



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2020

Pronounced on: 07.12.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.2327 of 2015

M.Parasuraman, (since deceased),

1. Rukku,
2. Rjesh,
3. Kiruba,
4. Geetha,
5. Sivakumar,
6. Udayakumar,
7. Kamala,

All are residing at  
Hut Area, Nochi Nagar,  
Mylapore, Chennai.

... Appellants/Claimants

/versus/

1. F.James,
2. United India Insurance Co.Ltd.,  
Silingi Building, No.134, O.No.40-46,  
Greams Road,  
Chennai - 600 006.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside and enhance the award against the judgment and decree dated 30.07.2013 and made in M.A.C.T.O.P.No.3577 of 2010 on the file of the Motor Accident Claims Tribunal IV Judge Small Causes Court, Chennai.

For Appellants : Mrs.A.Subadra,  
for Mr.K.Rajeswaran

For R2 : Mrs.R.Vijaya Kamala

For R1 : No appearance

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed for enhancement of compensation by LR's of the claimant who died pending claim petition.



2. The short facts of case is that, on 08.08.2009 at about 21.30 p.m at Santhome High Road, Karaneeswarar Koil Junction, when the claimant Thiru.Parasuraman was walking towards the east direction, rider of the motorcycle bearing registration No.TN-03-B-5656, dashed against the claimant while driving his two wheeler rash and negligently. The claimant was thrown away and he sustained severe injury all over his body. Claiming compensation of Rs.3,50,000/- petition was filed on the ground that the claimant was earning Rs.200/- per day as Electrician and due to fracture of both bone on his right leg and fracture of right 9<sup>th</sup> rib, he has lost his future income due to the disability.

3. Pending claim petition, the claimant died and his LR's were brought on record.

4. Before the Tribunal, 3 witnesses were examined and 9 Exhibits were marked. P.W.1 is the wife of the claimant, had filed proof affidavit, wherein, she has averred that due to fractured injury, her husband was taking continuous treatment and his death on 08.06.2011 was due to accident injury. In support of the said claim, P.W.3 Dr.Saravananbavanantham has deposed that, the claimant was injured in the accident occurred on 08.08.2009 and sustained fracture of both bone of his right Leg and fracture of 9<sup>th</sup> right rib. He was treated as inpatient from 08.08.2009 to 01.09.2009. Surgery was performed with implantation. He was on continuous medical treatment and died on 08.06.2011 due to complication arising out of previous trauma.

5. The Tribunal, after considering the medical records and evidence let in this connection awarded a sum of Rs.21,000/-. Not satisfied with the award amount, the present appeal is filed.

6. In the appeal, the Learned Counsel for the appellant would submit that the Tribunal failed to consider the evidence of P.W.1 to P.W.3 and documents marked through them. The Doctor has opined that the death of the claimant may be due to injury sustained in the road traffic accident. Therefore, he contended that the Tribunal ought to have awarded compensation for loss of income, loss of consortium and love and affection including the funeral expenses.

7. The Learned Counsel for the Insurance Company submitted that there is no evidence to prove that the death was due to the accident injury. Even P.W.3, who is not the doctor who treated the claimant, had only opined that the death may be



due to complication arising out of previous trauma and not due to the injury sustained. He is not certain that the death was caused because of injury. The accident took place on 08.08.2009 and claimant was discharged on 01.09.2009. There is no evidence to show that he required any future medical treatment for the accident injury. After 1 year and 3 months, he had been admitted in the hospital on 04.12.2010 and got discharged on 06.06.2011. Even according to P.W.3 evidence, he died due to the complication arising out of previous trauma and not directly due to the accident. From the record, it is clear that immediately after accident, he was admitted in the hospital and was treated as inpatient till 01.09.2009. After discharge, the claim petition was filed on 11.08.2009. He was carrying on normal life till he got admitted in the hospital on 04.12.2010. His death is unconnected to the accident injury. The award of the tribunal has to be sustained.

8. Heard the Learned Counsel for the appellant and the Learned Counsel for the respondent and record perused.

9. The discharge summary marked as Ex.P.1 and O.P Treatment book marked as Ex.P.2 along with O.P.Chits marked as Ex.P.3, indicates that after the claimant got discharged, after treatment to his fracture bone, he again got admitted as inpatient after one year and three months. P.W.3. The Doctor has opined that, the death might have been due to the complication arising out of previous Trauma. This is an event which cannot be directly attributed to the road accident. More particularly, when the claimant after discharge on 01.09.2009 was leading his normal life till he got admitted on 04.12.2010. In the meanwhile, he was fit enough to instruct his counsel to file his claim petition and pursuing the claim petition. Therefore, the finding of the Tribunal that the death of the claimant has no relevance to the road accident is upheld.

10. At the same time, this Court finds that the compensation for medical expense, Transport and Extra nourishment is very low and it has to be enhanced. Accordingly, the compensation of Rs.21,000/- is enhanced to Rs.42,000/- with 7.5% interest from the date of numbering the petition, till the date of deposit. The 2<sup>nd</sup> respondent/Insurance Company shall deposit the award amount, within a period of eight weeks, from the date of copy of this judgment. On such deposit, the Appellants are permitted to withdraw the award amount on filing proper application.



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11. The compensation shall be apportioned by the claimants as below:-

|                                                                  |                 |
|------------------------------------------------------------------|-----------------|
| 1 <sup>st</sup> claimant (wife of the deceased)                  | Rs.24,000/-     |
| 2 <sup>nd</sup> to 6 <sup>th</sup> claimants (sons and daughter) | Rs.2,000/- each |
| 7 <sup>th</sup> claimant (mother of the deceased)                | Rs.8,000/-      |

12. Accordingly, the Civil Miscellaneous Petition is Allowed. No costs.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm  
To:-

1.The Motor Accident Claims Tribunal,  
IV Judge Small Causes Judge,  
Chennai.

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

+1cc to Mr.K.Rajeshwaran, Advocate Sr.39405

C.M.A.No.2327 of 2015

nr[co]  
srg 24/08/2021