

**II (2013) ACC 16B (CN) (Mad.)
MADRAS HIGH COURT**

Aruna Jagadeesan, J.

NEW INDIA ASSURANCE CO. LTD.—Appellant

versus

M. VIJAYA KUMARI & ORS.—Respondents

C.M.A. No. 2588 of 2009—Decided on 27.9.2012

JUDGMENT

Aruna Jagadeesan, J.—This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 8.9.2008 made in MCOP.No.5130/2004 by the learned II Judge, Small Causes Court (MACT) Chennai, whereby the Tribunal awarded a sum of Rs.5,50,680/- as total compensation with interest at 7.5 per cent p.a. from the date of the claim petition till the date of realization to the claimants/the Respondents 1 and 2 herein, who are the parents of the deceased M. Senthil Kumar, who died in the motor accident that had occurred on 21.5.2004.

2. On 21.5.2004 at about 12.15 hours, when the deceased was riding motor cycle in the Arcot Road, near Kesavardhini bus stop, an auto coming from Vadapalani towards Porur in the extreme wrong opposite direction, hit the motorcycle, as a result of which the deceased succumbed to injuries. The Tribunal, after analysing the evidence placed on record, held that the accident had occurred only due to the rash and negligent driving of the driver of the auto and fastening the liability on the Appellant Insurance Company, awarded compensation as stated above.

3. As regards the negligence aspect, the Tribunal, considering the evidence on record, has held that there was negligent on the part of the rider of the offending vehicle and that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle. The finding recorded by the Tribunal with regard to the actionable negligence has not been assailed by the Appellant. Hence, the said finding of the Tribunal with regard to the negligence aspect fixing the same on the part of the driver of the offending vehicle is liable to be confirmed and accordingly, it is confirmed.

4. As regards the quantum of compensation, in the claim petition, it is stated that the deceased was studying Aeronautical Engineering Course. But, during the course of the evidence, Ex.P15 has been filed to show the course completion certificate, which indicated that the deceased has completed the Aeronautical Engineering Course. According to the claimants, the deceased was a brilliant student and had he been alive, he would have earned more income, as there was much scope for the course of Aeronautical Engineering. Considering his future prospects, the Tribunal fixed the monthly income of the deceased at Rs.3000/-. Since the deceased was a bachelor, as per age of his mother, who was aged 40 years old at the time of the accident, the multiplier of 16 was applied. By applying the said multiplier of 16 and after deducting 1/3rd towards his personal expenses, the loss of dependency was arrived at Rs.3,84,000/-. To this the Tribunal has added Rs.5000/- towards funeral expenses and Rs.40,000/- towards loss of love and affection, which are just and reasonable compensation and the same shall stand unaltered.

5. The victim had undergone treatment in Puthur Health Center and he died on 1.6.2004

that is nearly after 10 days after the accident. Ex.P7 Hospital Bills and Ex.P8 medical bills indicated that the claimants had incurred an expenditure to the tune of Rs.1,21,680/- towards medical expenses, which the claimants are entitled to. In all, the Tribunal awarded a sum of Rs.5,50,680/- as total compensation with interest at 7.5 per cent p.a. from the date of the claim petition till the date of realization to the claimants, which is just and reasonable compensation and is in consonance with the evidence placed on record and I do not find any infirmity to interfere with the same.

6. In the result, this Civil Miscellaneous Appeal is dismissed and the impugned award and the apportionment apportioned by the Tribunal are confirmed. The claimants are permitted to withdraw their respective award amounts with proportionate interest as awarded and apportioned by the Tribunal. No costs.

Appeal dismissed.
