

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1089 of 2015 and Cross Objection No.61 of 2016

C.M.A.No.1089 of 2015

National Insurance Co.Ltd.,
7, Raja Street
Post Box No.19
Gobichettipalayam

...Appellant/3rd Respondent

-vs-

1. Vaijayanthimala
2. Sasikala
3. Sathishkumar
4. Mohanraj
5. Prakash
6. Rajapandi

...Respondents/Petitioners
and Respondents 1&2

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 25.03.2014 made in M.C.O.P.No.1395 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur.

For Appellant :: Mr.S.Vadivel

For Respondents:: Mr.Ma.P.Thangavel for R1 to R4

No appearance for R5

R6-Not ready in notice

Cross Obj.No.61 of 2016 सत्यमेव जयते

1. Vaijayanthimala
2. Sasikala
3. Sathees Kumar
4. Mohan Raj

...Cross Objectors

-vs-

1. National Insurance Co.Ltd.,
No.7, Raja Street, Post Box No.19
Gobichettipalayam

2. Prakash
3. Rajapandi

(Respondents 2 & 3 is already
set ex parte in the lower Court.
hence notice is dispensed
with in this cross appeal)

..Respondents

Memorandum of Grounds of Cross Appeal under Order 41, Rule 22 of the Civil Procedure Code, against the award and decree dated 25.03.2014 made in M.C.O.P.No.1395 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur.

For Cross Objectors :: Mr.Ma.P.Thangavel

For Respondents :: Mr.S.Vadivel for R1

JUDGMENT

The National Insurance Company Limited, Gobichettipalayam, challenging the correctness of the impugned award passed by the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur in M.C.O.P.No.1395 of 2010 dated 25.3.2014 awarding a sum of Rs.8,30,000/-, as against the claim of Rs.15,00,000/-, has brought this civil miscellaneous appeal aggrieved over the quantum. Similarly, the claimants, namely, wife, married daughter and two unmarried sons of the deceased at the time of accident, have filed the Cross Objection seeking enhancement of the compensation for the loss of life of the breadwinner. For convenience, the parties will be hereinafter referred to as "the Claimants" and "the Insurance Company" in this order.

2. Learned counsel for the Claimants, assailing the impugned award on various grounds, submitted that the Tribunal has wrongly fixed the monthly income of the deceased at Rs.7,500/- and made one-third deduction instead of one-fourth towards the personal expenses. Secondly, when the breadwinner of the claimants' family, aged about 55 years, died in the accident, no reasonable addition of the actual salary has been made towards the future prospects. Thirdly, a sum of Rs.50,000/- alone has been awarded towards the loss of consortium to the wife of the deceased. Again under the head 'loss of love and affection', a sum of Rs.25,000/- each has been awarded to the four Claimants/dependents. Therefore, under these heads, as per the settled legal position, a just and reasonable compensation has to be awarded, he pleaded. In support of his submissions, the learned counsel for the Claimants relied upon a judgment of the Apex Court in the case of Neeta w/o Kallappa Kadolkar & others, etc. v. Divisional Manager, MSRTC, Kolhapur, 2015 (1) TN MAC 161 (SC), wherein the Apex Court has held that even in the absence of any evidence to prove the income of the deceased, for awarding a just and reasonable compensation, the principles laid down by the Apex Court have to be followed. Moreover, when the evidence with regard to the cause of death of both the deceased in the said case remained unchallenged by the Transport Corporation by disputing the claim, a sum of Rs.12,000/- can be fixed as the monthly salary. While so, in the present case, when the wife of the deceased entered the witness box and deposed that along with her, her husband was also working as a Powerloom worker and earning a sum of Rs.10,000/- per month, the Tribunal, in the absence of any rebuttal evidence from the Insurance Company, ought to have accepted the monthly income at

Rs.10,000/-, instead of fixing Rs.7,500/- per month. However, right multiplier '11' has been adopted. He also submitted that a sum of Rs.25,000/- can be fixed towards funeral expenses, instead of Rs.10,000/- fixed by the Tribunal. On this basis, he prayed for allowing the Cross Objection filed by the Claimants.

3. Mr.S.Vadivel, learned counsel for the Insurance Company submitted that when the husband of the first Claimant died on 10.9.2010 at about 5.10 P.M., in the accident said to have been caused by the rider of the two wheeler bearing Registration No.TN 36 F 0465, the claim made by the legal representatives of the deceased, namely, wife, daughter and sons, is not supported by any documentary evidence with regard to the monthly income of the deceased, because the wife of the deceased had only deposed before the Tribunal that her husband was working as a Powerloom worker on a monthly salary of Rs.10,000/- and died while walking on the road side at about 5.10 P.M., on 10.9.2010. Therefore the Tribunal, in the absence of any evidence whatsoever to prove the permanent employment or the monthly salary of the deceased, ought not to have fixed a sum of Rs.7,500/-. Even a sum of Rs.6,500/- per month, as held by the Apex Court in the case of Syed Sadiq, etc. v. Divisional Manager, United India Insurance Co.Ltd., 2014 (1) TN MAC 459 (SC), could have been fixed reasonably. But, leaving that course, the Tribunal has unreasonably fixed a sum of Rs.7,500/- in this case, as a result the compensation under the head of 'loss of dependency' has been completely inflated. Therefore the said amount is liable to be sliced down. With regard to the fixation of the correct age of the deceased, it was further contended that it is the case of the Claimants that they had produced two documents viz., post-mortem certificate marked as Ex.P2 and death certificate marked as Ex.P3. In the post-mortem certificate, Ex.P2, the age of the deceased was shown as 55 years, whereas in the death certificate, Ex.P3 his age has been shown as 58 years. Hence the Tribunal ought to have accepted the age mentioned in the death certificate as 58 years. But contrary thereto, the Tribunal has conveniently taken his age as 55 years. Generally the death certificate issued by the revenue authorities always carry more weight based on some evidence. Therefore the Tribunal, in all fairness, ought to have accepted the age of the deceased as 58 years. So far as the addition to be made towards future prospects is concerned, the learned counsel is not able to counter the argument advanced by the learned counsel for the Claimants with any supportive decision.

4. This Court finds that the deceased was a pedestrian. While he was walking on the road at about 5.10 P.M., on 10.9.2010, a two-wheeler bearing Registration No.TN 36 F 0465 coming in the opposite direction dashed against him and caused multiple injuries. Although he was taken to Komarapalayam Government Hospital and after sometime he was shifted to CMC Hospital, Coimbatore for better treatment, he succumbed to the injuries on 11.9.2010. Resultantly a post-mortem was conducted at the Government Hospital, Coimbatore, wherein the age of the deceased was recorded as 55 years. The claim petition also has shown the age of the deceased as 55 years. Therefore, the

Tribunal has rightly accepted the age of the deceased as 55 years, which requires no interference in my considered opinion. While coming to the fixation of notional monthly income, the Apex Court has repeatedly held that for the purpose of awarding a just and reasonable compensation, the principles laid down by the Apex Court are required to be followed. Keeping in mind the settled ratio, if the case of the Claimants is considered, this Court could see that Mrs.Vijayanthimala, the wife of the deceased being examined as P.W.1, had deposed before the Tribunal that her husband was also working along with her as a Powerloom worker on a monthly salary of Rs.10,000/-. While so, on the fateful day, when he was just walking on the road, he was unfortunately killed due to the negligence of the rider of the two-wheeler bearing Registration No.TN 36 F 0465. The First Information Report, Ex.P1 registered on the file of Bangalaw Pudur Police Station implicating the rider of the two-wheeler also clearly shows that the accident took place only due to his rash and negligent driving. In view of the said accident, the pedestrian lost his valuable life. When the claim was made by the wife, daughter and sons of the deceased for a reasonable compensation, the Tribunal, finding that no contra evidence was adduced by the Insurance Company, has fixed the notional monthly income at Rs.7,500/-. But to me, the fixation of Rs.7,500/- as the monthly income may not be correct, for the reason that no documentary evidence or corroborative evidence was produced from the side of the Claimants. Hence this Court, following the ratio laid down by the Apex Court in the case of Syed Sadiq, etc. v. Divisional Manager, United India Insurance Co.Ltd., 2014 (1) TN MAC 459 (SC) holding that even in the case of a vegetable vendor a sum of Rs.6,500/- can be taken as the notional monthly income, is inclined to fix a sum of Rs.6,500/- as the notional monthly income of the deceased in this case. Since the deceased was aged about 55 years at the time of accident, as per the ratio laid down by the Apex Court in Rajesh & others v. Rajbir Singh & others, 2013 (9) SCC 54, 15% of the actual salary is to be added towards future prospects. As there are four Claimants, namely, wife, a married daughter and two unmarried sons, is inclined to deduct one-fourth of the said amount towards the personal expenses of the deceased, instead of one-third deducted by the Tribunal. As per the ratio laid down by the Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (2) TN MAC 1 (SC), taking into account the age of the deceased as 55 years, the right multiplier is '11'. Accordingly, the loss of dependency is arrived at Rs.7,40,025/- (Rs.6500+975-1868.75 i.e., 5606.25x12x11=Rs.7,40,025) . Following the ratio of the Apex Court in Rajesh & others v. Rajbir Singh & others, 2013 (9) SCC 54, this Court is inclined to award a sum of Rs.1,00,000/- towards loss of Consortium to the first Claimant-wife, a sum of Rs.75,000/- each to the Claimants 2 to 4-daughter and sons towards loss of love and affection and a sum of Rs.25,000/- towards funeral expenses. The award of Rs.10,000/- by the Tribunal towards Transport expenses is sustained. Accordingly, the award of the Tribunal is modified and the Claimants are entitled to a total compensation of Rs.11,00,025/- together with 7.5% interest per annum from the date of petition till

realisation. Out of the said amount, the first Claimant is entitled to Rs.6,50,025/- and the Claimants 2 to 4 are each entitled to Rs.1,50,000/-.

5. It is seen from the records that pursuant to the interim order, the Insurance Company had already deposited the entire amount of compensation with proportionate interest and costs and the Claimants were permitted to withdraw 50% of the same. Hence the Insurance Company is directed to deposit the balance amount of compensation representing the enhancement together with interest to the credit of the M.C.O.P.No.1395 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Claimants are entitled to withdraw the entire apportioned amount with accrued interest by moving appropriate applications before the Tribunal, after complying with the formalities. With this modification, Cross Objection No.61 of 2016 filed by the Claimants stands allowed and C.M.A.No.1089 of 2015 filed by the Insurance Company stands dismissed. Consequently, C.M.P.Nos.1 of 2015 & 5222 of 2016 are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The II Additional District Judge
Motor Accident Claims Tribunal
Tiruppur

+1cc to M/s. Ma.P. Thangavel, Advocate, S.R.No.68147
+1cc to M/s. S. Vadivel, Advocate, S.R.No.68266

UG(CO)
EU 26.12.16

C.M.A.No.1089 of 2015 &
Cross Obj.No.61 of 2016