IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2015

C O R A M

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

C.M.A.No.3918 of 2008

1. S.Kalaivani
2. E.Kumudharani
3. N.S.Elangovan
4. S.E.Vasanthakumar
5. Minor S.Krishna @ Jaykrishna ... Appellants/Petitioner

Minor rep.by his mother and natural guardian 1st appellant-S.Kalaivani

-vs.-

1. K.Murugesan

2. The Branch Manager
United India Insurance Co.Ltd.,
Branch Office
No.19/2A, Junction Main Road
Opp.Raja Kalyana Mahal
5 Roads, Salem-4. ... Respondents/Respondents

Civil Miscellaneous Appeal against the judgment and decree dated 16.06.2008 passed by the learned Subordinate Judge [Motor Accident Claims Tribunal], Tirupattur in MCOP No.368 of 2004.

For Appellant ... Mr.C.Prabakaran

For Respondents ... Mrs.R.Sreevidhya for R2
R1-No appearance

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal in a sum of Rs.8,47,920/- for the death of one Sukumaran in a road accident that occurred on 13.08.2004, the appellants, who are the wife, parents, brother and son of the deceased have come up with the above Civil Miscellaneous appeal seeking enhancement of the compensation.

2. Brief facts, which are necessary for disposal of this Appeal are as follows:-

(i) On 13.08.2004, the deceased Sukumaran was driving in his two wheeler near Thalaivasal-Athur Main Road; at that time, a timber lorry bearing Regn.No.TN-27-W-4844, driven by its driver in rash and negligent manner came in the opposite side and dashed against the two wheeler, as a result of which, the deceased died on the spot. Alleging that the accident was due to rash and negligent driving of the lorry driver, the appellants, who are the claimants, went before the Tribunal claiming a compensation in a sum of Rs.50,00,000/-.

(ii) Opposing the claim, the Insurance Company has filed counter denying negligent driving by the driver of the lorry. The Insurance Company has also stated that the claim petition is not maintainable as the claimants have not added the owner of the vehicle driven by the deceased, as a party to the proceedings. Further, the Insurance Company has also stated that the lorry driver was not having valid driving licence at that time. It had also disputed the age and income of the deceased.

(iii) Before the Tribunal, the first Claimant/wife of the deceased was examined as P.W.1 along with PW2 and Exs. P.1 to P.7 were marked. On the side of the Insurance Company one Panchasheelan was examined as DW1 and Exs.D1 to D3 were marked. Upon consideration of oral and documentary evidence, Tribunal held that the accident was due to the contributory negligence of both the lorry driver and the deceased. Taking the monthly income of the deceased as Rs.10,515/- and after deducting 1/3rd towards his personal expenses, the Tribunal arrived his monthly income at Rs.7,010/- and adopting multiplier 13, calculated loss of dependency at Rs.10,93,560/-. Further, the Tribunal awarded a sum of Rs.2,000/- towards Funeral Expenses; a sum of Rs.10,000/- towards loss of consortium and Rs.25,000/- [calculating at the rate of Rs.5,000/- per claimant] towards loss of love and affection to the claimants. After deducting 25% towards the contributory negligence, the Tribunal has awarded a total compensation of Rs.8,47,920/- to the claimants.

3. Challenging the quantum of compensation, the learned counsel for the Appellants-Claimants submitted that the multiplier adopted by the Tribunal considering the age of the deceased at the time of death, viz., 33 is not in accordance in with law. He would contend that even as per Sarala Verma's case reported in 2009(2) TNMAC 1 (SC), the Tribunal ought to have adopted 16 multiplier, which is the appropriate multiplier as the deceased was working as a Sub Inspector of Police at the time of the accident and he would have been promoted to the further level and would have earned more money as salary. The learned counsel would also submit that the widow at that point of time was aged only 24 years and the minor son was aged 3 years and both of them have lost the love and affection of the deceased. Accordingly, he would pray for the enhancement of the

compensation awarded.

4. Learned Counsel appearing for the respondent-Insurance Company would submit that the Court below after taking into consideration the entire materials available on record and also the documents produced on the side of the claimants adopted 13 multiplier and she would further submit that the future prospects cannot be assessed as it is not certain. Further, the deceased had also contributed to the accident. Accordingly, she would pray for the dismissal of the appeal.

5. Heard both sides and perused the records.

6. On a careful perusal of the judgment passed by the Court below, it is seen that the Court below had awarded a total compensation of Rs.8,47,920/- after deducting 25% towards the contributory negligence. Both sides did not question the same and they are challenging only the quantum of compensation awarded by the Tribunal.

7. The Tribunal has adopted 13 multiplier for arriving at the loss of income. However, as rightly pointed out by the learned counsel for the appellants/claimants even as per Sarala Verma's case [cited supra], the correct multiplier is 16 considering the age of the deceased at the time of the accident, viz.,33. Admittedly, the deceased, at the time of his death, was working as a Sub Inspector of Police and his retirement age is 58 years. Hence, the deceased could have earned more had he been alive. However, the Tribunal has not awarded any amount towards future prospects. Even as per the judgment of the Hon'ble Supreme Court reported in 2013(2) TNMAC 55 (SC) [Rajesh and others vs. Rajbir and others] the Tribunal should have awarded towards future prospects; however, it has not awarded the same. Hence, this Court is inclined to award 50% towards future prospects. Further, the Tribunal has awarded only a meagre amount as loss of consortium to the first appellant/wife and the same has to be increased as the widow was aged only 24 years. The minor child was aged only 3 years and she has to look after him. Accordingly, I am inclined to modify the award passed by the Tribunal as follows:

Loss of income [Rs.7,010 x 16 x 12]	-	Rs.13,45,920/-
Loss towards future prospects [Rs.7,010 x 8x 1/2 x 12]	-	Rs. 3,36,480/-
Loss of Consortium	-	Rs. 30,000/-
Loss of love and affection [wife and minor son]	-	Rs. 20,000/-
Loss of love and affection [father and mother]	-	Rs. 20,000/-
Total		Rs.17,52,400/-

After deducting 25% towards contributory negligence, viz., a sum of Rs.4,38,100/-, the total amount awarded as compensation by the Tribunal is modified and is fixed at Rs. 13,14,300/- [Rupees thirteen lakhs fourteen thousand and three hundred only].

8. It is seen that the Tribunal has also apportioned to the brother of the deceased, however, this Court feels that the brother cannot be a dependent. Accordingly, the apportionment ordered by the Tribunal is modified to the following extent:

First appellant/wife	- 30%
fifth appellant/minor son	- 40%
parents, viz., father and mother @ 15% each	- 30%

9. In the result, the judgment passed by the Court below is allowed and the second respondent-Insurance Company is directed to deposit the entire award amount of Rs.13,14,300/- [Rupees thirteen lakhs fourteen thousand and three hundred only] now modified by this Court to the credit of MCOP No.368 of 2004 on the file of the learned Subordinate Judge [Motor Accident Claims Tribunal, Tirupattur] within a period of eight weeks from the date of receipt of a copy of this order along with an interest at the rate of 7.5% from the date of petition. It is needless to state that on such deposit being made, the appellants/claimants are entitled to withdraw the entire compensation amount along with interest on making out a proper application before the court below as per the apportionment ordered by this Court. It is also made clear that the Tribunal shall deposit the minor appellant's share of 40% in an interest bearing Fixed Deposit in any one of the Nationalised Bank and the mother/natural guardian, viz., the first appellant is permitted to withdraw the interest accrued in the Fixed Deposit once in three months.

10. With the above modification, this Civil Miscellaneous Appeal is allowed. No costs.

05.10.2015

BEING MENTIONED

This matter having been listed under the Caption for 'Being Mentioned' on 29/10/2015 pursuant to the order of this Court dated 05/10/2015 and made herein the presence of the aforesaid Counsel on the either side the Court made the following Order:

The above Civil Miscellaneous Petition is posted today for "being mentioned" to clarify the calculation made in para No.7 of the judgment dated 05.10.2015.

2. Learned counsel appearing for the second respondent-Insurance Company submitted that future prospects need not be stated separately and it can be calculated along with the loss of income itself.

3. In view of the said submission, the calculation portion made in para No.7 of the order dated 05.10.2015 and the consequential observations made in para No.9 are modified as follows:

"7. ....Accordingly, I am inclined to modify the award passed by the Tribunal as follows:

Loss of Income and future prospects [Rs.7,010 + 2340 x16 x 12]	-	Rs.17,95,200/-
Loss of Consortium	-	Rs. 20,000/-
Loss of Love and Affection [wife and minor son]	-	Rs. 10,000/-
Loss of Love and affection [father and mother]	-	Rs. 10,000/-
Total	-	Rs.18,35,200/-

After deducting 25% towards contributory negligence, viz., a sum of Rs.4,58,800/- [Rupees four lakhs fifty eight thousand and eight hundred only] the total amount awarded as compensation by the Tribunal is modified and is fixed at Rs. 13,76,400/- [Rupees thirteen lakhs seventy six thousand and four hundred only].

9. In the result, the judgment passed by the

Court below is modified and the second respondent-Insurance Company is directed to deposit the entire award amount of Rs.13,76,400/- [Rupees thirteen lakhs seventy six thousand and four hundred only] now modified by this Court to the credit of MCOP No.368 of 2004 on the file of the learned Subordinate Judge [Motor Accident Claims Tribunal, Tirupattur] within a period of eight weeks from the date of receipt of a copy of this order along with an interest at the rate of 7.5% from the date of petition. It is needless to state that on such deposit being made, the appellants/claimants are entitled to withdraw the entire compensation amount along with interest on making out a proper application before the court below as per the apportionment ordered by this Court. It is also made clear that the Tribunal shall deposit the minor appellant's share of 40% in an interest bearing Fixed Deposit in any one of the Nationalised Bank and the mother/natural guardian, viz., the first appellant is permitted to withdraw the interest accrued in the Fixed Deposit once in three months."

The Judgment dated 05.10.2015 is clarified accordingly. In all other respects, the judgment dated 05.10.2015 shall remain unaltered.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To
The Subordinate Judge
[Motor Accidents Claims Tribunal]
Tirupattur.

+1 cc to M/s.R.Sreevidhya Advocate sr.54191
+1 cc to C.Prabakaran Advocate sr.53853

C.M.A.No.3918 of 2008

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