

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.NO.2524 OF 2018

1. S.Raj (Died)

2. R.Subetha

... Appellants/Petitioners

.Vs.

1. Aghin Roadways,  
No.4/83, New No.5/93,  
Main Road, Kaniyur,  
Karumathampatti,  
Coimbatore - 641 659.

2. Reliance General Insurance Co.Ltd.,  
"Rai's Tower", 2nd Floor,  
Plot No.2054, 2<sup>nd</sup> Avenue,  
Next to Senthil Nursing Home,  
Anna Nagar, Chennai - 600 040.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989 against the judgment and decree dated 28.03.2018 in M.C.O.P.No.896 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Motor Accident Claim Petitions, Small Causes Court at Chennai.

For Appellant : M/s.Ramya V.Rao

For Respondent-1 : Served - No Appearance

For Respondent-2 : Mr.S.Arun Kumar

JUDGMENT

The claimants are the appellants before this Court. They had filed M.C.O.P.No.896 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court at

Chennai, claiming compensation of a sum of Rs.25,00,000/- for the death of their son, Vimal Raj in a road accident on 12.08.2013.

2. It is the case of the claimants that the said Vimal Raj, who was 28 years old, was working as a load man, earning a monthly income of Rs.15,000/- per month. He had died in a road accident on 12.08.2013. On the said date, at about 23.00 hours, when he was working as a load man in a lorry, bearing Registration No.TN-37-BZ-2305, which was proceeding near Sathampoondi Village, Thiruvannamalai, the deceased had alighted on the rear side of the lorry. At that time, the lorry had suddenly reversed, as a result of which, the deceased had fallen down on the road and the rear wheel of the lorry had run over him. By reason of this accident, the said Vimal Raj had sustained fatal injuries and had died in the hospital.

3. The first respondent, owner of the lorry had not entered appearance and was set ex-parte and it was the Insurance Company, which had denied the manner in which the accident had taken place. They had contended that the deceased had been standing behind the lorry and had not responded to the reverse horn, as a result of which, the accident has taken place and therefore, he was also a contributory negligent. In all respects, the second respondent-Insurance Company had put the appellants to strict proof.

4. The Tribunal, after considering the evidence, held that the accident had occurred only on account of the rash and negligent driving of the lorry by its driver. The Tribunal below, relying upon the Post Mortem Certificate-Ex.P4, concluded that at the time of his death, the age of the deceased was 31 year old. Thereafter, since Ex.P6-Salary Certificate had not been corroborated by the authorised persons, who had issued the Salary Certificate, the Tribunal had ignored the same and fixed the monthly income at Rs.8,000/-, to which 40% was added towards future prospects and 50% was deducted towards personal expenses and after granting the amounts under the conventional heads, a sum of Rs.12,10,200/- was awarded as compensation by the Tribunal.

5. Challenging the same, as being on the lower side, the appellant is before this Court.

6. The learned counsel for the appellant would submit that the Tribunal has erred in fixing the notional income at Rs.8,000/- totally overlooking the fact that the deceased was working as a load man, which fact was also not been denied by the second respondent-Insurance Company. It is her contention that the Tribunal ought to have fixed the notional income at

Rs.10,000/-, to which, 40% towards future prospects ought to have been added.

7. However, Mr.S.Arun Kumar, learned counsel appearing for the second respondent-Insurance Company would submit that the Tribunal has adopted the correct notional income.

8. Heard the learned counsel on both sides and perused the materials available on record.

9. Admittedly, the deceased was working as a load man in the local market. He would have definitely earned atleast a sum of Rs.300 to 400 per day. Considering his age, he would have definitely had employment on most days. Therefore, the notional income of Rs.9,500/- would be adequate, to this, 40% has to be added towards future prospects. Therefore, the notional monthly income would be a sum of Rs.13,300/-. Since the deceased was aged 31 years old at the time of the accident, the multiplier of 16 has to be adopted. After deducting 50% towards the personal expenses, the pecuniary loss would be a sum of Rs.12,76,800/- (Rs.13,300 x 12 x 16 x 1/2) An amount of 1,00,000/- has been granted under the head of loss of "Love and Affection". This has to be reduced to a sum of Rs.80,000/-. Therefore, the award is modified as follows:

| Heads              | Amount by the Tribunal in Rs. | Amount Awarded by this Court in Rs. |
|--------------------|-------------------------------|-------------------------------------|
| Loss of Dependency | 10,75,200                     | 12,76,800<br>(enhanced)             |
| Love and Affection | 1,00,000                      | 80,000<br>(Reduced)                 |
| Loss of Estate     | 15,000                        | 15,000                              |
| Transport Charges  | 5,000                         | 5,000                               |
| Funeral Expenses   | 15,000                        | 15,000                              |
| Total              | 12,10,200                     | 13,91,800                           |

10. The appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from Rs.12,10,200 to Rs.13,91,800. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.896 of 2014 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award

amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimant. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

srn

To

The Motor Accident Claim Petitions,  
The Special Sub Court No.1,  
Small Causes Court,  
Chennai.

Copy To:-

The Section Officer,  
V.R. Section,  
High Court of Madras,  
Chennai.

+2ccs to M/s.Ramya V.Rao, Advocate, S.R.No.38741  
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.38519

C.M.A.NO.2524 OF 2018

MG(CO)  
PBS/18/07/2022