

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.4239 and 4746 of 2019
and

C.M.P.No.27133 of 2019 in C.M.A.No.4746 of 2019

C.M.A.No.4239 of 2019

1.Gail Theresa Wilson
W/o.Wilson Stanly @ Harry Wilson

2.Wilson Stanly @ Harry Wilson
S/o.Wilson ... Appellants/ Petitioners

Vs

1.Packagavathy
W/o.Mani

2.The Manager,
New India Assurance Co. Limited,
No.232, N.S.C. Bose Road,
Bombay Mash Building, 6th Floor,
Chennai - 600001. ... Respondents/ Respondents

C.M.A.No.4746 of 2019

The Manager,
New India Assurance Co. Limited,
No.232, N.S.C. Bose Road,
Bombay Mash Building, 6th Floor,
Chennai - 600001.

... Appellant/ 2nd Respondent

vs

1.Gail Theresa Wilson
W/o.Wilson Stanly @ Harry Wilson

2.Wilson Stanly @ Harry Wilson
S/o.Wilson ...Respondents/ Petitioners

3.Packagavathy
W/o.Mani ... Respondents

(Third respondent was set ex parte
in the lower Court. Hence, notice
is dispensed with.)

Common prayer:

Civil Miscellaneous Appeals filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2019 passed in M.C.O.P.No.3777 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Appearance:

For appellants in C.M.A.No.4239/2019 and
respondents 1 & 2 in C.M.A.No.4746/2019 : Mr.K.Suryanarayanan for
Mr.Amar Dineshbhai Pandiya

For second respondent in C.M.A.No.4239/
2019 and appellant in C.M.A.No.4746/2019: Mr.R.Sivakumar

[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 04.09.2019 passed in M.C.O.P.No.3777 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, claimants have filed C.M.A.No.4239 of 2019. Questioning the quantum of compensation awarded in the very same judgment, insurance company has filed C.M.A.No.4746 of 2019.

2. For the sake of convenience, parties are referred to as per the ranking in the claim petition in M.C.O.P.No.3777 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

3. Claimants are the parents of deceased, aged 60 and 71 respectively. The case of the claimants is that on 05.05.2018 at about 06.30 hours, while the deceased Rodney Wilson, was riding his motorcycle on CTH Road, Padi, Mannurpet, a lorry bearing Registration No.TN-02-8767, belonging to first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and dashed against the deceased, as a result of which the deceased fell down and the rear side of the lorry ran over him and he died on the spot. The deceased was a bachelor, aged 32. Contending that the accident has occurred owing to the rash and negligent driving of the lorry, claimants have filed M.C.O.P.No.3777 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, seeking compensation in a sum of Rs.1,15,00,000/-.

4. Before the Tribunal, to prove their case, claimants have examined 3 witnesses and marked 23 exhibits. None were examined on the side of second respondent insurance company nor were any exhibits marked. On appreciation of materials, the Tribunal, found that the accident had occurred owing to the rash and negligent driving of the lorry and awarded compensation as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(40000+40%-1/2)*12*16]	53,76,000/-
2.	Funeral expenses	15,000/-
3.	Loss of love and affection	20,000/-
	Total	54,11,000/-

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 realisation.

5. Heard learned counsel appearing for claimants and learned counsel appearing for second respondent insurance company.

6. Learned counsel appearing for claimants submits that at the time of accident, the deceased was working as a Senior Accounts Executive in Miramed Ajuba Solution India Pvt. Ltd., Taramani and was earning a sum of Rs.53,979/- p.m. To prove the same, one Venkatalakshmi, Assistant Manager of the aforesaid company, was examined as PW-3 and Ex.P19 - Copy of offer of Appointment of the deceased and Ex.P20 - Salary Certificate of the deceased, Ex.P21 - copy of Income Tax Returns of the deceased for the Financial Year 2017-18, Ex.P22 - copy of

Income Tax Returns of the deceased for the Assessment Year 2018-19 and Ex.P23 - Form 16 of the deceased were marked through her. A careful perusal of Ex.P23 - Form 16 of the deceased, would clearly show that the annual income of the deceased was Rs.6,59,909/-. While so, the monthly income of the deceased comes to Rs.54,992/-. However, the Tribunal has fixed only a sum of Rs.40,000/- as the monthly income of the deceased towards arriving at compensation under the head 'Loss of dependency'. Learned counsel further submits that the amount awarded under the other heads is also on the lower side. Submitting as above, learned counsel prays for enhancement of compensation.

7. Countering the submission of learned counsel appearing for claimants, learned counsel appearing for second respondent insurance company submits that claimants/parents of the deceased are aged 60 and 71 respectively. Though the gross income for the period from 01.04.2017 to 31.03.2018 of the deceased was shown as Rs.6,59,909/- in Ex.P23 - Form 16 of the deceased, the break up details of the salary is given as follows:

Description	Amount (in Rs.)
Basic Salary	9,500/-
HRA	5,700/-
Conveyance	1,600/-
Special Allowance	33,429/-
Statutory Bonus	1,400/-
Night Shift Allowance	1,100/-
Medical Allowance	1,250/-
Total	53,979/-

The special allowance of Rs.33,429/- mentioned in Form 16 is not a fixed allowance and hence, the Tribunal ought to have deducted the said amount and if it is done, the monthly salary of the deceased would be only Rs.20,550/-. Hence, fixing of Rs.40,000/- as the monthly salary of the deceased is on the higher side and the same needs to be reduced. Submitting as above, learned counsel prays for reduction of compensation.

8. This Court has considered the rival submissions.

9. On a perusal of the judgment under challenge, this Court finds that though claimants have examined PW-3 - Assistant Manager to depose about the monthly salary earned by deceased and marked Ex.P23 - Form 16 of the deceased, to show that the

annual income of the deceased was Rs.6,59,904/, the Tribunal has found that incentives are fixed only based on the performance of an employee and it cannot be given every month and hence, the same cannot be taken into account for the purpose of fixing the monthly salary. Considering the fact that the deceased was working as a Senior Accounts Executive and was aged 32 at the time of accident, the Tribunal has found that the deceased would have earned an average monthly income of Rs.40,000/-. Since the deceased was a bachelor, the Tribunal deducted 50% towards his personal expenses. Further, the Tribunal has rightly added 40% towards future prospects, adopted multiplier '16' and awarded a sum of Rs.53,76,000/- as compensation under the head 'loss of dependency'. This Court also finds that only an appropriate sum of Rs.15,000/- and Rs.20,000/- is awarded towards funeral expenses and loss of love and affection respectively. In the aforesaid circumstance, there is no scope either to enhance or reduce the compensation awarded by the Tribunal. This Court finds that the Tribunal has passed a well-justified award and the same does not require any interference by this Court.

10. Accordingly, the Civil Miscellaneous Appeals are dismissed. The second respondent insurance company is directed to deposit the compensation amount of Rs.54,11,000/- with interest at 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of this judgment. On such deposit, claimants are entitled to withdraw their respective shares, as apportioned by the Tribunal, on due application. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//
सत्यमेव जयते

Sub Assistant Registrar

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To

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

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2. The Section Officer
VR Section
High Court, Madras

4 ccs to M/s. Amar D. Pandiya, Advocate, Sr. 25472, 25473

C.M.A.No.4239 and 4746 of 2019

RLP (CO)
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