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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2022

CORAM

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

C.M.A.No.1552 of 2017

1.M.Vijaya
2.R.Tamil Selvi
3.M.Uvaraj
4.B.Meenakshi
5.M.Udayakumar

... Appellants/ Claimants

Vs.

1.M/s.Symrise Private Limited,
No.140, Old Mahabalipuram Road,
Semmencheri,
Chennai - 600 119.

2.Royal Sundaram Alliance Insurance Co. Limited,
"Sundaram Towers",
No.45 & 46, Whites Road,
Royapettah,
Chennai - 600 014.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 25.09.2014 MACT.O.P.No.1748 of 2012, on the file of the V Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellants : M/s.N.M.Muthurajan

For R1 : M/s.C.Khathiravan
for M/s.Ridhima Sharma

For R2 : M/s.B.Raghavan
for M/s.M.B.Gopal an Associates

JUDGMENT

The claimants in MACT.O.P.No.1748 of 2012, are the appellants herein.

2. The said MACT.O.P.No.1748 of 2012 on the file of the V Small Causes Court / Motor Accidents Claims Tribunal, Chennai



had been filed owing to the unfortunate death in a road accident of the husband of the 1st claimant and the father of the claimants 2 to 5. The deceased was a plumbing contractor and it was claimed that he was a sub-contractor for the Government Plumbing Contractors.

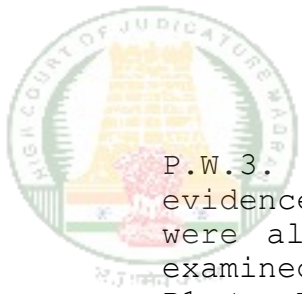
3. The necessity to institute the claim petition arose, owing to the fact that the deceased, L.Munusamy was driving a Motorcycle bearing Registration No.TN-06-C-2451 on 19.03.2012 at around 09.30 hours from Raja Annamalaipuram to Semmencherry along Rajiv Gandhi Salai from North to South direction. His daughter, the 4th claimant B.Meenakshi, was the pillion driver. She was having her ten months' infant in her hand. The Motorcycle was proceeding opposite to Nungambakkam Koil, Semmencherry. At that time, a four wheeler bearing Registration No.TN 22 CY 8073 said to have been driven in a rash manner had dashed against the motorcycle. Owing to the said accident, L.Munusamy died. Placing negligence on the owner and the driver of the four wheeler and consequently on the second respondent before the claim Tribunal as the insurer of the vehicle, a claim petition was preferred.

4. Both the respondents joined issue with the claimants and filed separate counter statements. The first respondent put the onus on the claimants to prove the issue of negligence. The quantum of claim sought was also questioned. The second respondent/Insurance company also filed counter affidavit and claimed that the compensation sought was excessive. They also put the issue of negligence to be proved by the claimants.

5. In view of the fact that the respondents had joined issues with the claimants, trial was conducted. It must also be mentioned that there were two other claim petitions namely M.C.O.P.No.1746 of 2012, which was preferred by the minor/the young infant, who was with her mother Meenakshi/4th claimant, daughter of the deceased and the other by Meenakshi, who filed a separate claim petition in M.C.O.P.No.1747 of 2012. With respect to the death of Munusamy, his legal representatives filed M.C.O.P.No.1748 of 2012. The award granted in M.C.O.P.No.1748 of 2012 alone is under challenge in the present Civil Miscellaneous Appeal.

6. Heard Mr.N.M.Muthurajan, learned counsel appearing for the appellants, Mr.C.Khathiravan for Ms.Ridhima Sharma learned counsel appearing for the first respondent and Mr.M.B.Raghavan for M/s.M.B.Gopalan Associates, learned counsel appearing for the second respondent.

7. During the course of trial, on the said of the claimants, the 1st claimant/wife of Munusamy was examined as



P.W.3. It must be mentioned that P.W.1 and P.W.2 had adduced evidence with respect to M.C.O.P.No.1746 and 1747 of 2012. There were also two independent witnesses P.W.5 and P.W.6, who were examined to determine the monthly income of Munusamy. Exhibits P1 to P18 were marked. With respect to the present issue and present appeal, the work certificate, P17 and work certificate, P18 alone will be relevant documents. On the side of the respondent, R.W.1 was examined and he marked Exs.R1 to R5.

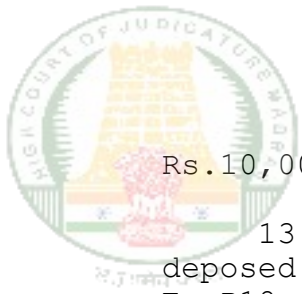
8. The Tribunal with respect to the issue of negligence had observed that Munusamy was driving along Rajiv Gandhi Salai from North to South and while proceeding opposite to Nungambakkam Koil, Semmancherry, a four wheeler driven by the driver of the first respondent bearing Registration No. TN 22 CY 8073 had come from behind and had dashed against the motorcycle. It had been stated that the very fact that the accident was caused by dashing the motorcycle from behind can be a basis to determine the negligence was solely on the driver of the four wheeler.

9. The Tribunal also examined Exs.P1 and P2, the copy of the First Information Report and the copy of the rough sketch to determine the negligence. I would affirm that particular finding of the Tribunal.

10. With respect to the second issue, it was also held that since the vehicle was insured with the second respondent the burden was placed on the second respondent to pay the compensation determined owing to an accident. The Tribunal then proceeded to determine the compensation to be granted. The primary issue was to determine the monthly income of deceased Munusamy. P.W.3/1st claimant had stated that the deceased was aged about 51 years and that he was a Plumbing contractor and earning Rs.20,000/- per month. However, she admitted that documents to show his earning capacity had not been produced. P.W.4 and P.W.5, who are said to be contractors, have stated that the deceased was actually a Sub-Contractor and they affirmed that he would be in a position to earn Rs.10,000/- per month. But, in the absence any documentary evidence on that particular aspect, the Tribunal determined a sum of Rs.10,000/- would be a just amount to be fixed as the monthly income of the deceased.

11. The learned counsel for the appellants had stated that in view of the evidence of P.W.4 and P.W.5 and Ex.P17 and Ex.P18, the Court should revisit the monthly income determined.

12. The learned counsel for the second respondent however pointed out that the accident taken place in the year 2012 and even in the absence of any documentary proof with respect to the monthly income, determination of the income of deceased at



Rs.10,000/- was reasonable.

13. A perusal of the records show that P.W.4 and P.W.5 have deposed about the monthly income of the deceased and Ex.P17 and Ex.P18 are the work certificates relating to the work that had been allotted to the deceased. That fact cannot be a ground to presume that he would be continuing to get that particular income continuously. In view of the fact that arguments had been advanced and there is some evidence available with respect to the fact that he was a working as Sub-contractor, I would re-fix the monthly income from Rs.10,000/- to Rs.11,000/-.

14. However, a perusal of the order of the Tribunal shows that towards future prospects 15% had been granted, that has to be necessarily interfered with and only 10% has to be granted for the future prospects, since at the time of the accident, the deceased was aged about 51 years and Ex.P12, the death report shows that the deceased was aged about 55 years.

15. Accordingly, the monthly income is fixed as Rs.11,000/- per month and if 10% is added towards future prospects, it would be Rs.11,000/- + Rs.1,100/-, which is Rs.12,100/-. The deceased was aged about 55 years, then the multiplier would be '11'. From the monthly income $\frac{1}{4}$ th can be deducted towards personal expenses. Therefore, the monthly income would be Rs.12,100/- (-) Rs.3,025/- ($\frac{1}{4}$ th of monthly income) = Rs.9,075/-. Hence, the notional income comes to $9,075 \times 12 \times 11 = \text{Rs.}11,97,900/-$, which is rounded off to Rs.12,00,000/-. Loss of consortium granted at Rs.1,00,000/- is reduced to Rs.40,000/-. Loss of love and affection for four children would be Rs.40,000/- x 4 = Rs.1,60,000/-. Finally, the compensation now granted is as follows :-

Notional income $9,075 \times 12 \times 11$	12,00,000/-
Loss of consortium	40,000/-
Loss of love and affection 40,000 x 4	1,60,000/-
Funeral expenses	25,000/-
Loss of Estate	11,000/-
Total	14,36,000

16. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.13,75,000/- is hereby enhanced to Rs.14,36,000/- [Rupees Fourteen Lakhs Thirty six Thousand only] together with interest at the rate of 7.5% per annum from the date of the appeal till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount, now determined by



this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1748 of 2012, on the file of the V Small Causes Court (Motor Accidents Claims Tribunal) Chennai. On such deposit, the 1st appellant is permitted to withdraw the amount and the shares of the children are retained at 50% at any nationalised bank as directed by the Tribunal, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, as awarded by the Tribunal less the amount if any, already withdrawn by making necessary applications before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sp/mp

To

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

Copy To:

The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.Ridhima Sharma, Advocate, S.R.No.20783
+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.20699

CMA.No.1552 of 2017

RR(CO)
SB(25/04/2022)