

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.03.2021

Judgment Delivered on : 25.03.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2552 of 2012

1. T.Ravichandran
S/o. Thirunavukkarasu
 2. Kalaivani
W/o. Ravichandran
- ... Appellants /Claimants

Vs.

1. Subramanian
S/o. Deivanayagam
 2. The Divisional Manager,
New India Assurance Co., Ltd.,
Villupuram.
- ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.873 of 2009 dated 07.06.2012 on the file of the Motor Accidents Claims Tribunal, Additional District Judge - III, Puducherry.

For Appellant : Mr.J.Kumaran
For Respondents : Mr.R.Sivakumar for R2

JUDGMENT

(This case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 07.06.2012 in MCOP.No.873 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge - III, Puducherry.

2. The case in brief is as follows:

On 17.10.2008 at 8 hours, while one Jegan was riding a bicycle near Gangaianman Koil, Thanikuppam to Embalm road, at that time a tractor belonging to the first respondent bearing Registration No. PY-01-AS-5347 driven by its driver in a rash and negligent manner and dashed against the bi-cycle, as a result of which, he was thrown away and died.

3. The learned counsel for the appellants/claimants has submitted his arguments. As per his submissions, the

Tribunal had fixed the notional income as Rs.15,000/- per annum. Therefore, the award passed by the Tribunal is on the lower side. Aggrieved by the low amount granted as compensation, the claimants have come before this Court by way of appeal against the award passed by the Tribunal for the death of the claimants' son.

4. The learned counsel for the respondent/Insurance Company has submitted his arguments. As per his submissions, the deceased was 14 years teenage son, he was not an earning member of his family. The Tribunal had considered the same and notionally fixed the salary as Rs.15,000/- per annum and had assessed the compensation as just compensation to the family of the deceased. There cannot be any reason to enhance the same. Therefore, this appeal lacks merits and it has to be dismissed.

5. Whether the claimants/appellants (Parents of the deceased) are entitled to enhancement of compensation.

6. Perused the claim petition filed by the appellants/claimants before the Motor Accident Claims Tribunal/III Additional District Judge, Pondicherry, in MCOP No.873/2009, the counter filed by the second respondent/Insurance Company and the order passed by the Motor Accident Claims Tribunal.

7. On perusal of the award passed by the Tribunal, it is found that the Tribunal had granted only meagre amount as compensation for the death of the son of the claimant. It is found that only Rs.15,000/- was fixed as notional income per annum. Therefore, the award passed by the Tribunal is on the lower side. Based on the Law relating to Motor Accident Claims by Justice. J.R.Midha following on the Hon'ble Supreme Court ruling reported in 2009 (1) TNMAC 593 (SC) (R.K.Malik and Another Vs. Kiran Pal and others) for computation of the compensation for death of a child, in this case the deceased was 14 years old son of the claimant. Therefore, he is not a contributing member of his family. However, the learned counsel for the claimants had stated that he was attending work along with his father and was earning a sum of Rs.250/- per day. Therefore, this Court fixed the notional income as Rs.200/- per day, which works out to

Monthly Income	= 200x30=6000/-
½ towards family expenses	= Rs.6000x1/2=3000
Annual income for computation	=3000x12 = 36000

Taking the multiplier as 18 for the age group upto 25 years

Pecuniary Loss	::	Rs.36000 x18
	::	Rs.6,48,000/-

8. Since no amount was awarded by the Tribunal under the heads "Transportation and "Loss of Estate", this Court awards

a sum of Rs.5,000/- and 50,000/- towards "Transportation" and "Loss of Estate" respectively.

9. The Tribunal awarded a sum of Rs.20,000/- towards "loss of love and affection" is too low. Considering the age of the deceased, this Court enhanced from Rs.20,000/- to Rs.50,000/-.

10. Since the amounts awarded by the Tribunal under the head funeral expenses is just and fair, the same is hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of dependency	1,70,000	6,48,000
2	Funeral Expenses	10,000	10,000
3	Loss of Estate	-	50,000
4	Transportation	-	10,000
5	Loss of Love and Affection	20,000	50,000
	Total	2,00,000	7,68,000

11. The Insurance Company had disputed the liability of the insurer claiming that the tractor was attached with mini tipper and the tipper was not insured with the Insurance Company. Therefore, that the violation of the policy of the insurance, R1 is the owner of the tractor. He is duty bound to pay the compensation. The Insurance Company/R2 is directed to deposit the award amount into Court and recover the same from the first respondent/owner of the tractor including attachment of properties of R1/owner of the vehicle towards recovery of dues of R1.

12. The point for consideration is answered in favour of the appellants/claimants and against the respondent/Insurance Company.

Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.873 of 2009 on the file of the Motor Accidents Claims Tribunal, III- Additional District Judge, Pondicherry, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of

this judgment. On such deposit, the first claimant shall be entitled to withdraw a sum of Rs.3,50,000/- with accrued interest. The second claimant shall be entitled to withdraw a sum of Rs.4,18,000/-. The appellants are directed to pay appropriate Court fees within a period of two months, failing which, they are not entitled to claim interest on the award amount. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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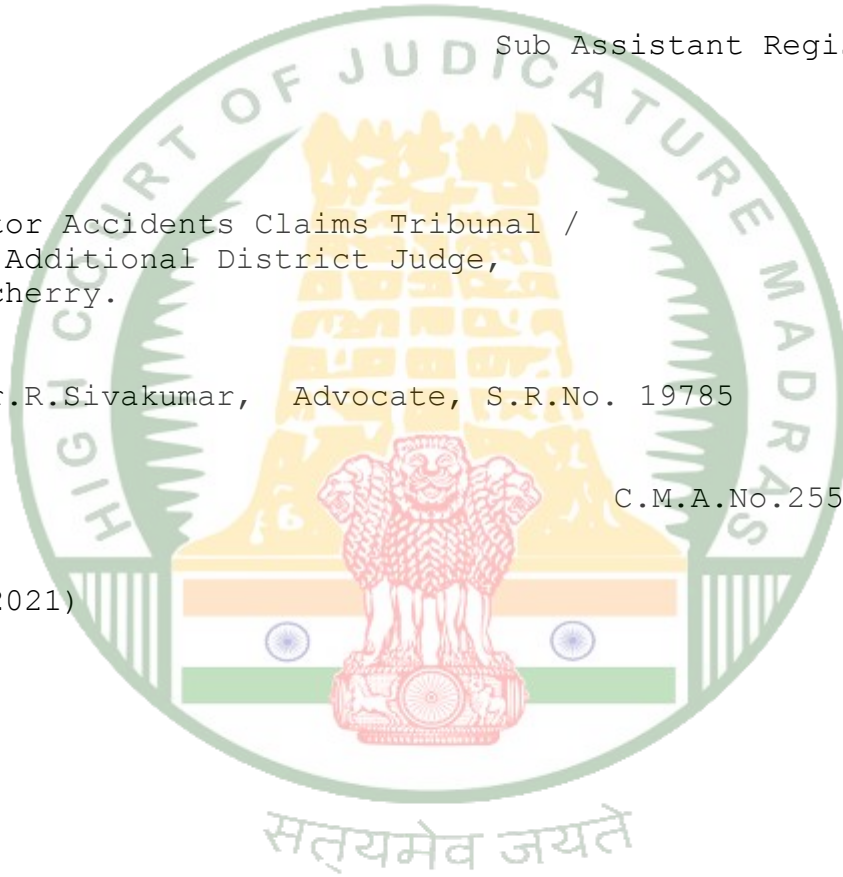
To

1. The Motor Accidents Claims Tribunal /
III - Additional District Judge,
Pondicherry.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No. 19785

C.M.A.No.2552 of 2012

RSV(CO)
GN(12/05/2021)



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