

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.2.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.1310 of 2013

Krishnaveni

... Appellant/Petitioner

..Vs..

1. K.M.Chinnadurai
2. The Manager,
The New India Assurance Co. Ltd.,
45, Moore Street, Chennai. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 17.12.2007 made in M.C.O.P.No.5125 of 2004 on the file of II Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

For Appellant	:	Mrs.K.Vasanthamala for
	:	Mr.U.M.Ravichandran
For Respondent No.2	:	Ms.A.Salomi for
	:	Mr.C.Ramesh Babu
For Respondent No.1	:	Notice unserved

JUDGMENT

Dissatisfied with the award, dated 17.12.2007, passed in M.C.O.P.No. 5125 of 2004, by the Motor Accident Claims Tribunal, Chennai, the claimant is before this Court for enhancement of compensation awarded by the tribunal.

2. It is the case of the claimant that on 19.05.2004 at about 11.00 p.m., the deceased Rajkumar @ Raja @ Rajangam coming from Chennai towards Thiruverkadu, by a motorcycle bearing registration No.PY-01-M 1065 at left side corner of Poonamallee high road near Dhaya Sadan School Compound, a lorry bearing registration No.TN-38-U 1899 coming on the same direction in a rash and negligent manner, hit behind the deceased, thereby caused accident, resulting in Rajkumar died on the spot. A case in Cr.No.345 of 2003 has been registered by E-5 Maduravoyal Police Station. The wife of the deceased has filed a claim petition before the tribunal claiming

Rs.9,00,000/- and restricted her claim to Rs.7,00,000/- as compensation from the respondents.

3 The Tribunal, based on the oral and documentary evidence Exs.P1 to P.8, has awarded Rs.4,46,052/- as total compensation along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Compensation for loss of dependency	4,16,052/-
Funeral expenses	5,000/-
Loss of consortium	25,000/-
Total	4,46,052/-

4. Heard, the learned counsel appearing for the claimant/appellant and the learned counsel appearing for the respondent/Insurance company and perused the materials available on record.

5. According to the learned counsel appearing for the appellant, the notional income fixed by the tribunal is not based on the appreciating the case of the appellant. Further, the multiplier adopted by the tribunal is not in consonance with Sarala Varma case. Therefore, the compensation awarded by the tribunal requires modification.

6. Per contra, the learned counsel appearing for the respondent/ Insurance company would submit that based on the oral and documentary evidence, the tribunal has rightly determined the compensation to the claimant. Admittedly, the deceased as daily wage coolie, was earning a sum of Rs.133/- per month. Considering the evidence of P.W.3, the tribunal has fixed the monthly income of the deceased at Rs.4000/- per month and after deducting 1/3rd towards his personal expenses the deceased would have contributed to his family at Rs.2,667/- per month. Therefore, the loss of dependency was calculated at $2667 \times 12 \times 13 =$ Rs.4,16,052/-and awarded Rs.4,46,052/- as total compensation. Therefore, there is no warrant to interfere with the award.

7. The main contention of the learned counsel appearing for the appellant is that the notional income of the deceased was fixed @ Rs.133/- per month is totally incorrect and the deceased was earning Rs.250/- per day. The notional income of the deceased can be safely fixed at Rs.200/- per day. In the light of the judgment of the Hon'ble Supreme Court, future prospect insofar as the self employment is concerned, in addition to Rs.200/- per day, 40% will be added to the monthly income of the deceased, i.e. $\text{Rs.200/-} + 40\% = \text{Rs.280/-} \times 30 \text{ days} = \text{Rs.8400/-}$. After deducting $\frac{1}{3}^{\text{rd}}$ towards his personal expenses, the monthly income of the deceased would be Rs.5600/-. In the light of the Sarala Varma case, considering the age of the deceased i.e. 34 years, the tribunal ought to have adopted 16 multiplier. Thus, by calculating the notional income of the deceased at Rs.5600/- as contribution to his family, the claimant/appellant is entitled to $\text{Rs.5600/-} \times 12 \times 16 = 10,75,200/-$ as compensation towards loss of dependency. However, the appellant has filed a claim petition for a claim of Rs.9,00,000/- and restricted her claim to Rs.7,00,000/-. The tribunal awarded compensation of Rs.4,46,052/- and the appellant seeks enhancement of compensation to the tune of Rs.4,50,000/-. Therefore, total claim of the appellant is Rs.8,96,000/-. This Court is inclined to enhance the compensation to the tune of Rs.9,00,000/- in toto. The compensation awarded by the tribunal is modified to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

8. The claimant/appellant is entitled to withdraw Rs.9,00,000/- (Rupees nine lakhs only) along with interest at the rate of 7.5% p.a. from the date of petition till realization. The respondent/Insurance company is directed to deposit Rs.9,00,000/- along with interest at the rate of 7.5% p.a. from the date of petition till realization, within a period of eight weeks from the date of receipt of copy of the judgment, after deducting the amount if any, already deposited before the tribunal. On such deposit being made by the second respondent/Insurance Company, the claimant/appellant is entitled to withdraw the amount by filing appropriate application.

9. In the result, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

The II Court of Small Causes,
(Motor Accidents Claims Tribunal)
Chennai.

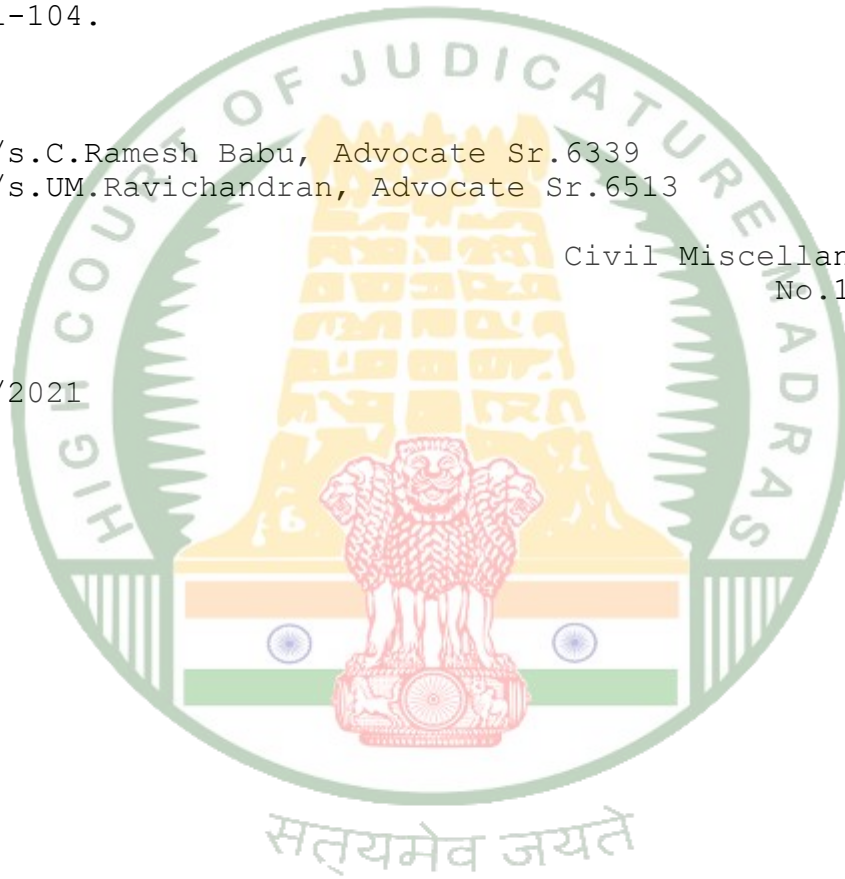
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The Section Officer,
V.R.Section, Madras High Court,
Chennai-104.

+1cc to M/s.C.Ramesh Babu, Advocate Sr.6339
+1cc to M/s.UM.Ravichandran, Advocate Sr.6513

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