

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3348 OF 2013

1. M.Rethinam
2. S.Muthu Selvam .. Appellants/Claimants

Versus

1. B.Sampath
2. Reliance General Insurance Co. Ltd.,
"HEAVITREE" Unit No.1, IIIrd Floor,
No.23, Spur Tank Road, Chetpet,
Chennai- 600 031. ... Respondents/Respondents

(Respondent 1 was set exparte before the Tribunal)

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 20.12.2012 made in M.C.O.P.No.1747 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellant : Mr.N.M.Muthurajan

For Respondent-2 : Mrs.Bhavana Sundari

R1 - Ex-parte

J U D G M E N T

The claimants have preferred this appeal against the Judgment and order in M.C.O.P.No.1747 of 2010 dated 20.12.2012 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai, seeking for enhancement of compensation awarded by the Tribunal.

2. The petitioners before the Claims Tribunal are the appellants herein who are the Mother and Father of the deceased

respectively. The 1st respondent is the owner of the vehicle who has insured the vehicle with the 2nd respondent herein who is none other than the Insurance Company.

3. The facts of the case briefly are as follows:

On 05.09.2009 at about 6.45 hours, when the son of the claimants/appellants herein was walking along Jawaharlal Nehru Road, near Ekkattuthangal, a TaTa Mini Van bearing registration No.TN 07 BA 9911 driven by its driver in a rash and negligent manner hit behind him thereby he sustained severe head injuries and died on 08.09.2009 during the course of treatment. In view of the death of the son in the accident, 1st petitioner/1st appellant herein and 2nd petitioner/2nd appellant herein who are mother and father of the deceased respectively, have preferred a Claim petition in M.C.O.P. No.1747 of 2010 before the Claims Tribunal seeking for a compensation of Rs.12,00,000/-. After trial, the claimants/appellants were awarded a sum of Rs.7,39,800/- as compensation by the Claims Tribunal.

4. Being aggrieved by the award passed by the Tribunal, the claimants/appellants herein have filed the present appeal contesting only on meagre award amount as compensation for the death of their only son and sought for enhancement of the compensation awarded by the Claims tribunal.

5. The learned counsel appearing on behalf of the appellants submits that the Tribunal has awarded a meagre sum of Rs.7,39,800/- after deducting 50% of the income for personal expenses instead of deducting 1/3 of personal expenses which would be usually deducted in the total income of the deceased or injured in the accident. Further, the Tribunal has wrongly adopted the multiplier as 13 only taking into consideration the age of the mother of the deceased as 48 years instead of applying the multiplier as 18 without taking into consideration the age of the deceased as 23 years. For the above, the reason was pointed out that deceased was unmarried at the time of the accident due to which 50% of the Income has been deducted for personal expenses and multiplier has to be applied is 13 taking into consideration only the age of the mother of the deceased. The reason of the above is not sustainable and liable to be set aside. Further, the compensation on other heads has not been considered properly. Hence, overall compensation may be considered to be enhanced by this Court. Therefore, this Court may be pleased to award the compensation as prayed for.

6. On the other hand, the learned Counsel for the 2nd respondent/Insurance Company would submit that the claimants/appellants herein were awarded after considering the entire oral and documentary evidence during the trial. In view of the fact

that the deceased was unmarried at the time of the accident, the Tribunal has deducted 50% of the income for personal expenses and the multiplier of 13 has been adopted taking into consideration the age of the mother of the deceased and awarded adequate compensation to the petitioners/appellants herein. As there is no infirmity in the above, it is needless to interfere with the award passed by the Claims Tribunal.

7. Heard the learned counsel appearing for both sides and perused the materials available on records. The 1st respondent who is the owner of the offending vehicle, was set ex-parte before the Tribunal as well as before this Court as he was remained absent.

8. During the course of the trial, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.11 were marked on the side of the claimants/appellants herein. R.W.1 was examined and Ex.R.1 to Ex.R.4 were marked on the side of the respondents before the Tribunal.

9. It is admitted fact that the factum and the manner of the accident being rash and negligence driving on the part of the driver of the Mini Van under Section 163-A are not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

10. After going through the oral and documentary evidences of P.W.3, coupled with the Ex.P.11, this Court is of the considered view that as per the salary certificate Ex.P.11, the deceased was working as driver and earned a sum of Rs.5,000/- per month in addition to batta at Rs.150/- per day. It is admitted fact that the deceased would receive the batta if he was working only in the extra hours in the company. Hence, totally, Rs.6,000/- p.m shall be taken as income of the deceased. i.e. (Rs.5000/- as Salary p.m + Rs.1000/- as batta p.m). As observed by the Hon'ble Supreme Court in the Judgment reported in 2012 AIR SCW 2892, 30% shall be added along with the total income of the deceased. Thus, Rs.6000/- + 30% (Rs.1800) = 7800/- has been arrived as income of the deceased in which it is to be accepted 50% deduction as done by the Tribunal considering the age of the deceased who was unmarried at the time of the accident and the much of income would have been spent for himself, not for the family expenses. Hence, out of the 7,800/-, after deducting of 50% towards the personal expenses, the remaining comes to Rs.3,900/-. i.e. (7800 - 3900). As far as the multiplier is concerned, the Tribunal has to be applied as per the age of the deceased not the age of the mother of the deceased even though the deceased was unmarried. Hence, the correct multiplier of 18 shall be adopted in arriving the loss of pecuniary benefits to the petitioners/appellants herein.

Therefore, the loss of pecuniary benefits to the petitioners/ appellants is assessed at Rs.3,900/- X 12 X 18 = Rs.8,42,400/-. Further, the compensation on all other heads are awarded as per the oral and documentary evidence. Hence, this Court is not inclined to interfere with on other heads. Thus, the compensation has been modified as per the details given below:

1. Loss of pecuniary benefits -	Rs.8,42,400/-
2. Loss of love and affection -	Rs. 20,000/-
(Each Rs.10,000/-)	
3. Funeral Expenses	- Rs. 10,000/-

	Rs.8,72,400/-

11. Thus, the compensation of the award has been enhanced by Rs.1,32,600/- from Rs.7,39,800/- to Rs.8,72,400/- with interest @7.5% per annum from the date of filing of the petition till the date of realization.

12. Out of the Total Award amount, the 1st petitioner/1st appellant herein who is the mother of the deceased is entitled to Rs.6,00,000/- and 2nd petitioner/2nd appellant herein who is the father of the deceased is entitled to Rs.2,72,400/-.

13. The 2nd respondent/Insurance Company is directed to deposit the modified award amount of Rs.8,72,400/- along with interest to the credit of M.C.O.P. No.1747 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai, less already deposited amount, if any, within a period of three weeks from the date of receipt of copy of this Judgment.

14. On such deposit, the petitioners/appellants are permitted to withdraw their respective shares as directed by this Court after filing a formal petition before the respective Claims Tribunal. The deficit Court fee, if any, to be paid immediately.

15. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

lbm

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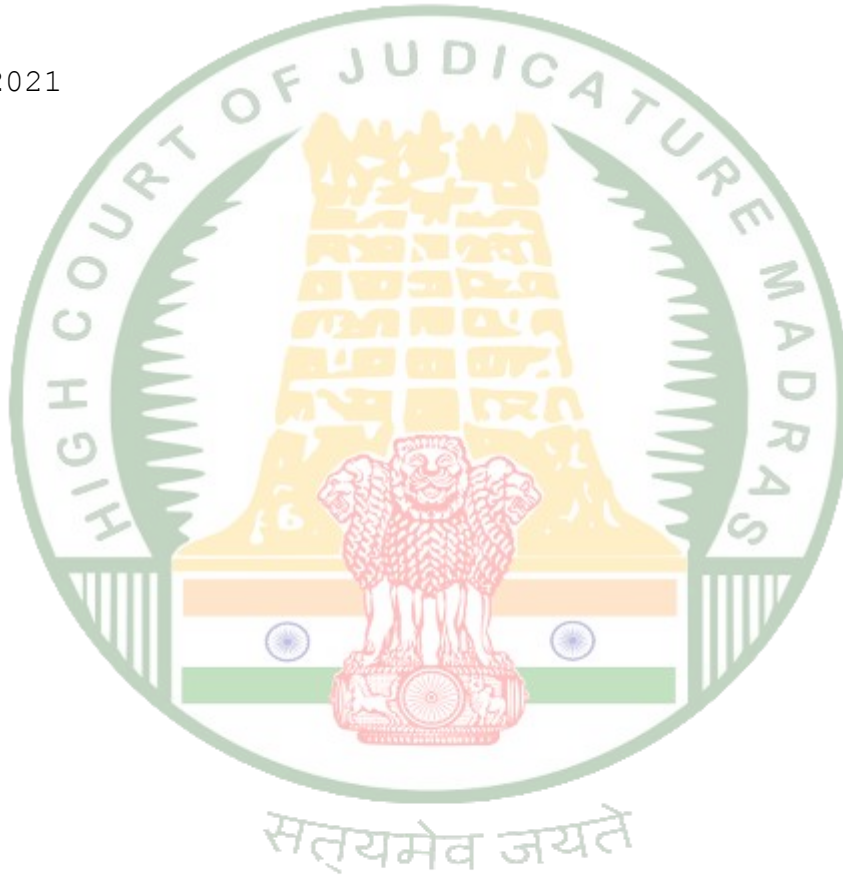
1. The Motor Accident Claims Tribunal,
Chief Small Causes Court, Chennai.

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

C.M.A.No.3348 of 2013

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