IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.3364 of 2008 and 319 of 2010

C.M.A.No.3364 of 2008

United India Insurance Co.Ltd.,
Branch Office
Opp.to Raja Kalyana Mahal
19/2A, Junction Main Road
Near 5 Roads
Salem-4 .. Appellant / 2nd Respondent

-Vs-

1. A.Kalaiselvi
2. Minor Dinesh
3. Minor Pradeep
   (Both minors are rep.by their mother
   guardian A.Kalaiselvi)
4. Perumal, S/o Sengodan
5. Poovayammal, W/o Perumal
6. R.Ramesh .. Respondents/ Petitioners/ I Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 4.2.2008 made in M.C.O.P.No.2093 of 2004 on the file of the Motor Accidents Claims Tribunal, First Additional District Judge, Salem.

For Appellant :: Mr.S.Arun Kumar

For Respondents:: Mr.P.Jagadeesan for RR 1 to 3 & 5
RR4 & 6 - died

C.M.A.No.319 of 2010

1. A.Kalaiselvi
2. Minor Dinesh
3. Minor Pradeep
   (2nd and 3rd appellants are rep.
   by natural guardian mother
   1st appellant)
4. Poovayammal, W/o Perumal
   (Cause title accepted vide order
   of Court dt. 28.1.2010 made in M.P.No.2 of 2009)
   .. Appellants/ Petitioners

-Vs-

1. R.Ramesh

2. United India Insurance Co.Ltd.,
Branch Office
Opp.to Raja Kalayana Mahal
19/2A, Junction Main Road
Near 5 Roads
Salem-4 .. Respondents/ Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 4.2.2008 made in M.C.O.P.No.2093 of 2004 on the file of the Motor Accidents Claims Tribunal, First Additional District Judge, Salem.

For Appellants :: Mr.P.Jagadeesan

For Respondents :: R1 - died
Mr.S.Arun Kumar for R2

JUDGMENT

The above civil miscellaneous appeals have been filed by the insurer and the legal heirs and dependants of the deceased, challenging the award of the Motor Accidents Claims Tribunal, First Additional District Judge, Salem dated 4.2.2008 made in M.C.O.P.No.2093 of 2004. C.M.A.No.3364 of 2008 has been filed by United India Insurance Company Limited, Salem aggrieved over the liability and quantum of compensation and the C.M.A.No.319 of 2010 has been filed by the legal heirs of the deceased-claimants for enhancement of the compensation awarded by the Tribunal. Hence, both the appeals are taken up together and the parties will be hereinafter referred to as the "Insurance Company" and "the Claimants" in this judgment.

2. When one Mr.Ayyandurai, serving as Police Constable, was carrying his office files from Salem Town to S.P.Bungalow on the Yercaud Main Road in a motor-cycle bearing Registration No.TN 27 G 1447, at that time, the offending vehicle 407 Tempo bearing Registration No.TN 30 B 0646 driven by its driver in a rash and negligent manner dashed against the motor-cycle driven by Mr.Ayyandurai near C.S.I.Polytechnic, as a result, he sustained fatal injuries. Though he was taken to Sri Gokulam Speciality Hospital for intensive treatment, he died within two hours at the said hospital. Therefore, the claim petition was filed by his legal heirs and dependants, namely, wife, two children, father and mother of the deceased, claiming a sum of Rs.25,00,000/- for the loss of his life and the Tribunal has awarded a sum of Rs.8,44,145/- together with interest at 7.5% per annum from the date of petition till the date of realisation.

3. Mr.P.Jagadeesan, learned counsel for the Claimants, in support of the prayer for enhancement, made three-fold submissions indicating the three errors committed by the Tribunal while passing the impugned award. When it is the admitted case of both sides

that Mr.Ayyandurai was serving as a Police Constable, on the date of his death, he was aged only 37 years, therefore, the improper multiplier of 12 adopted by the Tribunal is running contrary to the ratio laid down by the Apex Court in Sarla Verma v. Delhi Transport Corporation & another, 2009 (2) TN MAC 1, wherein the proper multiplier has been fixed at 15. Adding further he submitted that when the deceased was earning a monthly salary of Rs.6,267/-, the Tribunal, considering the loss of income for the rest of his service viz., 22 years, ought to have added 50% towards the future prospects, as laid down by the Apex Court in Sarla Verma's case. This serious error committed by the Tribunal is required to be rectified by this Court, he pleaded. Thirdly, he submitted that instead of making the deduction of 1/4th of the income towards personal expenses, the Tribunal has deducted 1/3rd only as per the Schedule, therefore, this error, which is apparent on the face of the record, also is required to be rectified by this Court, in view of the judgment of the Apex Court in Sarla Verma's case. The learned counsel also submitted that since the fourth claimant Mr.Perumal, namely, the father of the deceased had passed away during the pendency of the appeals, his share may be allotted to the other Claimants i.e., wife, two minor children and mother.

4. On the other hand, Mr.S.Arun Kumar, learned counsel for the Insurance Company, assailing the award of compensation granted by the Tribunal as excessive, submitted that since the theory of future prospects was not decided or settled at the time of passing of the impugned award, the contention of the learned counsel for the Claimants for adding 50% towards future prospects is far from acceptance. However, the learned counsel does not dispute the contentions of the learned counsel for the Claimants with regard to the age, monthly income and legal heirs/dependants of the deceased. The learned counsel for the Insurance Company also submitted that since the owner of the offending vehicle Mr.R.Ramesh remained ex parte before the Tribunal and is presently no more, the Insurance Company may be given liberty to proceed against the legal heirs of Mr.R.Ramesh, the owner of the vehicle for recovery of the compensation amount by issuing notice in the manner known to law.

5. Heard the learned counsel for the parties.

6. Admittedly, it is not in dispute that the deceased was serving as a Constable in the Police Force. He was aged about 37 years, being the sole bread winner of his entire family including his father and mother. However, the Tribunal, while considering the last drawn salary of the deceased at Rs.6,267/-, has fixed a sum of Rs.8,000/- as the notional monthly income of the deceased. But the law requires that while fixing the last drawn salary, as he had lost his life leaving behind his wife, two minor children and parents as orphans, 50% of the salary has to be added towards future prospects, since the deceased had 22 more years of service to his credit. Further, when the deceased was less than 40 years of age at the time of his untimely death, the proper multiplier should have been 15, instead of 12 fixed by the Tribunal, as rightly contended by the learned counsel for the Claimants. This Court also finds that 1/4th deduction should have been made towards the personal expenses of the deceased, instead of 1/3rd deduction

made by the Tribunal, therefore, this Court is inclined to modify the award of the Tribunal so far as the quantum of compensation alone is concerned, in view of the ratio laid down by the Apex Court in Sarla Verma's case. Hence, this Court, taking the monthly income of the deceased at Rs.6,267/-, is inclined to add 50% towards future prospects i.e., Rs.6267+Rs.3133 = Rs.9400/-. Out of the said income, since the Claimants are wife, children and parents of the deceased, 1/4th deduction is made towards the personal expenses i.e., Rs.9400-Rs.2350 = Rs.7050/-. Since the deceased was aged 37 years at the time of death, adopting the multiplier of 15, a sum of Rs.12,69,000/- is arrived at as the just and reasonable compensation to be paid to the Claimants by the Insurance Company i.e., Rs.7050x12x15=Rs.12,69,000/- for the loss of life of the deceased, instead of Rs.8,44,145/- awarded by the Tribunal under all the heads, on the facts of this case. The total compensation of Rs.12,69,000/- will carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till realisation. Out of the compensation amount, the first claimant-wife is entitled to a sum of Rs.4,00,000/-, the second and third claimants-sons are entitled to a sum of Rs.3,50,000/- each and the fifth claimant-mother is entitled to a sum of Rs.1,69,000/-, since the fourth claimant-father died during the pendency of the appeals. The amounts apportioned to the shares of the minor children is directed to be invested in fixed deposit with a nationalised bank till they attain majority and the first claimant-mother is permitted to withdraw the interest accruing thereon once in three months directly from the bank for the welfare of the minor children till they attain majority.

7. With the aforesaid observations and directions, C.M.A.No.319 of 2010 filed by the Claimants stands allowed and the C.M.A.No.3364 of 2008 filed by the Insurance Company stands dismissed. The Insurance Company is further directed to deposit the entire balance amount to the credit of the M.C.O.P.No.2093 of 2004 on the file of the Motor Accidents Claims Tribunal, First Additional District Judge, Salem within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Claimants, namely, wife and mother of the deceased are entitled to withdraw their entire share including interest accrued thereon by moving appropriate applications before the Tribunal. The Insurance Company is also at liberty to recover the compensation amount from the legal heirs of the owner of the Tempo vehicle in question, since the owner remained ex parte and is presently no more, by issuing notice in the manner known to law, in the light of the ratio laid down by the Apex Court in Oriental Insurance Co.Ltd., v. Shri.Nanjappan and others, 2004 (2) CTC 464 on the theory of 'pay and recover'. Consequently, interim order stands vacated and the M.P.No.1 of 2008 is also dismissed. There is no order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

The Motor Accidents Claims Tribunal
First Additional District Judge
Salem

C.M.A.Nos.3364 of 2008 & 319 of 2010

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