

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.SARAVANAN

C.M.A.No.1885 of 2020

1.Balamurugan
2.Prema

... Appellants

vs

1.C.V.Sureshkumar
S/o.Veeraraghavan

2.Bharti Axa General Insurance Co. Ltd.,
II Floor, Metro Plaza,
162, Anna Salai,
Chennai - 600002.

... Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.04.2019 passed in M.C.O.P.No.565 of 2016 on the file of Motor Accident Claims Tribunal/ I Additional District & Sessions Judge, Cuddalore.

For Appellants : Mr.Ramya V Rao

For Respondents: Mr.K.Poomalai [R2]

JUDGMENT

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

This matter is heard through Video Conference.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its judgment and decree dated 29.04.2019 passed in M.C.O.P.No.565 of 2016 on the file of Motor Accident Claims Tribunal/ I Additional District & Sessions Judge, Cuddalore, appellants/claimants have filed the present appeal.

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

Appellants/claimants are parents of the deceased Sundar. On 01.11.2015 at about 5.00 a.m., while the deceased was travelling in the Maruti Suzuki Ertiga Car bearing Registration No.TN-05-AW-8202 belonging to first respondent, on the ECR Salai, the driver of the Car drove the same in a rash and negligent manner and hit against the Poonthandalam Bridge Wall, owing to which the Car had fallen and capsized. In the said accident, the deceased sustained grievous injuries and died on the spot. Second respondent is the insurer of the Car. Appellants/claimants filed a claim petition seeking compensation in a sum of Rs.75,00,000/-.

4. The claim was resisted by second respondent insurance company by filing a detailed counter.

5. To prove the claim, on the side of appellants/claimants 2 witnesses were examined and 13 documents were marked. On the side of second respondent insurance company 2 witnesses were examined and 4 exhibits were marked.

6. On appreciation of materials on record, the Tribunal found that the accident had occurred owing to the rash and negligent driving of the Car belonging to first respondent and held that the second respondent insurance company, as insurer of the said vehicle, was liable to pay compensation. The compensation awarded by the Tribunal is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Pecuniary Loss [(8000 + 50%) * 12 * 18 - 1/2]	12,96,000/-
2.	Loss of love and affection	40,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
	Total	13,66,000/-
	Award of the Tribunal	13,56,000/-

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

7. Learned counsel for appellants/claimants submits that the deceased was a Engineering student. At the time of accident, the deceased was earning approximately a sum of Rs.20,000/- p.m. by doing part time job in a Private Computer Center. However, the Tribunal fixed the monthly income of deceased at Rs.8,000/- p.m.

only. Considering the date of accident i.e. 01.11.2015 and the cost of living prevailing at the relevant point of time and the qualification of the deceased, the Tribunal ought to have fixed a sum of Rs.15,000/- as the monthly income. Submitting as above, learned counsel prays this Court to fix the monthly income of deceased at Rs.15,000/- and accordingly, re-calculate the compensation awarded under the head 'pecuniary loss'. Learned counsel further submits that the amount awarded under the other heads is also on the lower side and the same requires proper enhancement.

8. Per contra, learned counsel for second respondent insurance company submits that the deceased was only a student. Absolutely, no proof was filed to establish the income of the deceased. In such circumstances, the Tribunal has fixed a reasonable sum of Rs.8,000/- towards monthly income of the deceased. The amount awarded under the other heads is also reasonable. Submitting as above, learned counsel prays this Court to dismiss the appeal.

9. This Court has considered the rival submissions. Perused the materials on record.

10. Considering the fact that the accident had occurred in the year 2015 and the cost of living prevailing at that point of time as also considering the qualification of the deceased, this Court fixes the monthly income of the deceased at Rs.14,000/-. This Court finds that the Tribunal has added 50% towards future prospects and the same is reduced to 40%. Accordingly, the compensation payable under the head 'pecuniary loss' is recalculated as follows:

Monthly Income	:	Rs.	14,000/-
Add: future prospects at 40% (40% of 14000)	:	Rs.	5,600/-
		Rs.	19,600/-
Annual Income (19600*12)	:	Rs.	2,35,200/-
Less: Personal expenses (1/2)	:	Rs.	1,17,600/-
		Rs.	1,17,600/-
Mulltiplier	:		18
Pecuniary Loss	:	Rs.	21,16,800/-

Further, this Court finds that only a sum of Rs.40,000/- was awarded towards loss and affection and hence, the same is enhanced to Rs.80,000/- (40,000/- each). This Court also finds that no sum has been awarded towards transportation and hence, a sum of Rs.10,000/- is awarded under such head. The amount awarded under the other heads is hereby confirmed.

11. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Pecuniary Loss	12,96,000/- [(8000+50%) *12*18 - 1/2]	21,16,800/- [(14000+40%) *12*18 - 1/2]
2.	Loss of love and affection	40,000/-	80,000/-
3.	Loss of estate	15,000/-	15,000/-
4.	Funeral expenses	15,000/-	15,000/-
5.	Transportation	-	10,000/-
	Total	13,66,000/-	22,36,800/-
	Award of the Tribunal	13,56,000/-	

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal in a sum of Rs.13,56,000/- is hereby enhanced to Rs.22,36,800/- [Rupees Twenty Two Lakhs Thirty Six Thousand and Eight Hundred only]. Second respondent insurance company is directed to deposit the modified compensation of Rs.22,36,800/-, less the amount, if any, already deposited, together 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 share, as apportioned by Tribunal, on due application. In all other aspects, the award of the Tribunal is hereby confirmed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1.The Motor Accident Claims Tribunal,
I Additional District & Sessions Judge,
Cuddalore.

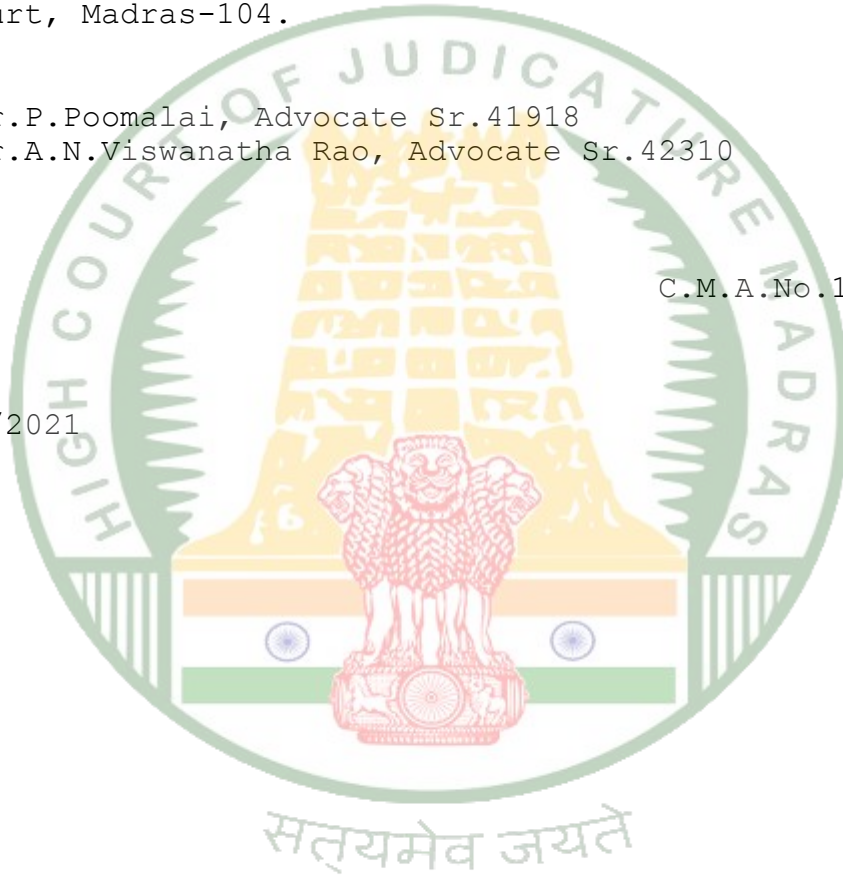
2.The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.P.Poomalai, Advocate Sr.41918

+1cc to Mr.A.N.Viswanatha Rao, Advocate Sr.42310

C.M.A.No.1885 of 2020

gmr[co]
srg 18/02/2021



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