BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
AND
THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

C.M.A(MD) No.834 of 2013

1.Rajeswari
2.Minor Ivanchalin Lara
3.Minor Breshlee Prashila
4.Minor Sabartini Jeedi
5.Anthonisamy
6.Salethmary .. Appellants/Claimants
(Minors 2 to 4 are rep.by their mother
and guardian the first appellant Rajeswari)

Vs.

1.Rajilal Bright

2.The Royal Sundaram Alliance Insurance Company Ltd.,
rep. By its Manager,
46, Whites Road, Chennai- 600 014.
(R-1 set exparte by the Tribunal
hence, notice may be given up
against 1st Respondent) ..Respondents /Respondents

Prayer: This Petition filed under Section 173 of the Motor Vehicles Act, 1988, to allow the Appeal and modify the Judgment and Decree of the Motor Accident Claims Tribunal (Principal District Judge), Thanjavur in MCOP No.950 of 2010, dated 29.11.2012 by enhancing the award amount to Rs.18 Lakhs to the Appellants with proportionate interest.

For Appellant : Mr.G.Karnan
For R1 : Ex-parte
For R2 : Mr.S.Srinivasa Ragavan

JUDGMENT
[Judgment of the Court was made by V.M.VELUMANI, J]

This Civil Miscellaneous Appeal is focussed as against the award, dated 29.11.2012 made in M.C.O.P.No.950 of 2010 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Thanjavur.

2.The appellants are claimants in M.C.O.P.No.950 of 2010. First respondent is the owner of Jeep involved in the accident. The second respondent is the insurer of Jeep. The appellants filed claim petition claiming a sum of Rs.65,00,000/- as compensation for the death of one Arockiasamy husband of first appellant, father of the appellants 2 to 4, son of appellants 5 and 6. The Tribunal has awarded a sum of Rs.23,82,887/- as compensation.

3.Against the said award, the appellants have filed the present appeal for enhancement of compensation.

4.Facts of the case:-

The deceased Arockiasamy was riding his two wheeler bearing Registration No.TN 55 J 9186 from Kantharvakottai to Thanjavur on 06.10.2010 at 8.45 p.m. At that time, the Jeep bearing Registration No. TN 74 Q 4492 belonging to the first respondent, was driven at a high speed in a rash and negligent manner and dashed against the two wheeler driven by the deceased. The deceased suffered serious injuries and died on 08.10.2010 in spite of medical treatment. The deceased was working as Head Master in the Panchayat Union Middle School at Mattankal and was earning a sum of Rs.25,000/- per month as monthly salary. In these circumstances, the appellant claimed a sum of Rs.65,00,000/- as compensation.

5.The first respondent, owner of Jeep remained exparte before the Tribunal. The second respondent insurer of Jeep filed counter statement and denied all the averments made by the appellants. According to the second respondent, the accident took place only due to the rash and negligent driving of the deceased. The appellants 1,5 & 6 are having substantial income and they are not dependents of the deceased. The deceased was more than 45 years and compensation claimed is exorbitant and speculative and prayed for dismissal of the claim petition.

6.Before the Tribunal, the first appellant was examined herself as P.W.1, Muthamilan was examined as P.W.2 and one Saravanan eye witness was examined as P.W.3. Exs.P1 to P14 were marked. The second respondent did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings and evidence in oral and documentary, came to the conclusion that the accident took place only due to the rash and negligent driving by driver of Jeep. Before the Tribunal, the appellants marked Ex.P9 Pay Certificate issued by Assistant Elementary Educational Officer, Kantharvakottai. The Tribunal considering the salary paid to the deceased as per Ex.P9, awarded compensation of Rs.22,13,887/- towards loss of income to the appellants and granted and other amounts under the following heads:-

Loss of Income	Rs.	22,13,887
Damage to clothing	Rs.	500
Medical Expenses	Rs.	1,25,000
Funeral Expenses	Rs.	5,000
Consortium	Rs.	10,000
Love and affection	Rs.	25,000
Mental Shock	Rs.	3,000
Total	Rs.	23,82,887

The total compensation arrived at by the Tribunal would come to Rs.23,82,887/-. The appellants have filed the above appeal for enhancement of compensation. The respondents did not file any appeal.

8. The learned counsel for the appellants contended that the Tribunal is not correct in applying the multiplier '13' and that correct multiplier to be applied is '15'. The Tribunal should have fixed the monthly income of deceased at Rs.30,052/-. In view of 6 dependents on deceased, the Tribunal erred in deducting 1/3 towards personal expenses. As per the judgment of ***Sarla Verma v. Delhi Transport Corporation***, reported in ***2009(2) TN MAC 1 (SC)*** only 1/5 is to be deducted towards personal expenses of the deceased. The deduction of 10% towards Income Tax is not correct. The Tribunal is not correct in deducting Rs.4,975/- paid by the deceased towards GPF loan and prayed for enhancement of compensation.

9.Per contra, the learned counsel for the second respondent contended that the Tribunal has considered all the materials available on record in proper perspective and awarded just compensation and appellants have not made out any case for enhancement of compensation.

10. We have heard the learned counsel appearing for the appellants as well as the learned counsel for the second respondent and perused the materials on record and considered the judgments relied on by either side.

11.The respondents have not filed any appeal against the award of the Tribunal. In the circumstances, the finding of the Tribunal holding that the accident took place only due to rash and negligent driving by driver of the Jeep belonging to the first respondent has become final.

12.Now, the only point to be decided in this appeal is whether the appellants are entitled to enhancement of compensation or not?

13.Point:

As far as quantum of compensation is concerned, the Tribunal has deducted a sum of Rs.4,975/- which was deducted from salary of the deceased towards GPF loan. The reason given by the Tribunal is not valid. After discharge of loan, the deceased will be getting entire GPF. Therefore, the compensation for loss of income has to be calculated on Gross income as per Ex.P9, which shows, the deceased was earning a sum of Rs.27,692/-. The Tribunal deducted 1/3 from the salary of the deceased towards his personal expenses. Appellants 1 to 6 are the dependents of the deceased. In view of number of dependents, the deceased would have spent only ¼ from his salary towards personal expenses. Further, the Hon'ble Supreme Court in ***Sarla Verma v. Delhi Transport Corporation***, reported in ***2009(2) TN MAC 1 (SC)*** considered this aspect and held that deduction of ¼ towards personal expenses, where the number of dependent family members is 4 to 6. In the present case also 1/4th to be deducted from his total income towards his personal expenses. The Tribunal applied multiplier "13" to arrive at loss of income. The age of the deceased was 44 years at the time of accident. As per the judgment of ***Sarla Verma v. Delhi Transport Corporation***, reported in ***2009(2) TN MAC 1 (SC)*** correct multiplier is 14. Therefore, the contention of the learned counsel for the appellants that the multiplier to be adopted is 15, is unsustainable. Applying the guidelines laid down in ***Sarla Verma v. Delhi Transport Corporation***, reported in ***2009(2) TN MAC 1 (SC),*** multiplier 13 applied by the Tribunal, is modified as 14.

14. For the above reasons, the award of the Tribunal granting compensation for loss of income is modified as follows:-

15.The monthly income of the deceased is determined at Rs.27,692 and the annual income works out to Rs.3,32,304/- (Rs.27,692 X 12). After deducting standard deduction of Rs.1 lakh, if 10% deduction is made towards Income Tax, the balance amount would be (3,32,304-23,230) Rs.3,09,074/-, and after deducting 1/4th of the income towards personal expenses of the deceased, the balance amount works out to (3,09,074-77,268) Rs.2,31,806/-. If multiplier '14' is applied, the loss of income is arrived at Rs.32,45,284/-.

16.Considering the facts and circumstances of the case, the award of Rs.5,000/- towards funeral expenses is enhanced to Rs.10,000/-.

17.Relying upon the ratio laid down in ***Rajesh v. Rajbir Singh, (2013) 9 SCC 54***, the award of Rs.10,000/- towards loss of consortium is increased to Rs.1,00,000/-.

18.The deceased is survived by three children and parents. Therefore, the award of Rs.25,000/- towards loss of love and affection to five dependents in the opinion of this Court is too meagre and hence it is increased to Rs.1,00,000/- (Each Rs.20,000/-).

19.The award of Rs.500/- towards transportation is also on the lower side and hence it is enhanced to Rs.5,000/-. Rate of interest awarded at 7.5% on the quantum is sustained. In all other aspects, the award of the Tribunal stands confirmed.

20. The award of Tribunal is modified as follows:-

S. No.	**Description**	**Amount awarded by Tribunal**	**Amount awarded by this Court**	**Award confirmed or enhanced or granted**
1.	Loss of earning capacity	22,13,887	32,45,284	enhanced
2.	Damage to Clothing	500	500	confirmed
3.	Medical Expenses	1,25,000	1,25,000	confirmed
4.	Funeral Expenses	5,000	10,000	enhanced

5.	Loss of Consortium to first appellant	10,000	1,00,000	enhanced
6.	Loss of love and affection to appellants 2 to 6	25,000	1,00,000 (20,000/-each to appellants 2 to 6)	enhanced
7	Mental shock	3,000	3,000	confirmed
8	Transportation	500	5,000	enhanced
	Total	23,82,887	35,88,784	Enhanced by Rs.12,05,897/-

21.In the result, the Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal is enhanced from Rs.23,82,887/- to Rs.35,88,784/- (Rupees Thirty Five Lakhs Eighty Eight Thousand Seven hundred and eighty four only), as total compensation. The second respondent is directed to deposit the said amount, with interest @ 7.5% p.a. from the date of petition on Rs.23,82,887/- and on the enhanced amount from the date of this order, till the date of deposit, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

22.On such deposit being made, the first appellant would be entitled to Rs.12,38,784/- and the appellants 2 to 4 would be entitled to Rs.6,50,000/- each, and the appellants 5 and 6 would be entitled to Rs.2,00,000/- each with respective proportionate accrued interest and costs, less the amount, if any, already withdrawn.

23. The Tribunal shall deposit the share of respondents 2 to 4, who are minor claimants, in a Fixed Deposit in Indian Bank, High Court Branch, Madurai-23, High Court Campus, Uthangudi, which shall be renewed periodically, till they attain majority. The first appellant - mother of the minors is permitted to withdraw interest from the shares of her minor children, *viz.*, appellants 2 to 4, once in three months from the bank directly. No costs.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Principal District Judge), Thanjavur.

+1cc to Mr.G.Karnan, Advocate Sr.No.46034
+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.46440