IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1476 of 2015
and M.P.No.1 of 2015

New India Assurance Co.Ltd
Npo.17, Fort Main Road
Shevapet, Salem-636 002 ... Appellant/2nd Respondent

vs.

1.G.Baggiyam
2.Kavitha
3.Megala
4.Minor G.Selva Babu
S/o.Gopalan
5.Pappammal
(R4 Minor Rep. By N/F guardian
mother G.Baggiyam) ..Respondents 1 to 5/Petitioners

6.S.Duraisamy ...6th Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 the of Motor Vehicles Act, 1988 against the award and decree in M.C.O.P.No.1361 of 2008 dated 19.06.2012 on the file of Motor Accidents Claims Tribunal, Additional District Judge and Special Judge for EC Act Cases, Salem.

For Appellant : Mr.N.Vijayaraghavan

For Respondents 1 to 5 : Mr.S.Suresh Kumar for For & Fair Associates

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The New India Assurance Company is on appeal challenging the award dated 19.06.2012 passed in M.C.O.P.No.1361 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional

District Judge and Special Judge for EC Act Cases), Salem.

2. It is a case of fatal accident. On 13.05.2007, when the deceased-P.Gopalan, aged 48 years was riding a two-wheeler (TVS XL Super Moped) bearing Registration No.TN 30 L 1693 towards Salem and when he reached near Chinthamaniyur Petrol Bunk, Mettur to Salem Main Road, he hit a Tanker Lorry bearing Reg.No.TN 30 E 0299, which was negligently parked without lights, as a result, he fell down and sustained grievous head injury and Gopalan died in the hospital. The claimants, who are wife, two married daughters, one minor son and the mother of the deceased have filed a claim petition for compensation for a sum of Rs.25,00,000/-. According to the claimants, the deceased was working as Head Constable at Prohibition Enforcement Wing, Mettur and was earning a sum of Rs.10,000/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1; one Chinnappan, who said to have witnessed the accident was examined as P.W.2 and one Rameshkumar, Junior Assistant of Salem District Superintendent of Police Office, was examined as P.W.3 and Ex.P-1 to Ex.P-15 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Certified Copy of FIR
P2	Certified copy of Section Altered Report
P3	Driving Licence
P4	Identity Card
P5	Accident Register Copy
P6	Accident Register Copy
P7	Accident Register Copy
P8	Certified copy of post-mortem certificate
P9	Final Report
P10	Legal Heirship Certificate
P11	Ambulance bills
P12	TVS XL repair charges
P13	Pay Certificate of Gopalan
P14	Xerox copy of S.R.Gopalan
P15	Salary certificate ofGopal

On behalf of the Insurance Company, R.Ws.1 to 3 were examined and Ex.R.1-Insurance Policy of Tanker Lorry and Ex.R.2-True copy of Rough sketch were marked before the Tribunal.

4. The Tribunal based on the oral and documentary evidence came to conclusion that the accident occurred only due to the negligence of the driver of the Tanker Lorry bearing Reg.No.TN 30 E 0299 in parking the vehicle without observing the road rules and accordingly held that the owner of the Tanker Lorry bearing Reg.No.TN 30 E 0299 was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the vehicle belonging to the 6th respondent herein was insured with the appellant, to compensate the claimants.

5. From the rough sketch-Ex.R.2, it is evident that the vehicle was parked on the mud portion of the road and as such, the finding of the Tribunal that on seeing the oncoming vehicles with dazzling light, the deceased lost his balance and hit on the parked vehicle without any light is absolutely tenable and the Tribunal is further justified in relying on the decision in 2007(5) MLJ page 952 [United India Insurance Company Ltd., Ranipettai Vs. Sundaram and others], wherein, it is held that when the driver of the parked lorry did not observe the rules and failed to keep the danger light burning and oncoming vehicle was approaching with a dazzling light, there is nothing to show that the deceased was rash or negligent while driving.

6. In view of the above, the finding of negligence on the part of the driver of the parked lorry who is responsible for the accident and consequential liability fixed on the appellant insurance company to compensate the claimants is confirmed.

7. It is stated that the age of the deceased P.Gopalan was 48 years. He was working as Head Constable at Prohibition Enforcement Wing, Mettur and earning a sum of Rs.10,000/- per month. As per I.D. Card of the deceased, the Tribunal fixed the age of the deceased as 47 years. As per the salary certificate Ex.P-15, the Tribunal fixed the monthly salary of the deceased at Rs.10,291/-. In view of the decision reported in 2009(2) TNMAC 1(SC) Smt.Sarla Verma & others vs. Delhi Transport Corporation and another, the Tribunal added 30% of salary towards future prospects. Accordingly, the Tribunal fixed the total income of the deceased at Rs.13,720/-. After deducting ¼ towards personal expenses of the deceased, the Tribunal fixed the loss of contribution to the family of the deceased at Rs.10,290/- per month. Considering the age of the deceased Gopalan at 47 years, the Tribunal adopted multiplier “13” and calculated the loss of pecuniary benefits to the dependents of the deceased at Rs.16,05,240/- (Rs.10,290/- x 12 x 13 = Rs.16,05,240/-). In addition, the Tribunal granted compensation under conventional heads. In all the Tribunal granted the following amounts as compensation with interest at

7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents of the deceased (Rs.10,290/- x 12 x 13 = Rs.16,05,240/-)	Rs.16,05,240/-
2	Funeral expenses	Rs. 5,000/-
3	Loss of consortium	Rs. 10,000/-
	Total	Rs.16,20,240/-

8. In appeal, it is contended that the deceased had only ten years service and hence the adding of 30% towards future prospects is not correct. As such, the award of the Tribunal is excessive and therefore, the compensation has to be reduced.

9. We are not inclined to interfere with the award of the Tribunal for the following reasons:-

(i) Considering the age of the deceased at 47 years and the decision of the Apex Court in the case of Santosh Devi - vs. - National Insurance Company Ltd. and others reported in (212)6 SCC 421 in para 14, the future prospects can be pegged at 30%. Para 14 of the decision reads as follows:-

> "14.We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed

income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines, of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

Therefore, the contention that adding of 30% of income towards future prospects is not correct is rejected.

(ii) Further the Tribunal granted a sum of Rs.10,000/- only towards loss of consortium to the wife of the deceased, which is very low.

(iii) Meagre amount of Rs.5,000/- has been granted towards funeral expenses.

(iv) No amount has been granted towards loss of love and affection to the minor claimants 2 to 5.

10. There is no objection with regard to interest granted at 7.5% per annum and the same is confirmed.

11. In the result, the award of the Tribunal is confirmed. The Civil Miscellaneous Appeal is dismissed. The appellant is directed to deposit the award amount within a period of two months. The major claimants are permitted to withdraw their respective share amounts. The share of the minor claimant is directed to be deposited in any one of the nationalised bank till the minor claimant attains majority. There will be no order as to costs in this appeal. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

nvsri

To
1. Additional District Judge and Special Judge
for EC Act Cases,
(The Motor Accidents Claims Tribunal)
Salem.

+1 cc to Mr.S.Sureshkumar, Advocate, sr.10301
+1 cc to Mr.N.Vijayaraghavan, Advocate, sr.16435

C.M.A.No.1476 of 2015

ksj co
kra 08.03.2016