

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1530 of 2016

- 1.Radha
- 2.Minor Surya
- 3.Minor Lavanya
- 4.Minor Santhosh Kumar
- 5.Kittal

... Appellants

(Minors 2 to 4 rep. by their next friend,
guardian and mother Radha)

vs.

- 1.Raghunathan
- 2.Mohamed Aniba
- 3.The New India Assurance Company Ltd.,
No.1, Officers Line, C.S.I.Building,
Vellore.
- 4.Sudha
- 5.Guna
- 6.Vinothkumar

... Respondents

Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicles Act 1988 praying to enhance
the compensation amount awarded in the Judgment and Decree dated
21.12.2009 made in M.C.O.P.No.877 of 2006 on the file of the
Motor Accident Claims Tribunal/III Additional Subordinate Court
at Coimbatore with interest and costs.

Mr.Ma.P.Thangavel For Appellants :
Ms.S.R.Sumathy For 3rd respondent :

JUDGMENT

This appeal is preferred by the claimants not satisfied
with the compensation awarded by the Motor Accidents Claims
Tribunal, (III Additional Subordinate Court), Coimbatore.

2. In the claim petition, it is averred that on 27.6.2005 at about 10.15 a.m., when the deceased Nagaraj was riding the Moped bearing Reg.No.TN 37 AB 5721 with one K.Murugesan, as pillion rider, on Kangeyam Palayam - Soolur Road from East to West slowly, cautiously and abiding all traffic rules, the lorry bearing Reg.No.TN-23 D 0824 driven by one Ranganathan, in a rash and negligent manner without abiding the traffic rules, dashed against the moped driven by the deceased Nagaraj. The pillion rider and the said Nagaraj were thrown away from the Moped and Nagaraj sustained severe injuries all over the body and he died on the way to hospital.

3. The legal heirs of the deceased Nagaraj filed a Claim Petition in MCOP No.877 of 2006 and the pillion rider K.Murugesan filed Claim Petition in MCOP No.20 of 2007. The Tribunal, dealt with both the petitions together and by its common order, insofar as MCOP No.877 of 2006 in respect of the deceased Nagaraj is concerned, it awarded a sum of Rs.4,40,000/- together with interest at the rate of 7.5 % per annum from the date of petition till the date of deposit payable by the third respondent herein. Not satisfied with the compensation awarded by the Tribunal in MCOP No.877 of 2006, the claimants have preferred the present Appeal.

4. The learned counsel for the appellants would submit that the Tribunal erred in fixing the notional income of the deceased as Rs.3,000/- per month, which is contrary to the the ratio laid down by the Hon'ble Apex Court in Syed Sadiq etc., vs. Divisional Manager, United India Insurance Co.Ltd., reported in 2014 (1) TNMAC 459 (SC) wherein the Apex Court keeping in mind the price rise has held that the notional monthly income should be taken as Rs.6,500/- where no documentary evidence has been produced in support of the income . The Tribunal also erred in applying the multiplier "17" instead of "16" since the deceased was aged about 35 years at the time of the accident. It is further contended by the learned counsel appearing for the appellant, placing reliance on the judgment of of the Hon'ble Apex Court in Santosh Devi vs National Insurance Co.Ltd.& Ors, reported in (2012) 6 SCC 421, that the Tribunal has not added any amount towards future prospects and the compensation awarded towards loss of consortium to the wife and the compensation awarded towards loss of love and affection to the minor children and mother of the claimant were very meagre, because, a sum of Rs.1,00,000/- ought to have been awarded under those heads as per the ratio laid down by the Apex Court in the case of Rajesh and others V. Rajbir Singh and Others reported in 2013 2 TN MAC 55. As such, he prays that the compensation awarded may be enhanced substantially.

5. On the contrary, the learned counsel appearing for

the third respondent would submit that on the basis of pleadings in the claim petition and the evidence adduced before the Tribunal, and applying the ratio laid down by the Hon'ble Apex Court in a catena of decisions, the Tribunal has rightly awarded the compensation and such an award need not be interfered with. As such, the learned counsel prays that the Appeal may be dismissed.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent.

7. It is one Nagaraj who succumbed to injuries sustained in the accident that occurred at Kangeyam Palayam - Soolur Road on 27.6.2005 at about 10.15 a.m., due to rash and negligent driving of the lorry bearing Reg.No.TN 23 D 0824 driven by one Ranganathan who died pending MCOP proceedings, while the said Nagaraj and the pillion rider, K.Murugesan were riding the Moped bearing Reg.No.TN 37 AB 5721, leaving behind his wife, aged 28 years, two minor daughters, aged 11 and 8 years respectively, a minor boy, aged 5 years and his mother aged, 50 years as dependants. When the claimants/legal heirs of the said Nagaraj claimed compensation for the loss of life of the sole bread winner, the Tribunal has wrongly fixed the monthly notional income of the deceased as Rs.3,000/-. It has been well settled by the Hon'ble Supreme Court in Syed Sadiq etc., vs. Divisional Manager, United India Insurance Co.Ltd., reported in 2014 (1) TNMAC 459 (SC) that where the claimants fail to produce any documentary proof towards the monthly income of the deceased, a sum of Rs.6,500/- towards notional monthly income of the deceased can be fixed. Secondly, the Tribunal also failed to add any amount towards future prospects. In the light of the the ratio laid down by the Apex Court in the case of Santosh Devi v. National Insurance Company Ltd., reported in (2012) 6 SCC 421, 50% of the actual salary of the deceased should be added taking into age of the deceased i.e. 35 years at the time of the accident, while arriving at the compensation towards future prospects. The Tribunal has also wrongly deducted $1/3^{\text{rd}}$ of the notional income of the deceased Nagaraj, instead of $1/4^{\text{th}}$, as the claimants are five in number. Again, the Tribunal has applied the wrong multiplier "17" instead of "16". As such, pecuniary loss of income of the deceased is determined as Rs.14,04,000/- ($9,750 \times 12 \times 16 \times 3/4 = 14,04,000/-$). Coming to the award of compensation towards loss of consortium, in the case of Rajesh v. Rajbir Singh, (2013) 9 SCC 54, the Hon'ble Supreme Court has held that a minimum of Rs.1,00,000/- has to be given to the wife of the deceased. Therefore, a sum of Rs.1,00,000/- is awarded under the head of loss of consortium to the wife. Under the head of loss of love and affection, a sum of Rs.50,000/- each is awarded to the claimants 2 to 5 (the total sum of Rs.50,000 X 4 =

Rs.2,00,000/-). Funeral expenses is enhanced to Rs.10,000 from Rs.2,000/- awarded by the Tribunal. Accordingly, the compensation is enhanced as follows:-

Pecuniary loss	Rs.14,04,000
Loss of consortium to the wife	Rs. 1,00,000
Loss of Love and Affection to the claimants 2 to 5 (Rs.50,000/- each)	Rs. 2,00,000
Funeral expenses	Rs. 10,000

Total Rs.17,14,000

Out of the said amount, the first appellant is entitled to Rs.5,14,000, appellants 2 to 4 are each entitled to Rs.3,50,000/- and the 5th appellant is entitled to Rs.1,50,000/-.

8. The third respondent/Insurance Company is directed to deposit the entire award amount of compensation of Rs.17,14,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order.

9. On such deposit, it is open for the claimants to approach the Tribunal for withdrawal of the award amount in its entirety with interest pertaining to their share. However, the shares of the minors shall be in deposit till they attain majority and the first appellant is entitled to withdraw the interest periodically. The appellants have approached this Court with a delay of 1,574 days. Hence, this delay period of 1,574 days will bear no interest and the claimants are not entitled for interest in respect of 1,574 days delay. The claimants are directed to pay the additional court fee for the enhanced compensation as per rules.

10. In the result, the Civil Miscellaneous Appeal is allowed as indicated above. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

asvm

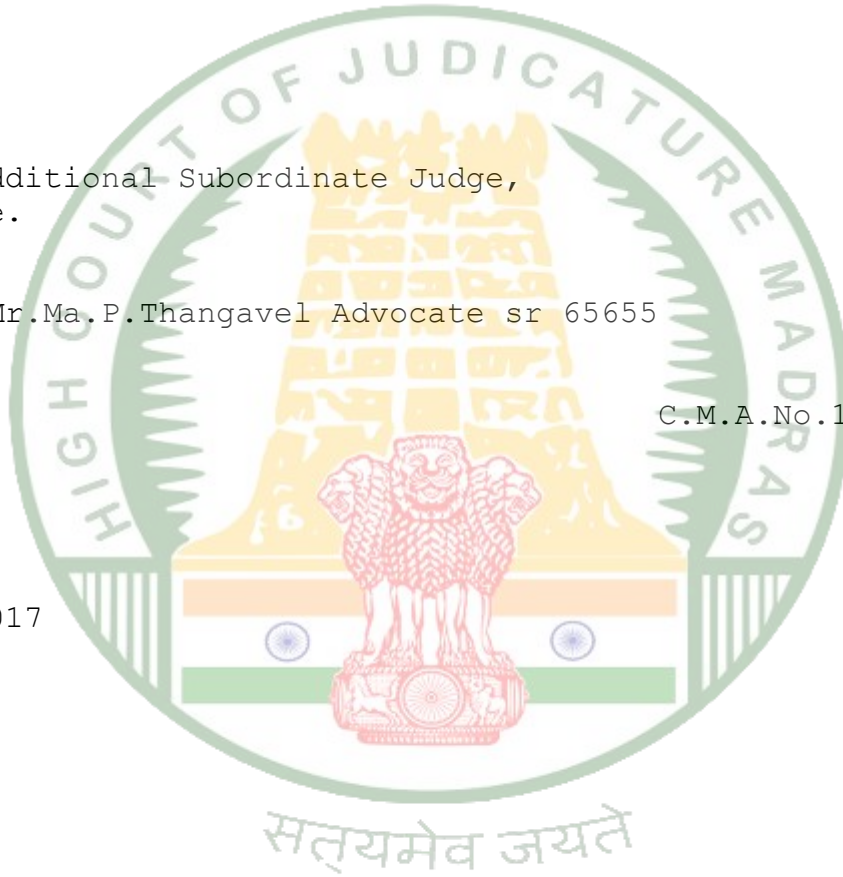
To

The III Additional Subordinate Judge,
Coimbatore.

+1 cc to Mr.Ma.P.Thangavel Advocate sr 65655

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