IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Civil Miscellaneous Appeal No.1466 of 2018

1.Sudhakaran
2.Minor Nandhitha
(Minor 2nd appellant represented by her father/
next friend/guardian/the 1st appellant herein)
... Appellants/Petitioners

Versus

1.S.V.Tulasidoss
(R1 remained ex-parte before Tribunal.
Hence, notice to R1 dispensed with)

2.Iffco Tokio General Insurance Company Limited,
No.128, Habibullah Road,
2nd and 3rd Floor,
T.Nagar, Chennai – 600 017. ...Respondents/Respondents

The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.A.C.T.O.P.No.3944 of 2013, dated 06.02.2017, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : M/s.Terry Chella Raja
For Mr.V.Velu

For R1 : Ex-parte

For R2 : Mrs.K.Saraswathi

JUDGMENT

The claimants in M.C.O.P.No.3944 of 2013, which was on the file of the Chief Court of Small Causes, Chennai/Motor Accidents Claims Tribunal, Chennai, have filed the present appeal aggrieved by the compensation granted by the Tribunal by an award dated 06.02.2017 owing to the unfortunate death of Praveena, who was the wife of the first claimant and the mother of the second claimant in a motor accident.

2. The Claim Petition had been filed seeking compensation of Rs.31 lakhs but was restricted to Rs.20 lakhs. The Tribunal by award dated 06.02.2017 had granted compensation of Rs.15,45,000/-.

3. Assailing the said quantum of compensation granted, the present appeal has been filed.

4. The deceased Praveena, on 08.04.2013, at around 01.00 p.m., in the afternoon, was travelling in a car bearing registration No.TN 22 CB 0033 from Tada to Chennai. It was alleged that the car was driven in high speed in a rash and negligent manner. It dashed against the centre median. Owing to this accident, Praveena died on the spot. Claiming that the accident occurred only owing to the rash and negligent manner in which the vehicle was driven, the Claim Petition had been preferred by the husband and by her minor daughter.

5. A Counter had been filed by the second respondent/Iffco Tokio General Insurance Company Limited, wherein they had denied their liability to pay compensation and disputed the manner in which the accident was said to have happened.

6. In the claim petition, it had been stated that Praveena was earning a sum of Rs.15,000/- per month and that she had studied B.A and was working as an Accountant in Escol Enterprises at Nanganallur in Chennai.

7. This facts about her employment and about the monthly income which was claimed she was earning were also denied and disputed in the counter statement of the second respondent.

8. In view of the adversarial stand taken by the claimants and the second respondent, the Tribunal invited the parties to graze the witness box and adduce evidence.

9. During the trial, the first claimant/Sudhakaran was examined as P.W.1. He also examined two other witnesses as P.W.2 and P.W.3.

10. In view of the arguments advanced before this Court, the evidence of P.W.3 would assume some importance. She had deposed on behalf of the employer/Escol Enterprises and her evidence was relevant to the quantum of compensation to be determined as she spoke about the monthly income or rather the monthly salary paid to the deceased.

11. The claimant also marked Exs.P1 to P10. Ex.P1 was the copy of the First Information Report. Ex.P4 was the copy of the Salary Certificate. Ex.P8 were the Income Tax returns and Ex.P10 was the copy of the Bank Statement.

12. The respondents did not adduce any oral and documentary evidence.

13. On the basis of the evidence adduced, the Tribunal proceeded to determine the first issue namely, the manner in which the accident occurred and perused the Ex.P1, the copy of the First Information Report, and came to a conclusion that the accident had occurred only owing to the rash and negligent manner in which the car was driven and therefore, determined that aspect of negligence on the car driver. I affirm the said finding.

14. The Tribunal then proceeded to determine as to who has to pay the compensation, if at all, compensation is awarded. Since the vehicle bearing registration No.TN 22 CB 0033 was insured with the second respondent, it had been stated that the second respondent was liable to pay compensation. I would affirm that particular finding also.

15. Thereafter, the Tribunal proceeded to determine the quantum of compensation.

16. In this connection, the Tribunal determined the age of the deceased as 39 years and applied a multiplier of '15'. With respect to the income, the evidence of P.W.3 was examined. P.W.3 was running Escol Enterprises and stated that she employed Praveena as an Accountant, and paid a sum of Rs.15,000/- as monthly salary. She also filed Ex.P8/Income Tax returns and Ex.P9/Purchase order and Ex.P10/Bank Statements. However, the Tribunal observed that she failed to file any document to prove that she had actually paid Rs.15,000/- as monthly salary.

17. This point had been assailed by Mr.Terry Chella Raja, learned counsel for the appellants before this Court who stated that the Balance sheet had been produced, and that a perusal of the same would show that there is an entry towards salaries and that a further observation would indicate that Praveena was paid a sum of Rs.15,000/- as monthly salary.

18. The Tribunal however determined the salary at Rs.8,000/- and added 15% towards future prospects and deducted 1/3rd towards personal expenses and arrived at a net monthly salary of Rs.8,000/-. Applying the multiplier of '15', the annual loss of income was determined at Rs.14,40,000/- [Rs.8,000X 12X 15].

19. The Tribunal also granted a sum of Rs.25,000/- towards loss of consortium to the husband/first claimant, a sum of Rs.50,000/- totally towards loss of love and affection to both the first and second claimants, a sum of Rs.5,000/- towards transportation charges, a sum of Rs.25,000/- towards funeral expenses and a sum of Rs.15,000/- towards loss of estate. In all, the Tribunal had granted a total compensation of Rs.15,60,000/-.

20. Heard Mr.Terry Chella Raja, learned counsel appearing for Mr.V.Velu, learned counsel for the appellants and Mrs.K.Saraswathi learned counsel for the second respondent/Insurance Company.

21. The Tribunal, with respect to the compensation to be granted, though evidence was presented before the Tribunal indicating that the employer/P.W.3 paying a sum of Rs.15,000/- as monthly income, had still went on to search for further evidence and had stated that no document had been produced to show that P.W.3 actually paid a sum of Rs.15,000/- towards salary and therefore, came to a conclusion that a sum of Rs.8,000/- can be taken as a reasonable salary which an accountant would be paid.

22. This reasoning seems to be a point of real agitation in Mr.Terry Chella Raja, learned counsel who claimed that the documents produced namely the Income Tax Certificates and also the Balance Sheet would indicate that substantially more amount have been paid as salary.

23. It was also contended by the learned counsel that the oral evidence of P.W.3 should be taken into consideration and there cannot be any suspicion created over the said oral evidence. It was also stated that during the cross examination when a question was raised as to how the salary was paid, the witness had very categorically stated that salary was paid by cash which would indicate that there was no document available to prove the quantum of salary.

24. I have given my anxious consideration to the arguments advanced and also to the available records.

25. I hos that balancing the rival version, it would only be prudent to determine the monthly salary at Rs.11,000/- per month and proceed to determine the compensation to be paid accordingly.

26. It must be pointed out that though this Court had directed the registry to call for records from the Trial Court and in spite of communication sent by the registry, the Trial Court had not forwarded the records. Let me however, not keep the appeal pending on that ground.

27. I would determine the salary of the deceased at Rs.11,000/- , I would add 40% towards future prospects. This would indicate that the monthly income would be Rs.15,400/- [Rs.11,000 + 4,400 (40% of 11,000) Towards personal expenses 1/3rd will have to deducted. This would indicate the monthly salary at Rs.10,267/- [15,400 – 5133]. The annual income would then be Rs.1,23,204/- [10,267 X 12] and by applying multiplier '15', it would be Rs. 18,48,060/- [1,23,204 x 15].

28. An amount of Rs.40,000/- is granted towards loss of consortium to the husband/first claimant and another amount of Rs.40,000/- is granted towards loss of love and affection to the second claimant/minor daughter. An amount of Rs.5,000/- is granted towards transportation charges and a sum of Rs.15,000/- is granted towards funeral expenses. A sum of Rs.15,000/- is granted towards loss of estate.

The Total Compensation now calculated is under:

Sl. No	Description	Amount awarded by this Court (Rs)
1	Loss of income	Rs.18,48,060/-
2	Loss of consortium to the first appellant	Rs.40,000/-
3	Loss of Love and affection to the second claimant	Rs.40,000/-
4	Transportation charges	Rs.5,000/-
5	Funeral Expenses	Rs.15,000/-
6	Loss of estate	Rs.15,000/-
	Total	Rs.19,63,060/-

29. In the result, this Civil Miscellaneous Appeal is allowed. The compensation awarded by the Tribunal at Rs.15,45,000/- is hereby enhanced to Rs.19,63,060- [Rupees Nineteen lakhs Sixty Three Thousand and Sixty only] together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a

period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.3944 of 2013, on the file of the Motor Accidents Claims Tribunal/Chief Court of Small Causes, Chennai. On such deposit, the first appellant is permitted to withdraw an amount of Rs.10,63,060/-. The share of the minor daughter/second appellant is directed to be deposited in any one of the Nationalised Bank in any interest bearing Fixed Deposit Scheme till the minor second appellant attains major. On such deposit, Sudhakaran, who is the father of the minor second appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor second appellant. The 2nd Respondent/Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.3944 of 2003, if the entire award amount has already been deposited by them. It is made clear that the appellants are not entitled to any interest for the delay period as per the order of this Court dated 02.07.2018 made in C.M.P.No.22134 of 2018 in C.M.A.SR.No.87916 of 2017. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

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To
1.The Chief Judge, Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.V.Velu, Advocate SR.No.29007

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.No.28310

GP(CO)
GMY(03/06/2022)