IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

C.M.A.No.2648 of 2014 & C.M.A.No.1676 of 2015
M.P.No.1 of 2014 and M.P.No.1 of 2015

National Insurance Co. Ltd.,
Branch Office, Salem-I. .. Appellant in CMA.No.2648/14
2nd Respondent in CMA.No.1676/15

.. Vs ..

1. Chellammal
2. Senthil Kumar
3. Indira
4. Poonkodi
5. Murali .. Respondents1 to 5 in CMA.No.2648/14
Appellants in CMA.No.1676/15

6. Thiagarajan .. 6th Respondent in CMA.No.2648/14
1st Respondent in CMA.No.1676/15

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the M.V.Act, 1988, against the judgment and decree, passed in M.C.O.P.No.21 OF 2009, dated 31.10.2013, on the file of the learned Motor Accident Claims Tribunal (Subordinate Judge), Mettur.

For Appellant in CMA.No.2648/14
2nd Respondent in CMA.No.1676/15 : Mr.D.Bhaskaran

Respondents 1 to 5 in CMA.No.2648/14
Appellants in CMA.No.1676/15 : Mr.P.Tamilavel

JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Quantum of compensation is the only challenge, in the present Civil Miscellaneous Appeals, before us.

2. It is the case of the respondent/claimant that in the accident, which occurred on 18.11.2008, Rajalingam, a 48 year old man, sustained fatal injuries and died on the spot. Wife, aged 46 years and sons & daughters, aged 33, 30, 28 and 26 years respectively, have preferred a claim petition in M.C.O.P.No.21 of 2009, before the Motor Accident Claims Tribunal (Subordinate Judge), Mettur, claiming compensation of Rs.50,00,000/-.

3. Before the Tribunal, the case of the respondents/claimants was that at the time of accident, the deceased, Rajalingam was aged 48 years, owned 15 acres of land. He was an agriculturist. That apart, he owned a dairy farm and vending milk. Besides, he was operating five buses for Kaveri College, on contract basis. According to them, from all the above sources, the deceased earned Rs.2,50,000/- per month. The Tribunal fixed the monthly income of the deceased as Rs.50,000/-. For the purpose of assessing the loss of dependency, Rs.17,000/- is taken, ie., 1/3rd of the monthly income determined by the Tribunal and after applying 11 multiplier, computed the dependency compensation as Rs.22,44,000/-. That apart, the Tribunal has awarded Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection, Rs.7,000/- towards damages to clothes and articles and Rs.3,000/- towards transportation. Altogether, the Tribunal has awarded Rs.22,74,000/- as compensation, with interest at the rate of 7.5% per annum, from the date of claim, till the date of deposit.

4. Assailing the correctness of the award, Mr.D.Bhaskaran, learned counsel for the National Insurance Co. Ltd., Salem, contended that the Tribunal has grossly erred in fixing the monthly income of the deceased as Rs.50,000/-, when there was no proper proof. According to him, in such circumstances, the notional income alone ought to have been taken into account, for the purpose of computing the loss of contribution to the family.

5. Upon perusal of Exs.P3 - Agreement Deed for plying the buses on contract basis, Ex.P4 - Authorisation Letter to ply the buses, Exs.P5 and P6 - Sale Deed and Ex.P7 - Computer patta and Ex.P8 - Pass Book of Kaveri College, the Claims Tribunal has presumed that the deceased would have earned Rs.50,000/- per month. However, the Tribunal has taken Rs.17,000/- as the monthly income for the purpose for computing the dependency

compensation.

6. Exs.P3 – Agreement Deed for plying the buses on contract basis, does not appear to be genuine. The stamp paper has been purchased for some other purpose. Money has been credited in the name of Mr.Senthil Kumar, his son and the 2nd respondent in this appeal. It has been erased with whitner and lateron, the name of the deceased is written. In the absence of producing any valid documents, to prove ownerships of buses and Ex.P3, having been observed as not genuine, we are not inclined to accept the case of the claimants, regarding operation of buses and generating income. Had the deceased owned five buses, as claimed, nothing prevented the claimants from marking the Registration Certificates of the buses, permits and other documents. Though reliance has been placed on the entries made in Ex.P9 – Pass Book of Kaveri College, upon perusal of the same, it could be deduced that the money was not paid to the deceased.

7. Though the claimants have marked documents, Exs.P5 and P6 – Sale Deeds, to show that the deceased owned lands, the above said documents also do not indicate the total extent of land, in the name of the deceased. The claimants have not taken any steps to obtain any Certificate from the concerned Village Administrative Officer or examined him to prove that the deceased had actually owned 15 Acres of land. Ex.P7 – Computer Patta, not only stands in favour of the deceased, but there are others. Even taking it for granted that the deceased had agricultural lands and earned some income, that cannot be said to be totally lost, after his demise. Still the lands could fetch income, if there is any agricultural activity.

8. Insofar as Milk vending business is concerned, the claimants have not produced any document to prove that the deceased had a dairy farm and earned a considerable sum. If the deceased had earned Rs.50,000/- per month, then he should have paid income-tax. He should have maintained a pass book, for the collage to transact the payment for operating the buses. When certain sum has been transacted by the College in the name of Mr.Senthil Kumar, he should have produced his pass book. If claimants could produce the copy of the pass book of the college, they could have summoned the college authorities to produce the the registers and account books, to prove that the deceased operated five buses and was paid the sum claimed.

9. There are no sufficient materials to prove that the deceased earned Rs.50,000/- per month. It is for the claimants to prove the nature of avocation and annual income of the deceased, by adducing oral and documentary evidence. But at the same time, if the actual income earned by the deceased, is not specifically mentioned in any of the documents, marked by the

claimants, on cumulative assessment of oral and documentary evidence, the Tribunal has to determine the annual income, by taking into account the ground realities, the practice prevalent in villages, regarding milk vending business, and the income earned from agricultural sources.

10. The mere fact that the claimants have produced the documents, Exs.P5 and P6 - Sale Deed and Ex.P7 - Computer patta, to show that the deceased owned lands, does not mean that he would have earned Rs.2,50,000/- per month. Reading of the entire judgment shows that the Tribunal has fixed an exorbitant monthly income of the deceased, without considering the principles underlined in compensating the accident victims. Hence, considering the avocation pleaded and the documents, pertaining to agricultural lands, we inclined to fix the monthly income of the deceased as Rs.15,000/-. Though it has been claimed that all the five claimants were dependant on him, considering the age of the claimants, transaction of money in the name of his son, Mr.Senthil Kumar, we are of the considered view that the contribution of the deceased to the family, would be less and hence, inclined to deduct 1/3rd only towards personal and living expenses of the deceased. In view of the above, the loss of monthly contribution of the deceased to the family works out to Rs.10,000/-. Hence, applying '11' multiplier to the age of the deceased, the dependency compensation works out to Rs.13,20,000/- (Rs.10,000/- x 12 x 11).

11. The Claims Tribunal has awarded Rs.10,000/- towards loss of consortium, which in the opinion of this Court, is very less. 'Consortium' as per the *Best v. Samuel Fox* reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, etc." Keeping the same in the mind, we are inclined to enhance the same to Rs.50,000/-. No compensation is awarded under the head, funeral expenses. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

> "21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite

expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

Thus, following the said decision, we deem it fit to award Rs.25,000/- under the head, funeral expenses.

12. Legal representatives of the deceased have lost the love and affection of the deceased. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards loss of love and affection. But considering the age of the claimants 2 to 5, this Court is inclined to award Rs.50,000/- each, which comes to Rs.2,00,000/-. However, the compensation of Rs.7,000/- awarded towards damages to clothes and articles is excessive and hence, reduced to Rs.2,000/-. A sum of Rs.3,000/- awarded towards transportation is less and enhanced to Rs.5,000/-.

13. In view of the above discussion, compensation amount is modified as follows:

Loss of Dependency	: Rs.13,20,000/-
Loss of Love and Affection	: Rs. 2,00,000/-
Loss of Consortium	: Rs. 50,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 5,000/-
Damages to clothes	: Rs. 2,000/-
Total	: Rs.16,02,000/-

14. Record of proceedings shows that pursuant to the interim orders granted by this Court, the appellant-Insurance Company has deposited the entire award amount to the credit of M.C.O.P.No.21 of 2009, on the file of the learned Motor Accident Claims Tribunal (Subordinate Judge), Mettur. In view of the re-working of compensation, there shall be a reduction of compensation of Rs.6,72,000/-.

15. Hence, C.M.A.No.2648 of 2014 is partly allowed and C.M.A.No.1676 of 2015, is dismissed. The appellant-Insurance Company is permitted to withdraw the balance amount, with proportionate accrued interest and costs, lying in the credit of M.C.O.P.No.21 of 2009, on the file of the learned Motor Accident Claims Tribunal (Subordinate Judge), Mettur. The

respondents/claimants are also permitted to withdraw their respective shares, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

skm

To

1.The Motor Accidents Claims Tribunal
(Subordinate Judge), Mettur.

2.The Section Officer,
VR Section, High Court, Madras

+1 cc to Mr.P.Tamilavel, Advocate sr.59717
+1 cc to Mr.D.Bhaskaran Advocate sr.58893

C.M.A.No.2648 of 2014 &
C.M.A.No.1676 of 2015

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