

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.01.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 3578 of 2014

&

M.P. No. 1 of 2014

M/s. Iffco Tokio General Insurance Co. Ltd.,
Having Office at Tulsi Chamber's,
3rd Floor, No.195,
T.V. Swamy Road (West),
R.S. Puram, Coimbatore.

...Appellant/2nd Respondent

Vs.

1. S. Thenmozhi
2. S. Harini (Minor)
3. S. Jeyanth (Minor)

(Respondents 2 & 3 minors repled.
by mother and NF S. Thenmozhi)

4. C. Saraswathi
5. K. Chinnusamy
6. A. Sharmila
7. V. Sethuraman

...Respondents 1 to 5/Petitioner

8. M/s. Reliance General Insurance Co. Ltd.,
Nalgaum Cross Road,
No. 570, Rectifier House,
Wadala (W), Mumbai - 400 031.

...Respondents 6 to 8/
Respondents 1, 3 & 4

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 13.06.2014 passed in M.C.O.P. No. 383 of 2011 by the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellant : Mrs. Harini for
Mr.N. Vijayaraghavan

J U D G M E N T

Aggrieved over the quantum of Rs.10,06,520/- awarded by the Tribunal to respondents 1 to 3, for the death of the 1st respondent's husband, by name, Saravanan, in the accident, which occurred on 29.07.2009, the Insurance Company is before this Court, questioning the quantum alone.

2. Heard the learned counsel for the appellant.

3. Learned counsel for the appellant would submit that though the Tribunal, taking note of the absence of valid driving licence possessed by the offending vehicle, insured with the appellant Insurance Company, rightly ordered pay and recovery, but, in the absence of any proof regarding the income of the deceased, took Rs.4500/- as the monthly income and added 50% towards "Future Prospects" and deducted one-fourth towards "Personal Expenses" and arrived at Rs.5060/- as the "monthly contribution to the family", which is on the higher side. Hence, she seeks reduction of the award amount.

4. The Honourable Apex Court, in its judgment rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd. reported in 2014 (1) TNMAC 459, in respect of an accident, which took place in the year 2008, took Rs.6500/- as the monthly income of a vegetable vendor. Whereas in this case, the accident occurred on 29.07.2009, a year after the date of accident in the above cited case. Therefore, following the aforesaid judgment of the Honourable Apex Court, a sum of Rs.6500/- is determined as monthly income of the deceased.

5. The deceased was aged about 31 years and therefore, following the judgment of the Honourable Apex Court rendered in Sarla Verma's case (2009 2 TN MAC 1(SC)), 50% is required to be added towards "Future Prospects" and after adding 50% towards "Future Prospects", the monthly income would be Rs.6500 +50% (Rs.6500) = Rs.9750/-. The size of the family is 5 and therefore, following Sarla Verma's judgment, one-fourth deduction has to be made towards "Personal Expenses", as has been rightly done by the Tribunal. After such deduction, the "monthly contribution of the deceased to the family" would be, $(Rs.9750/-) \times \frac{3}{4} = Rs.7312.50p$. As per the age of the deceased, namely, 31years, multiplier 16 was rightly adopted by the Tribunal and applying the same, "Loss of Income", would be,

Loss of Income :: Rs.7312.50 x 12 x16
 :: Rs.14,04,000/-

6. As far as the amounts awarded under other heads are concerned, the Tribunal did not award appropriate amount towards "Loss of Consortium" to the 1st respondent/wife. The deceased was aged about 31 years at the time of accident and the 1st respondent was aged about 27 years. Losing one's husband, at the age of 27 years, with two minor children, aged about 6 years and 3 years, to be taken care of, is unimaginable and the agony, both physiological and psychological, which should would undergo, having been deprived of her husband's care and affection, throughout her life, cannot be compensated in terms of money. But, the Tribunals are not giving much importance with regard to awarding of amounts under "Loss of Consortium". As already stated, loss of husband, at the age of 27 years, is, not only a personal loss to the wife, but it also affects the entire family. Therefore, following the judgment of the Honourable Apex Court rendered in Rajesh and others V. Rajbir Singh and others reported in 2013 (3) CTC 883, a sum of Rs.1 lakh is granted to the 1st respondent towards "Loss of Consortium".

7. It is shocking to note that when the deceased has left behind two minor children, aged about 6 years and 3 years, no amount has been awarded towards "Loss of love and affection". Hence, this Court awards a sum of Rs.50,000/- to each of the minors, totalling to Rs.1 lakh. The sum of Rs.5000/- awarded towards "Transportation Expenses" and Rs.10,000/- awarded towards "Loss of Estate" are confirmed. However, the amount of Rs.10,000/- awarded towards "Funeral Expenses" is too low and the same is enhanced to Rs.25,000/-. Hence, the total compensation payable to the claimants works out to Rs.16,44,000/- rounded off to Rs.16,50,000/-. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

8. Since the 6th respondent did not possess valid driving licence, the Tribunal rightly directed the Insurance Company to pay the compensation and recover the same from the insured. The said direction is confirmed.

9. Though the appeal has been preferred by the Insurance Company as against the award of Rs.10,06,520/-, on re-appreciating the evidence on record, applying the correct law and invoking Order XLI Rule 33 CPC, this Court enhances the said compensation to Rs.16,50,000/-, in an effort to award just compensation, even in the

absence of appeal/cross-appeal by the claimants.

10. The appellant is directed to deposit the entire award amount with interest and costs, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, respondents 1, 4 and 5 are permitted to withdraw their respective shares, as per the apportionment of the Tribunal. The minors' share shall be deposited in any one of the Nationalised Banks, in interest bearing fixed deposit, till they attain majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months. The Civil Miscellaneous Appeal is dismissed. No costs. Connected M.P. Is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The MACT
(Special District Court), Erode.

2. S. Thenmozhi

3. S. Harini (Minor)

4. S. Jeyanth (Minor)
(Respondents 2 & 3 minors repled.
by mother and NF S. Thenmozhi)

5. C. Saraswathi

6. K. Chinnusamy

All residing at
No.47/1, Sahan Street,
Karungalpalayam, Erode,

1 CC to M/s. N.Vijayaraghavan, Advocate SR.No. 2550

C.M.A. No. 3578 of 2014

RSI (CO)

PSI (03.03.2015)