

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MRS.JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1525 of 2015
& M.P.No.1 of 2015

M/s. New India Assurance Co. Ltd.,
Motor 3rd Party Cell, Regina Mansion,
No.45 Moore Street,
Chennai - 600 001

... Appellant / R-2 before
Tribunal

versus

1. Tmt. J.Sakunthala
2. J.Johnson
3. J.Jayaseeli (Minor)
4. J.Vincent (Minor)

(R-3 & R-4 rep. By their Mother &
Natural Guardian, J.Sakunthala)

... R-1 to R-4 / Petitioners 1
to 4 before Tribunal

5. M/s. SARCC Infra structure,
No.4-A Loganathan Street,
Tambaram,
Chennai - 600 045

... R-5 / R-1 before Tribunal

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, passed in MCOP No.5053 of 2012, dated 09.01.2015, on the file of the learned Motor Accident Claims Tribunal (IV Judge), Small Causes Court at Chennai District.

For Appellant : Mr. J.Chandran

For Respondents : Mr. J.John

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J U D G M E N T

(Judgment of the court was delivered by S.VIMALA, J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation (of Rs.22,47,500/-), as ordered by the Claims Tribunal, payable to the petitioners / respondents 1 to 4 herein, as compensation, in respect of the death of the deceased, Jaganathan.

2. Jaganathan, the deceased, aged 39, employed as Mazdoor in Tamil Nadu Generation and Distribution Corporation Limited, earning a sum of Rs.12,000/- per month, died in an accident that took place on 27.09.2012, at Kelambakkam - Vandalur Road, Chennai.

3. The first respondent herein, as wife, and respondents 2 to 4 herein, as sons, filed the claim petition, assessing compensation payable at Rs.30,80,000/-, but restricting their claim to Rs.20,00,000/-. The Claims Tribunal awarded compensation of Rs.22,47,500/- and the break-up details are as under:-

Head	Amount
Loss of Dependency	Rs.18,22,500.00
Loss of Consortium to R-1	Rs. 1,00,000.00
Loss of Love, Happiness, Parental Care and Mental shock	Rs. 3,00,000.00
Funeral Expenses	Rs. 25,000.00
Total	Rs.22,47,500.00

4. While calculating the loss of dependency, the Tribunal has fixed the monthly income at Rs.10,000/-. Even though the gross-salary was Rs.11,879/-, as per salary certificate-Ex.P-5 and salary and service particulars-Ex.P-9, the Tribunal has fixed the monthly income at Rs.10,000/-. Applying the dictum laid down in the case of Sarla Verma and Others v. Delhi Transport Corporation Ltd., (2009) 1 TN MAC 1 (SC), the Tribunal has made addition of 50% of the actual salary, to the actual salary, towards calculation of future prospective income and deducted 1/4th towards personal expenses of the deceased and 10% towards income-tax. Thus, calculating the annual dependency has been arrived at Rs.1,21,500/-. Applying the multiplier of '15', loss of dependency has been calculated at Rs.18,22,500/-.

5. The main grievance of the learned counsel for the Appellant / Insurance Company is that the issue pertaining to the addition of 50% income to the existing income, in order to arrive at the future prospective income of the deceased, is a subject matter, which has been referred to the larger Bench of the Hon'ble Supreme Court and therefore, the addition of 50% of the income to the actual salary of the deceased, Jaganathan, is unjustified.

6. Whether this contention could be accepted is the issue to be considered.

6.1. It is settled law that, when an issue pertaining to a subject-matter is referred to the larger Bench and till the larger Bench resolves the issue, the existing law declared by the Hon'ble Supreme court will not be kept in suspended animation and that it should be followed till the decision of the larger Bench is made available.

6.2. Coming back to the issue of calculation of future prospects, some standardization in the assessment of future prospects in income was made in the case of Sarla Verma, referred to supra.

6.3. The Apex Court in Santosh Devi Vs. National Insurance Co. Ltd. & Ors. (2012) 6 SCC 421, after considering the findings in the Sarla Verma's case, came out with a different reasoning with regard to the assessment of future prospects in income to the category of persons employed in unorganized sector and that the benefit of addition of income was extended to that category also.

6.4. Both the cases (Santhosh devi and Sarla Verma) were discussed in the larger Bench case of Reshma Kumari & Ors v. Madan Mohan & another, reported in 2013 (5) SCALE 160 and the addition of 50% of the income to the existing income was approved. The relevant observation reads thus:-

"36. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the

actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."

6.5. The Hon'ble Supreme Court, in the case of Rajesh and Ors. v. Rajbir Singh and Ors. 2013 (6) SCALE 563, advocated and justified the expansion of concept of calculation of future prospects in income and in the language of the Supreme Court, the observation reads thus:-

"20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra)....."

6.6. It is appropriate to quote the decision of the Hon 'ble Supreme Court reported in Munna Lal Jain & Anr vs Vipin Kumar Sharma & Ors MANU/SCOR/02562/2015 (decided on 15.05.2015) in CIVIL APPEAL NO. 4497 OF 2015 (Arising from S.L.P. (C) No. 8362/2013, in which the addition of 50% of the actual salary towards calculation of future prospective income has been adopted. The relevant observation reads thus:-

"As far as future prospects are concerned, in Rajesh and others v. Rajbir Singh and others, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects:

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years." The deceased being of the age of 30 years, 50% is the required addition."

7. From the legal position indicated above, it is clear that the Tribunal is perfectly justified in calculating the future prospective increase in income and applying appropriate multiplier towards quantification of damages.

8. The next contention of the learned counsel for the Appellant / Insurance Company is that, the amount of compensation awarded towards loss of consortium to the wife and the loss of love and affection to the children are on the higher side.

8.1. Explaining the necessity of awarding adequate compensation in respect of claim on consortium, the Hon 'ble Supreme Court in Rajesh and Ors. v. Rajbir Singh and Ors., 2013 (6) SCALE 563 has observed :

In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

8.2. Therefore, the compensation awarded under the head of consortium cannot be said to be excessive.

9. The third contention of the learned counsel for the Appellant is that the compensation on account of loss of love and affection awarded to respondents 2 to 4 is excessive.

9.1. This submission, in our considered view, appears to be reasonable and the amount of compensation awarded to each of the respondents 2 to 4 is reduced by Rs.25,000/-, from Rs.1,00,000/- i.e., compensation awarded to each of them is fixed at Rs.75,000/-.

10. The final submission of the learned counsel for the Appellant is that the Department in which the deceased had been employed had paid a sum of Rs.10,00,000/- and that must be deducted from the total compensation.

10.1. There are absolutely no materials to substantiate this contention and therefore, we are unable to accept the same.

11. In the result, this Appeal is partly allowed, reducing the quantum of compensation awarded from Rs.22,47,500/- to Rs.21,72,500/-, which is payable by the Appellant / Insurance Company, with interest at 7.5% per annum, from the date of filing of the petition, i.e., from 01.10.2012 till the date of realization with costs. It is made clear that as observed by the Tribunal, no interest is payable for the default period, i.e., from 21.07.2014 to 30.07.2015.

11.1. The appellant / Insurance Company shall deposit the entire award amount, less the amount already deposited, if any, to the credit of the Motor Accident Claims Tribunal, within a period of two months from the date of receipt of the copy of this judgment.

11.2. Out of the amount awarded, the first respondent herein / wife is entitled to a sum of Rs.11,22,500/- and each of the children / R-2 to R-4 herein are entitled to a sum of Rs.3,50,000/-. The amount payable to the minor respondents shall be in a fixed deposit, reinvestment scheme, till they attain majority and till such time, the first respondent is entitled to receive the interest once in three months directly from the Bank, under intimation to the Tribunal. The first respondent shall pay the necessary court fee before receiving the award amount from the Tribunal. Consequently, the connected MP is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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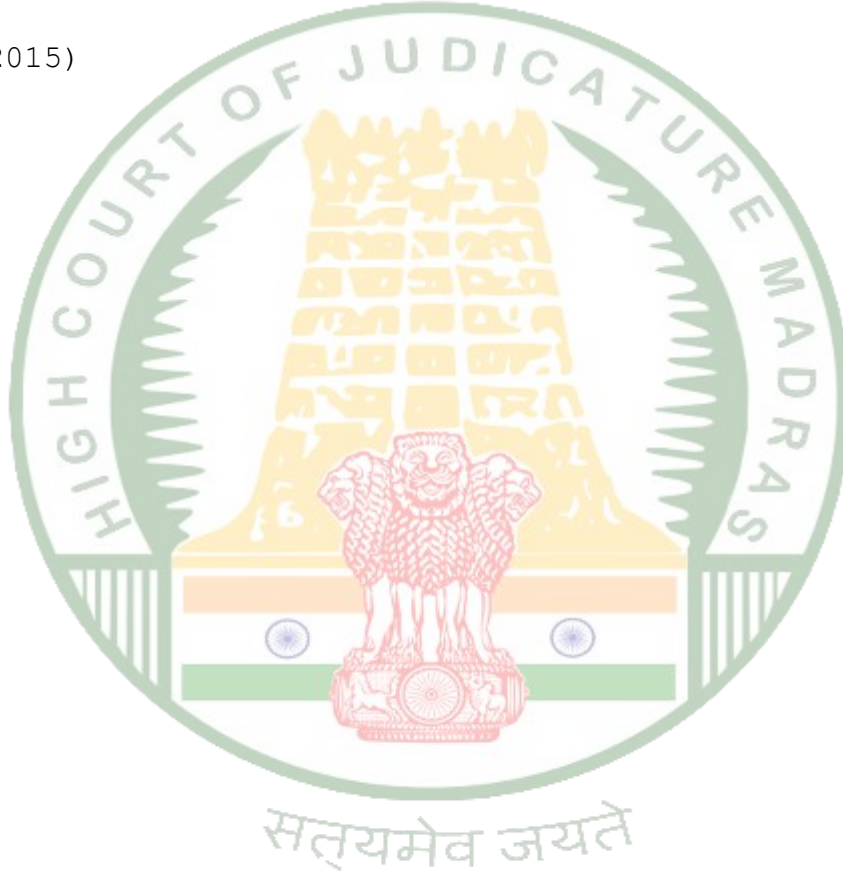
To

1. Motor Accident Claims Tribunal (IV Judge),
Small Causes Court at Chennai District

+2cc's to Mr.John, Advocate, S.R.No.37670

C.M.A.No.1525 of 2015
& M.P.No.1 of 2015

TEJ (CO)
CA(14/08/2015)



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