

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1185 of 2018

1.H.Vanaja

2.M.Haridhas Appellants/ Petitioner

Vs.

1.M/s.WIN WIN Diamond Products,
No.138/B, Burma Colony,
1st Main Road, 2nd Cross Street,
Perungudi, Chennai - 600096.
(Set Exparte before the Tribunal)

2.United India Insurance Co. Ltd.,
Motor Third Party Claims Hub,
Sillingi Building, No.132,
4th Floor, Greams Road,
Chennai - 600006. Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.02.2018 passed in MACT O.P.No.1309 of 2016 on the file of II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Petitioner : Mr.K.Suryanarayanan
For Respondents : Mr.D.Baskaran [R2]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

[Heard through Video Conference]

Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its judgment dated 19.02.2018 passed in MACT O.P.No.1309 of 2016 on the file of II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai, appellants/claimants have filed the present appeal.

2. The brief facts of the case is as follows:

Appellants/claimants are parents of the deceased Kishore. On 08.01.2016 at about 19.50 hours, while the deceased was standing on the left side of GST Road (Tambaram to Chengalpet) near Potheri railway station, a two wheeler bearing Registration No.TN-07-BY-7995, belonging to first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the deceased, owing to which the deceased sustained grievous injuries. Immediately, the deceased was taken to hospital and in spite of the treatment given to him, he died on the same day due to the grievous injuries sustained by him. Hence, appellants/claimants filed a claim petition before the Motor Accident Claims Tribunal, seeking compensation in a sum of Rs.65,00,000/-.

3. To prove their claim, on the side of appellants/claimants, second appellant/father of the deceased examined himself as PW-1 and marked 32 exhibits. On behalf of respondents, no witness was examined and no document was marked. On appreciation of materials, the Tribunal, found that the accident had occurred owing to the rash and negligent driving of the two-wheeler and held that the second respondent, as insurer of first respondent's vehicle, is liable to pay compensation and awarded a sum of Rs.16,98,000/- as compensation. The break-

up is as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency (11,000 + 50% - 1/2) *12 * 17	16,83,000/-
2.	Funeral expenses	15,000/-
	Total	16,98,000/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of petition to till the date of deposit.

Seeking enhancement of compensation, appellants/claimants have filed the present appeal.

4. Heard learned counsel appearing for appellants/claimants and learned counsel appearing for second respondent insurance company. Perused the materials on record.

5. Learned counsel appearing for appellants/claimants submits that the deceased was a B.E. and M.S. degree holder and he was working as a Project Manager and earning a sum of Rs.40,000/- p.m. at the time of accident. In support of their claim, appellants/ claimants, among other documents, had also marked Ex.P22 - Degree Certificate, Ex.P26 - M.S.Certificate, Ex.P27 - ID Card of the deceased, Ex.P28 - Concise experience certificate, Ex.P29 - HCL salary slip, Ex.P30 - Offer letter and Ex.P31 - Chem offer letter. However, the Tribunal has fixed only a sum of Rs.11,000/- as the monthly income of the deceased, which ultimately resulted in awarding an inadequate compensation. Submitting as above, learned counsel prays this Court to fix the monthly income of the deceased at Rs.40,000/- and thereby enhance the compensation.

6. Per contra, learned counsel appearing for second respondent insurance company submits that absolutely no document was marked to establish that the deceased was earning a sum of Rs.40,000/- p.m. In fact, the Tribunal has rendered a specific finding that the crucial document, viz., bank statement showing the receipt of the salary of the deceased was not marked. In such circumstance, the amount of Rs.11,000/-, fixed by the Tribunal, as the monthly income of the deceased, cannot be found fault with. Submitting as above, learned counsel prays for dismissal of the present appeal.

7. This Court has considered the rival submissions. Since the quantum of compensation alone is challenged, this Court is not dealing with the aspect 'rash and negligence'.

8. It is the specific case of appellants/claimants that the deceased was a B.E. and M.S. degree holder and was working as a Project Manager and earning a sum of Rs.40,000/- p.m. Though appellants/claimants have marked xerox copies of experience certificate and offer letters, the same have not been accepted by the Tribunal on the reasoning that they have not been marked through the employer. This Court is also of the view that in the absence of examination of the employer of the deceased, by merely relying on documents, a sum of Rs.40,000/- could not be fixed as the monthly income of the deceased. At the same time, considering the qualification of the deceased, this Court finds that the sum of Rs.11,000/-, fixed by the Tribunal, as the monthly income of the deceased, is on the lower side. Taking

note of the fact that the deceased was a B.E. and M.S degree holder, a sum of Rs.20,000/- is fixed as the monthly income of the deceased and 40% is added toward future prospects to arrive at a just and proper compensation in the present case. As the deceased was a batchelor, aged 25, 50% is deducted towards personal expenses and multiplier '17' is applied towards arriving at compensation under the head 'loss of pecuniary benefits'. This Court also finds that no sum has been awarded towards filial consortium, loss of estate and transport expenses and hence, a sum of Rs.50,000/- is awarded to each of the claimants for filial consortium, Rs.15,000/- towards loss of estate and Rs.14,000/- towards transport expenses.

9. Accordingly, the modified compensation payable would be:

Sl.No .	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency (20,000 + 40% - 1/2) *12 * 17	28,56,000/-
2.	Filial consortium (50,000 + 50,000)	1,00,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
5.	Transport expenses	14,000/-
	Total	30,00,000/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal in a sum of Rs.16,98,000/- is hereby enhanced to Rs.30,00,000/- (Rupees Thirty Lakhs only). The second respondent insurance company is directed to deposit the enhanced compensation of Rs.30,00,000/-, less the amount already deposited, with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, appellants/claimants are entitled to withdraw their respective shares, as apportioned by the Tribunal, on due application. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The II Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

Copy to:

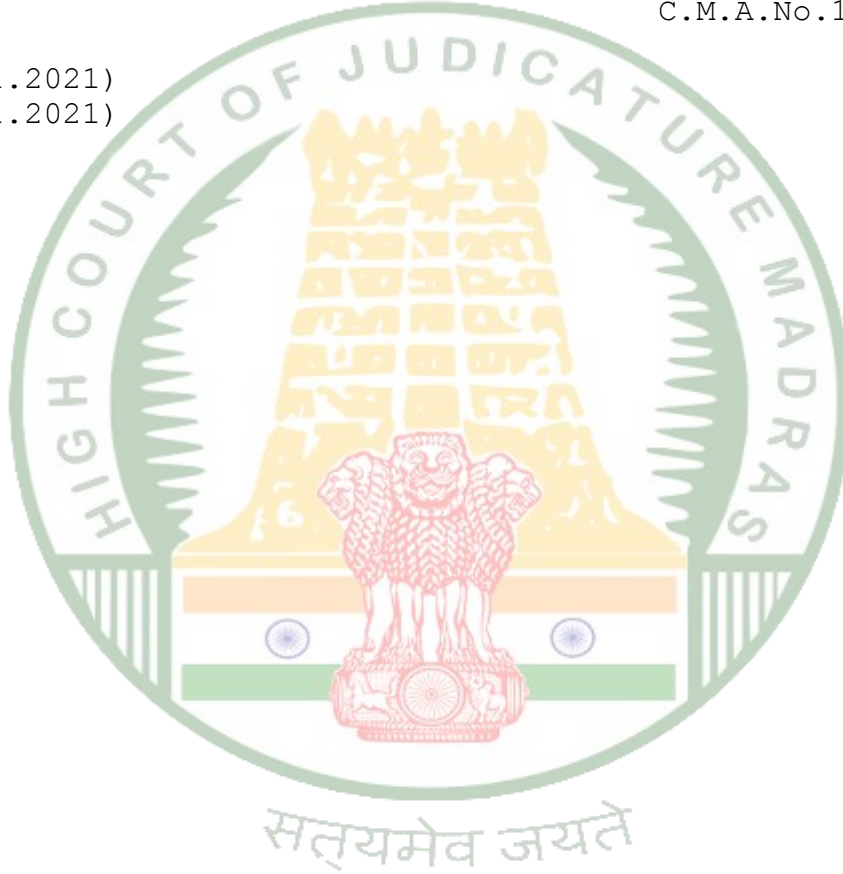
The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.K.Suryanarayanan , Advocate SR.No. 26517

C.M.A.No.1185 of 2018

A.SK(20.01.2021)

A.SK(25.01.2021)



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