

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2015

CORAM

THE HON'BLE MRS. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

C.M.A. No.1661 of 2015

1.J.Uma
2.V.Jawaharlal Nehru
3.J.Silambarasan Appellants/Petitioners

Vs.

1.C.Bama
2.National Insurance Co.Ltd.,
(Muruga Theater Complex),
K.K.Road,
Villupuram,
Villupuram District.

3.A.Ravi
4.United India Insurance Co.Ltd.,
Nehruji Road,
Villupuram,
Villupuram District ... Respondents/Respondents

Appeal against the judgment and decree dated 25.07.2014 in M.C.O.P.No.187 of 2013 on the file of Motor Accidents Claims Tribunal, Special District Judge, Villupuram (Special District Judge), Villupuram.

For Appellants .. Mr.S.Ayyathurai
For Respondents .. Mr.C.R.Krishnamoorthy for R2
Mr.J.Michael Visuvasam for R4

JUDGMENT

(Judgement of the Court was delivered by S.MANIKUMAR, J.)

Being aggrieved by the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Special District Judge), Villupuram in M.C.O.P.No.187 of 2013, the claimants have filed the present appeal.

2.Brief facts are that on 07.02.2012, at about 3.30 hours, when the deceased, who was employed as a driver under the third respondent, was proceeding from Gingee to Chennai in a car bearing Registration No.TN-09-BF-5932, belonging to the third respondent,

the first respondent's tanker lorry bearing Registration No.TN-04-Q-5185 came on the opposite direction in a rash and negligent manner and in a high speed and hit the car near Vazhkkamparai and due to which, the deceased sustained fatal injuries and died on the spot. The fourth respondent is the insurer of the car. The deceased was aged 28 years at the time of accident and he was working as driver and earning Rs.10,000/- per month. Alleging that the accident was due to the rash and negligent driving of the driver of the tanker lorry and that the first respondent, being the owner of the lorry and the second respondent, being the insurer of the said lorry are liable to pay compensation, the claimants, who are the parents and brother of the deceased have filed claim petition, claiming compensation of Rs.25 lakhs.

3.The second respondent insurance company has filed the counter affidavit denying the manner of accident, age, avocation and income of the deceased and also the dependency of the claimants. The insurance company also raised the contention that the accident might have occurred only by the contributory negligence of the deceased and hence the third respondent, being the owner of the car and the fourth respondent, being the insurer of the car, are also liable to pay compensation, as both vehicles collided each other.

4.To substantiate the claim, the first claimant/mother of the deceased examined herself as P.W.1 and one Murugan was examined as P.W.2. On the side of claimants, Exs.P1 to A14 were marked. On the side of the respondents, the third respondent, owner of the car, examined himself as R.W.1 and no documentary evidence was adduced.

5.Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was due to the rash and negligent driving of the driver of the tanker lorry and the first respondent, the owner of the lorry and second respondent, the insurer of the lorry are liable to pay the compensation. Though it is claimed that the deceased was earning Rs.10,000/- per month, the Tribunal has taken the income at Rs.5,000/-. The deceased being a bachelor, after deducting 50% towards his personal expenses, the Tribunal calculated the loss of dependency at Rs.30,000/- (Rs.2,500/- x 12 = Rs.30,000/-) per annum. Since the deceased was aged 28 years at the time of accident, the Tribunal adopted multiplier 17 and awarded Rs.5,10,000/- (Rs.30,000/- x 17 = Rs.5,10,000/-) towards annual loss of dependency. The Tribunal has awarded total compensation of Rs.5,45,000/- as under:

Annual loss of dependency	.. Rs.5,10,000.00
Loss of Love and affection	.. Rs. 30,000.00
Funeral expenses	.. Rs. 5,000.00
	=====
Total	: Rs.5,45,000.00
	=====

6.Since the appellants challenge the quantum of compensation alone, we are not dealing with negligence and liability aspects.

7.The deceased was aged 28 years at the time of accident and he was working as driver under the third respondent. The claimants have marked Ex.P14 series - salary certificate of the deceased, which shows that the deceased was getting salary of Rs.10,000/-, a month before the accident and Rs.50/- per day as batta. The Tribunal, accepting Ex.A14 series, fixed the monthly salary of the deceased as Rs.5000/-. Since the deceased was a bachelor, the Tribunal has deducted 50% towards personal and living expenses and fixed the monthly income at Rs.2,500/-. However, as per the decision of the Honourable Supreme Court in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and Others (2009 (5) L.W. 561), 50% addition is to be made towards future prospects. Adding Rs.1,500/- being 50% of Rs.2,500/-, the monthly income works out to Rs.4,000/-. If multiplier 17 is adopted, the loss of dependency works out to Rs.8,16,000/- (Rs.4,000/- x 12 x 17 = Rs.8,16,000/-).

8.The Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection and Rs.5000/- towards funeral expenses. Claimants 1 and 2 have lost their only son. Therefore, we are of the view that the amount towards loss of love and affection has to be enhanced to Rs.1,00,000/- and accordingly the amount is enhanced. Likewise, the amount of Rs.5,000/- awarded towards funeral expenses is enhanced to Rs.25,000/- and a sum of Rs.5000/- is awarded towards conventional damages.

9.The total compensation awarded by the Tribunal at Rs.5,45,500/- is enhanced to Rs.9,46,000/- as under:

Head	Amount awarded by the Tribunal Rs.	Amount now awarded Rs.
Annual loss of dependency	5,10,000.00	8,16,000.00
Loss of love and affection	30,000.00	1,00,000.00
Funeral expenses	5,000.00	25,000.00
Conventional expenses	----	5,000.00
TOTAL	5,45,000.00	9,46,000.00

10.The interest awarded by the Tribunal at 7.5% per annum is confirmed. The enhanced amount will carry interest at 7.5% per annum

from the date of petition till the date of payment.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal (Special District Judge), Villupuram at Rs.5,45,000/- is enhanced to Rs.9,46,000/- payable with interest at 7.5%. Out of the enhanced compensation of Rs.4,01,000/-, claimants 1 and 2/parents are entitled to Rs.1,50,000/- each and the third claimant/brother is entitled to Rs.1,01,000/-.

12. It is stated that the entire amount of Rs.5,45,000/- awarded by the Tribunal has already been deposited. The enhanced amount of Rs.4,01,000/- with interest shall be deposited within a period of four weeks from the date of receipt of a copy of this judgement.

13. The civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

msk

07.08.2015

The matter was having been listed on 18.09.2015 under the caption for "Being mentioned" in pursuant to the order of this court dated 07.08.2015 and made in CMA No. 1661 of 2015 in the presence of the above advocates on either side, the court made the following order:

(Order of the Court was made by S.MANIKUMAR, J.)

This Civil Miscellaneous Appeal, is listed today, under the caption 'for being mentioned' at the instance of the learned counsel for M/s.National Insurance Company Limited, the 2nd respondent herein.

2. Heard the learned counsel for the appellant, learned counsel for M/s.National Insurance Company, the 2nd respondent herein and the learned counsel appearing for M/s. United India Insurance Company Limited, the 4th respondent herein.

3. Vide order dated 07.08.2015, we disposed of CMA No.1661 of 2015. While computing the compensation due and payable to the legal representatives of the deceased, the tribunal has fixed the monthly income as Rs.5,000/-. As the deceased was aged 28 years, at the time of accident and was stated to be a driver, we decided to add up 50% towards future prospects for computing the loss of dependency. If 50% is added up, then, the income to be determined for computing dependency is Rs.7,500/-. As he was a bachelor, 50% of the income should be deducted towards the personal and living expenses of the deceased. 50% of the same is Rs.3,750/-. Multiplier '17' is not disputed. Therefore, the loss of dependency should have been Rs.3,750/- x 12 x 17 = Rs.7,65,000/-.

4. A mistake has crept at paragraph No.7 of the order in CMA No.1661 of 2015 dated 07.08.2015, while computing the loss of contribution to the family, monthly income of Rs.4,000/- had been taken instead of Rs.3,750/-, as explained supra. Thus, the total compensation due and payable to the legal representatives of the deceased/appellants in CMA No.1661 of 2015, has to be reworked. Consequently, paragraph No.9, where we have apportioned the compensation under various heads also require modification. Paragraph Nos.7 to 13 also requires change.

5. Therefore, the corrected paragraph Nos.7 to 13 are as follows:

"7.The deceased was aged 28 years at the time of accident and he was working as driver under the third respondent. The claimants have marked Ex.P14 series - salary certificate of the deceased, which shows that the deceased was getting salary of Rs.10,000/-, a month before the accident and Rs.50/- per day as batta. The Tribunal, accepting Ex.A14 series, fixed the monthly salary of the deceased as Rs.5000/-. As the deceased was aged 28 years at the time of accident and was working as a driver, as per the decision of the Hon'ble Supreme Court in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and Others (2009 (5) L.W. 561), 50% addition is to be made towards future prospects. Accordingly, Rs.2,500/- is added and the total monthly income is Rs.7,500/-. Since the deceased was a bachelor, the Tribunal has deducted 50% towards personal and living expenses and the monthly contribution of the deceased is fixed as Rs.3,750/-. If multiplier 17 is adopted, the loss of dependency works out to Rs.8,16,000/- (Rs.3,750/- x 12 x 17 = Rs.7,65,000/-).

8.The Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection and Rs.5000/- towards funeral expenses. Claimants 1 and 2 have lost their only son. Therefore, we are of the view that the amount towards loss of love and affection has to be enhanced to Rs.1,00,000/- and accordingly the amount is enhanced. Likewise, the amount of Rs.5,000/- awarded towards funeral expenses is enhanced to Rs.25,000/- and a sum of Rs.5000/- is awarded towards conventional damages.

9.The total compensation awarded by the Tribunal at Rs.5,45,000/- is enhanced to Rs.8,95,000/- as under:

Head	Amount awarded by the Tribunal Rs.	Amount now awarded Rs.
Annual loss of dependency	5,10,000.00	7,65,000.00
Loss of love and affection	30,000.00	1,00,000.00
Funeral expenses	5,000.00	25,000.00
Conventional expenses	----	5,000.00
TOTAL	5,45,000.00	8,95,000.00

10. The interest awarded by the Tribunal at 7.5% per annum is confirmed. The enhanced amount will carry interest at 7.5% per annum from the date of petition till the date of payment.

11. As stated above, the compensation awarded by the Tribunal (Special District Judge), Villupuram at Rs.5,45,000/- is enhanced to Rs.8,95,000/- payable with interest at 7.5%. Out of the enhanced compensation of Rs.3,50,000/-, claimants 1 and 2/parents are entitled to Rs.1,25,000/- each and the third claimant/brother is entitled to Rs.1,00,000/-.

12. It is stated that the entire amount of Rs.5,45,000/- awarded by the Tribunal has already been deposited. The enhanced amount of Rs.3,50,000/- with interest is payable by M/s.National Insurance Company Limited, Villupuram District, the 2nd respondent in the appeal and accordingly, the 2nd respondent is directed to deposit the said amount together with interest, within a period of four weeks from the date of receipt of a copy of this judgment.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed."

6. Registry is directed to replace paragraph Nos.7 to 13 of the judgment dated 07.08.2015, with the above modified order, and issue fresh order copy.

ars

18.09.2015

Sd/-
Assistant Registrar (CS-II)

True Copy

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Special District Judge),
Villupuram.

1 cc to Mr.J.Michael Visuvasam, Advocate Sr.No.51122

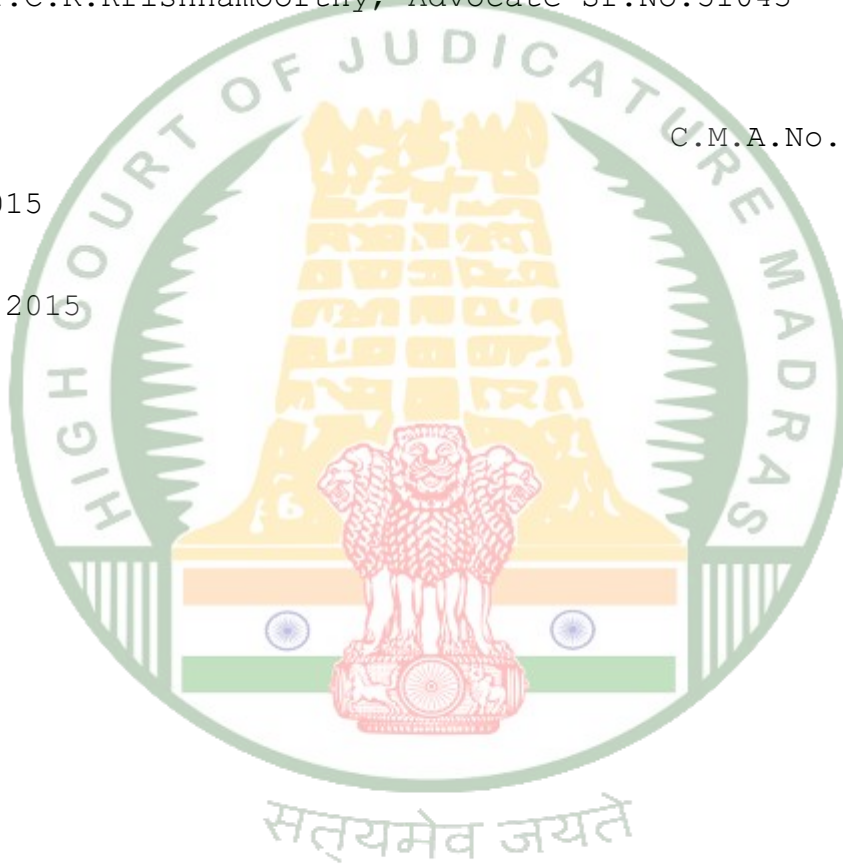
1 cc to Mr.S.Ayyathurai, Advocate Sr.No.50875

1 cc to Mr.C.R.Krishnamoorthy, Advocate Sr.No.51043

tej (co)
pmk.2.9.2015

JSV [CO]
PSI 29.09.2015

C.M.A.No.1661 of 2015



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