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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM:

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

C.M.A. NO. 1412 OF 2020
AND
C.M.P.NO.10337 OF 2020

M/s.Royal Sundaram Alliance Ins. Co. Ltd.,
Sundaram Towers,
Nos.45 and 46, Whites Road,
Royapettah,
Chennai-600 014.

...Appellant / 2nd Respondent

Versus

1. Moly, W/o Jose George
2. Jose George, S/o George
3. Julie Joseph, D/o Jose George ...Respondents / Petitioners
4. G.Thomas ...4th Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 27.09.2019 in M.C.O.P.No.5265 of 2015 on the file of the Special Sub-Court No.1 for Motor Accidents Claims Petition, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For appellant : Mr.G.Vasudevan

For respondents : Mr.J.Mahalingam for RR-1, 2 and 3

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

The present Civil Miscellaneous Appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal in M.C.O.P.No.5265 of 2015.



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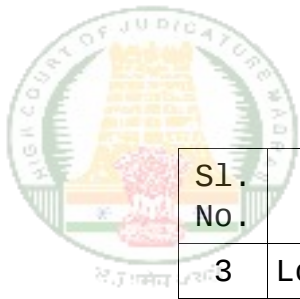
2. It is the case of the respondents 1 to 3 herein/claimants that on 31.10.2014 at about 5.30 a.m., the deceased Shynoj, son of Jose George, was travelling as a passenger in a Car bearing Reg.No.TN-10-AB-1985. When the car was proceeding from South to North at G.S.T.Road, Kallapiranpuram, Madurantakam, it dashed against the centre median, as a result of which, the car capsized and fell down on the opposite lane, and hit a TATA Sumo car bearing Reg.No.TN-49-T-7044, which was coming from the opposite direction. As a result of the above fatal accident, the said Shynoj died on the spot and the other passengers who were travelling in the car also sustained grievous injuries. According to the claimants, the accident had occurred due to the rash and negligent driving of the Car by its driver, the fourth respondent herein, who is also the owner of the car. The appellant herein is the insurer of the said car. The claimants have therefore filed the claim petition as against the owner of the car as well as its insurer, claiming a sum of Rs.75,00,000/-.

3. The appellant-Insurance Company filed counter statement denying the case of the claimants.

4. In order to prove the claim, on the side of the claimants, the wife of the deceased was examined as P.W.1. An eye-witness to the accident was examined as P.W.2, besides P.W.3 being the Senior Manager from Canara Bank and P.W.4 being the Manager from Ramaswamy and Murali Associates, were also examined. The claimants also marked Exs.P-1 to P-20 to substantiate the averments made in the claim petition. On behalf of the respondents in the claim petition, neither any document was marked nor any witness examined.

5. The Tribunal on appreciation of the oral and documentary evidence held that the the accident had occurred only due to rash and negligent driving of the Car bearing Registration No.TN-10-AB-1985 by its driver and awarded the compensation amount under the following heads:

Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amount awarded by the Tribunal (in Rs.)
1	Total loss of dependency	35,70,000
2	Loss of love and affection	75,000



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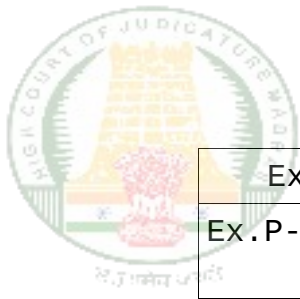
Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amount awarded by the Tribunal (in Rs.)
3	Loss of Estate	15,000
4	Transport Charges	5,000
5	Funeral expenses	15,000
	Total compensation awarded by the Tribunal	36,80,000

6. The only submission made by the learned counsel appearing for the appellant/Insurance Company is that the Tribunal, while calculating the compensation, had taken a sum of Rs.25,000/- as the loss of monthly income of the deceased without any documentary evidence to substantiate the same. Hence, the said amount of Rs.25,000/- fixed by the Tribunal has be modified.

7. Per contra, the learned counsel appearing for the claimants would contend that the Tribunal has awarded a fair and just compensation befitting the earning capacity of the deceased and it calls for no interference by this Court.

8. Keeping the submissions made on either side, we have carefully perused the entire materials available on record. We find that the claimants have claimed that that the deceased was a Proprietor of Marvel Clean Company (professional water tank cleaners and dis-infectors) and was earning a sum of Rs.3,65,000/- per annum. In order to prove the same, the following Exs.P-4 to P-11 were filed:

Exhibit	Details of the exhibit
Ex.P-4	Visiting Card of the Company where the deceased worked
Ex.P-5	The Marvel Clean Company pamphlet
Ex.P-6 series	The Marvel Clean Company Photos and CD
Ex.P-7	Machineries Bills
Ex.P-8	Car bill and Registration Certificate copy
Ex.P-9	Canara Bank Statement



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Exhibit	Details of the exhibit
Ex.P-10	Marvel Clean company's bill book (pertaining to the deceased)
Ex.P-11	TDS certificate of the deceased

9. That apart, the Senior Manager from Canara Bank and Manager from Ramaswamy and Murali Associates, who were dealing with the Account Statement of the deceased, were examined as P.Ws.3 and 4 and through them, the Bank Statement and Balance Sheet were marked as Exs.P-18 and P-19 respectively. Therefore, it is not as though the claimants have not filed any documentary proof at all to substantiate the income of the deceased. It is on the basis of the aforesaid documentary evidence, the Tribunal had taken a sum of Rs.25,000/- per month as income of the deceased and proceeded to award the compensation. While so, we see no reason to interfere with the award passed by the Tribunal.

10. In the result, we confirm the order dated 27.09.2019 passed in M.A.C.O.P.No.5265 of 2015 on the file of the Special Sub-Court No.1 for Motor Accidents Claims Petition, Motor Accidents Claims Tribunal (Small Causes Court), Chennai. The Civil Miscellaneous Appeal is dismissed. No costs. The appellant/Insurance Company is directed to deposit the total compensation of Rs.36,80,000/- as determined at by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw in accordance with law, their respective shares as apportioned by the Tribunal, less the amount if any already withdrawn by them.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

cs/rsh



To

The Special Sub-Judge No.1,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai-600 104.

CMA No. 1412 of 2020

MG(CO)
RVM(31/08/2021)