixed salary persons. Later, the judgment of the Hon'ble Supreme Court rendered in Pranay Sethi Case, it has mandated that even fixed salary person and self employed are entitled for certain percentage of increase in their salary under the head in the future prospects according to their age.

8. As contended by the Learned Counsel for the Appellant, this Court finds that the cause for accident is to be equally distributed between the lorry driver of the offending vehicle and the victim. So, any amount added under the future prospects, will only offset the increase in percentage of contribution and there will not be any much change in the total sum of compensation awarded by the Tribunal. Therefore, this Court is of the view that the award passed by the Tribunal need not be distributed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No cost.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

bsm

To,

1. The Motor Accidents Claims Tribunal,
Additional District Court No.3,
Dharapuram.

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

C.M.A.No.1247 of 2016

KJ(CO)
GMY(28/04/2021)