

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2885 of 2013

1. S. Latha

2. S. Sasikumar

3. S. Dhanalakshmi

4. R. Kamachi

5. N. Ragavan ..Appellants/Petitioners

Versus

1. J. Anitha

2.The New India Insurance Co. Ltd.,
Sri Balaji Towers, IInd Floor,
No.74, G.S.T. Road, Guindy, Chennai - 32.
(The 1st respondent was set ex-parte before the
Tribunal) ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 10.10.2012 made in M.C.O.P.No.2126 of 2010 on the file of the Motor Accident Claims Tribunal, III rd Judge, Incharge II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.K. Varada Kamaraj
For Respondent-2 : Mr.P.G. Padmanaban
R1 - Exparte

J U D G M E N T

This appeal has been preferred by the legal heirs of the deceased against the award and decree rendered in M.C.O.P. No. 2126 of 2010 on the file of the Motor Accident Claims Tribunal, IInd Judge, Court of Small Causes, Chennai, seeking for enhancement of the compensation.

2. The appellants herein were the petitioners and the 1st respondent and the 2nd respondent were in the same ranking as in this appeal, before the Tribunal. For the sake of the convenience, the parties are referred to in this Judgment as arrayed before the Tribunal.

on 16.06.2010 at about 11.00 hours, while the deceased Shanmugam was riding his bicycle, near Nellikuppam Road Signal, on GST Road, the Van bearing Registration No.TN-22-F-5350 belonging to the 1st respondent insured with the 2nd respondent, came into opposite direction at a high speed, dashed against the bicycle ridden by the deceased, resulting in grievous injuries was sustained by the deceased and died in the hospital on the same day during the treatment. The deceased is survived by his wife, son, daughter and parents. At the time of the accident, the deceased was aged about 44 years and he was running a barber shop earning a sum of Rs.10,000/- per month. The petitioners who are the wife, children and parents of the deceased were dependents on the earning of the deceased. Hence, the legal representatives of the deceased have filed a claim petition in M.C.O.P. No.2126 of 2010 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai, seeking for compensation of Rs.15,00,000/- whereby the petitioners were awarded a sum of Rs.8,97,100/- as compensation. Being aggrieved over the aforesaid award amount, the petitioners herein have filed the present appeal seeking for enhancement of the compensation awarded by the Tribunal.

4. The learned counsel appearing for the petitioners/appellants herein would submit that the Tribunal has awarded a meagre sum of Rs.8,97,100/- only as against the claim of Rs.15,00,000/- without considering the loss of only breadwinner and head of the family and income of the deceased who was a hairdresser earning a sum of Rs.10,000/- per month having a shop even though the Tribunal has confirmed that the accident was occurred due to rash and negligent driving of the driver of the 1st respondent herein. After the death of the sole breadwinner of the family, the family is totally mentally disturbed and they are unable to meet out their adequate requirement and commitment faced by the family. Hence, the petitioners are entitled to get compensation for Rs.15,00,000/- (Rupees Fifteen Lakhs Only) as claimed before the Tribunal.

5. On the other hand, the Tribunal has awarded the compensation in the aforesaid claim petition taking into consideration both oral and documentary evidences in a proper manner which cannot be considered as meagre compensation. Further, since the petitioners/claimants have not made out the case for enhancement of compensation, there is no need to interfere with the award passed by the Tribunal and prayed for dismissal of the appeal.

6. Heard the learned counsel appearing for both sides and perused the materials available on record. At the time of the trial, on the side of the petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondents, neither any evidence was examined nor any exhibits were marked. There is no representation on behalf of

the 1st respondent either before the Tribunal or before this Court. Hence, the 1st respondent was set ex-parte before the Tribunal and before this Court.

7. On perusal of the award, it is seen that during the trial, P.W.2 Mr. M.Prakash was examined as eyewitness with regard to the aforesaid accident wherein he deposed that the accident was occurred due to rash and negligent driving of the van driver of the 1st respondent. To corroborate the oral evidence of P.W.2, the Tribunal has compared his oral evidence along with the Ex.P1, copy of the F.I.R which has been registered against the Van driver of the 1st respondent. After both were tallied with regard to the incident, the Tribunal has confirmed the negligence of the van driver of the 1st respondent caused to the accident and awarded a sum of Rs.8,97,100/- as compensation to the petitioners. Hence, The factum and manner of the accident being rash and negligent manner driving of the driver of the 1st respondent under Section 163-A is not in dispute. The entitlement of the petitioners/claimants is alone disputed seeking for enhancement of compensation in order to the death of sole breadwinner of the family leaving behind their family members.

8. In so far as the compensation under the head of loss of dependency awarded by the Tribunal is concerned, this Court is of the considered view that the income of the deceased would be increased having considered the deceased was running a barber shop under the style of M/s. Udhayam Saloon for which Ex.P8, a copy of the State Association Identity Card for Barbers and Ex.P9, a copy of the Identity Card issued by the Tamil Nadu Labour Welfare Board. Further, it is submitted by counsel appearing for both sides that on enquiry with the Association of Barber with regard to fixation of notional income to the deceased, it is stated that in the year 2010, the notional income of the deceased may be fixed at Rs.6,000/- per month. Having considered the above, this Court is of the considered view that the income of the deceased shall be fixed at Rs.6,000/- per month instead of Rs.4,500/- as fixed by the Tribunal. Thus, the monthly income of the deceased is calculated as follows: Rs.6,000/- + 30% future prospects Rs.1800/- = 7,800/-. Since there are 5 dependents, 1/4th amount is to be deducted towards the personal expenses of the deceased. Since age of the deceased is fixed at 44 years, as per the decision of the Hon'ble Supreme Court in 2009 5 L.W. Page -561 Smt. Sarala Varma & Others Vs. Delhi Transport Corporation and another, the multiplier to be applied is 14 which was adopted rightly by the Tribunal. Accordingly, the loss of dependency is calculated is as follows:

Rs.7,800/- (-) 1/4th amount of Rs.1,950/- =Rs.5,850/- X 12 X 14== Rs. 9,82,800/-.

Further, the compensation under the heads of Funeral expenses and love and affection are confirmed since they were awarded reasonably. However, the loss of consortium to the 1st petitioner is awarded a sum of Rs.50,000/- by the Tribunal

which is to be considered on higher side relying on the Supreme Court Judgment. Hence, the loss of consortium is fixed at Rs.40,000/- instead of Rs.50,000/-. Accordingly, the compensation awarded by the Tribunal is modified as per the details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Loss of dependency as stated above	9,82,800.00
2	Loss of consortium	40,000.00
3	Funeral Expenses	10,000.00
4	Love and Affection each Rs.25,000/- for 4 persons	1,00,000.00
Total		11,32,800.00
Amount		

9. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.2,35,700/- from Rs.8,97,100/- to Rs.11,32,800/- with interest @ 7.5% per annum from the date of petition till the date of deposit. The Insurance Company is directed to deposit the award amount enhanced by this Court to the credit of M.C.O.P. No.2126 of 2010 after deducting the amount already deposited if any, within a period of three weeks from the date of receipt of copy of this order and on such deposit, the 1st petitioner/1st appellant herein being the wife of the deceased is entitled for a sum of Rs.4,82,800/-, the 2nd petitioner/2nd appellant herein and 3rd petitioner/3rd appellant herein are being the son and daughter of the deceased is entitled for a sum of Rs.2,25,000/- each and the petitioners 4 & 5 are being the parents of the deceased is entitled for a sum of Rs.1,00,000/- each from the total award amount. The appellants/petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The appellants/petitioners/claimants are directed to pay the required Court fee for the enhanced award amount before getting the copy of the Judgment.

10. In the result, the Civil miscellaneous appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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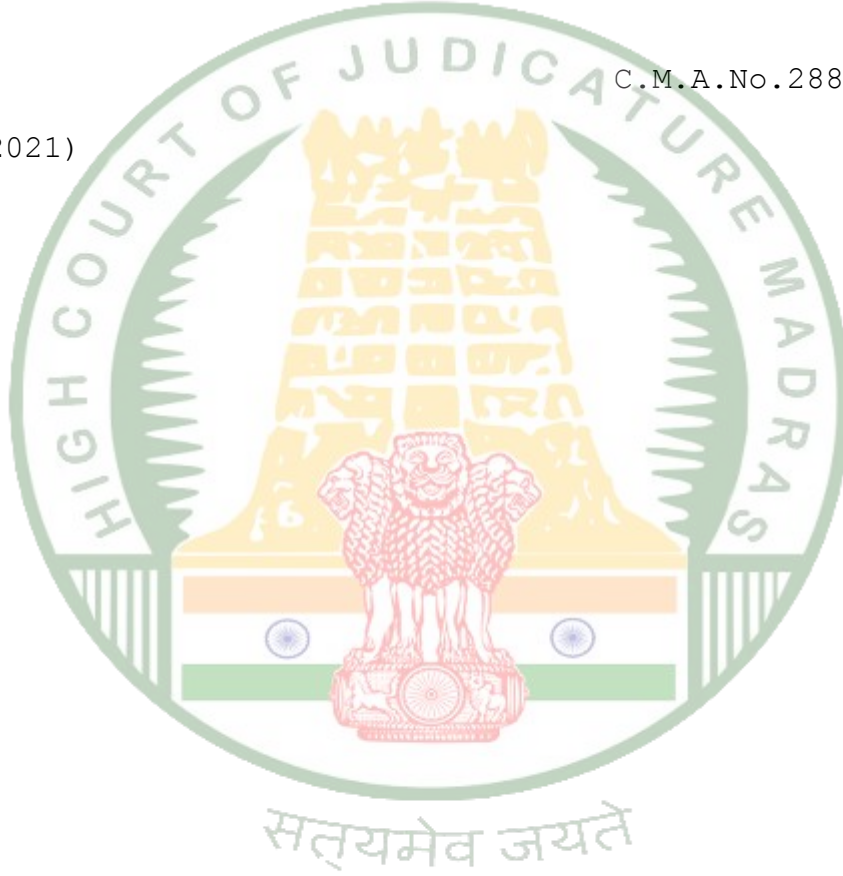
1.The Motor Accident Claims Tribunal, III Judge,
I/C II Judge,
Court of Small Causes, Chennai.

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

+lcc to Mr.Varada kamraj, Advocate, S.R.No. 9602
+lcc to Mr.Padmanaban, Advocate, S.R.No. 9382

C.M.A.No.2885 of 2013

MG(CO)
GN(09/02/2021)



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