

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.1991 of 2015

1. S.Kaveri
2. M.Shanmugam ... Appellants/Petitioners

vs.

1. G.Balu
2. M/s United India Insurance Company Limited
C/o Motor III Party Claims Office,
134, Greams Road, 4th Floor,
Silingi Buildings,
Chennai 600 006 ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 04.03.2015 passed in M.C.O.P.No.2375 of 2010 on the file of the Motor Accidents Claims Tribunal, Chief Judge (Court of Small Causes), Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.D.Bhaskaran (R2)
R1-Exparte

JUDGMENT

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

The claimants, who are parents of the deceased S.Muthuselvan have filed this appeal, challenging the award dated 04.03.2015 passed in M.C.O.P.No.2375 of 2010, on the file of the Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

2. It is a case of fatal accident. The deceased viz., S.Muthuselvan, 22 years old, died in a road accident at GST Road, opposite to Pakkam Railway Station towards Chennai, which

occurred on 13.06.2010 at 18.30 hours, owing to the injuries he suffered. The said accident had taken place while the deceased was travelling as a pillion rider in a motor cycle bearing registration No.TN-09-AT-9448, ridden by his friend Balu. First Aid was given on the same day at Chengleput Medical College Hospital and he was treated as an inpatient at Rajiv Gandhi Government Hospital for four days, where he died as an inpatient, due to the multiple injuries together with fatal head injury. At the time of accident, he is a B.E. degree holder and he was in search of a job. He is the only son of the parents, who are the claimants herein. The claimants, have filed a claim for compensation for a sum of Rs.30,81,000/- restricted to 25,00,000/-.

3. In support of the claim, the father of the deceased was examined as P.W.1; one Chinnamani, who is stated to be a witness was examined as P.W.2; and Ex.P-1 to Ex.P.8 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Copy of Postmortem certificate
P3	Death certificate
P4	Legalheirship certificate
P5	Provisional Certificate of the deceased
P6	Transfer certificate of the deceased
P7	Copy of Family Card
P8	Copy of charge sheet

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 1st respondent remained exparte.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

rg. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 18	Rs.8,64,000/-
2	Loss of love and affection (50000x2)	Rs.1,00,000/-
3	Transport expenses	Rs. 5,000/-
4	Funeral expenses	Rs. 25,000/-

rg. No.	Head	Amount granted by the Tribunal
	Total	Rs.9,94,000/-

This Civil Miscellaneous Appeal is filed by the claimants seeking enhancement of compensation.

6. The learned counsel for the appellants pleaded that the Tribunal has granted only a sum of Rs.9,94,000/- as against the claim of Rs.25,00,000/-. He would further plead that the finding of the lower Court with regard to the avocation and income of the deceased is absolutely wrong, in view of the specific pleading made by the appellants that the deceased was seeking job as a Software Engineer and expecting a salary of Rs.20,000/- p.m., he, being a B.E. Graduate. Therefore, according to him, the lower Court has failed to see that the sum of Rs.8,000/- p.m. fixed as the income of the deceased is not in any way reflect the realities of the case. The learned counsel for the appellants further pleaded that since the deceased sustained injuries on 13.06.2010 and died on 17.06.2010, after four days, at Government Hospital, Chennai as inpatient, a sum of Rs.50,000/- ought to have been granted towards pain and suffering. He further pleaded that since the deceased died at a very young age of 22 years, since there is shortening of life, it needs to be compensated by a sum of Rs.50,000/- for the loss of expectation of life. According to him, the lower Court has failed to see that the deceased was the only male child of the appellants and hence they have lost all support and help in future.

7. The learned counsel for the appellants further submitted that in an identical circumstances, in the case of death of an Engineering graduate, a Division Bench of this Court in the case reported in 2014(1) TANMAC 370 (DB) (Managing Director, Metropolitan Transport Corporation Limited, Chennai, vs. K.Murugesan and another), wherein, one of us is a party, has granted compensation to the parents of the deceased therein in the following manner:-

"16. It is not in dispute that the deceased Raja was an Engineering Graduate, which is evidenced by his Degree Certificate Exs. P.9 and P.10. Ex.P.13 reveals that the deceased was offered an appointment in one of the I.T. majors Wipro Technologies. Based on the above Exhibits, the Tribunal had arrived at his income at Rs.20,000/- per month and after deducting 50% towards his personal and living expenses, the Tribunal arrived at

Rs.10,000/- per month and Rs.1,20,000/- per annum. By adopting 15 multiplier the Tribunal fixed the loss of income to the deceased parents at a sum of Rs.18,00,000/-. Further, the Tribunal added Rs.5,000/- towards funeral expenses and Rs.50,000/- towards loss of love and affection, which is now under challenge.

17. Though the learned counsel appearing for the Transport Corporation canvassed that the compensation granted in a sum of Rs.18,00,000/- towards loss of income is excessive, he could not sustain the same with a concrete evidence. On the contrary, the learned counsel for the Cross Objectors, viz., the claimants have pointed out that even presuming that the monthly income fixed at Rs.20,000/- is excessive, the Tribunal omitted to add 50% towards future prospects considering the age and status of the deceased, that is, the deceased being a bachelor. As the deceased was a bachelor, = of the income should be deducted towards personal and living expenses from a sum of Rs.20,000/-. Therefore, even assuming that the loss of income to the deceased was Rs.10,000/- per month, adding 50% towards future prospects, it would be Rs.15,000/- per month. Therefore, the annual loss of income would be $\text{Rs.15,000/-} \times 12 = \text{Rs.1,80,000/-}$ which is considered to be the contribution to the family.

18. Now, having regard to the age of the deceased and the period of his active career, the appropriate multiplier should be selected. The Tribunal had taken the multiplier as 15 considering the age of the dependant, viz., mother. However, in terms of the decision in the case of Sarla Verma vs. Delhi Transport Corporation reported in (2009) 6 SCC 121, Sarla Verma vs. DTC, the proper multiplier would be 18 for the age group between 21 to 25 years. Therefore, in this case, as the deceased was 21 years, the loss of dependency can be calculated as $\text{Rs.15,000/-} \times 12 \times 18 = \text{Rs.32,40,000/-}$.

19. As regards funeral expenses, the Tribunal had awarded only Rs.5,000/- whereas the claimants are making a claim based on Rajesh and others vs. Rajbir Singh and others

reported in 2013 ACJ 1403 as per which, Rs.25,000/- can be awarded towards funeral expenses. On the head of loss of love and affection, the Tribunal has awarded only Rs.50,000/-, which is in the opinion of this Court, is very meagre and we are inclined to grant Rs.2,00,000/- (Rs.1 lakh each) to the aged parents.

20. Accordingly, the award of the Tribunal is enhanced as follows:-

Sl. No	Heads	Amt. granted by the Tribunal	Amt. granted by this Court
1	Loss of Income	Rs.18,00,000/-	Rs.32,40,000/-
2	Funeral Expenses	Rs.5,000/-	Rs.25,000/-
3	Loss of Love and Affection	Rs.50,000/-	Rs.2,00,000/-
	Total	Rs.18,55,000/-	Rs.34,65,000/-

There is no dispute in respect of the interest granted by the Tribunal at 7.5% p.a. Point No. 2 is answered accordingly".

Based on the above, the learned counsel for the appellants has pleaded for enhancement of compensation, however, he submitted that he restricts the quantum of compensation to a sum of Rs.25,00,000/- in toto.

8. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

9. The Tribunal, considering the age of the deceased, family circumstances and the educational qualifications of the deceased, fixed the income of the deceased at Rs.8,000/- p.m. and deducting 50% towards his personal expenses and adopting the multiplier 18, in the light of the decision reported in 2009 ACJ 1298 SC (Sarala Verma & Ors. vs. Delhi Transport Corporation and Anr.), awarded a sum of Rs.8,64,000/- towards loss of pecuniary benefits.

10. We find that insofar as the loss of income to the dependents is concerned, the Division Bench of this Court in the case of (Managing Director, Metropolitan Transport Corporation Limited, Chennai, vs. K.Murugesan and another) cited supra, in almost a similar situation, by taking the income of the deceased as Rs.20,000/- and by adding 50% towards future prospects, and deducting 50% towards the own expenses of the deceased, determined the pecuniary loss to the dependents at Rs.32,40,000/- The multiplier adopted in that case was 18, on the basis of the decision rendered by the Hon'ble Supreme Court in Sarla Verma's case reported in 2009 ACJ 1298 SC . Since the deceased in the case on hand was also a bachelor and an Engineering Graduate, searching for a job, by applying the same yardstick to the present case on hand, by taking the income of the deceased as Rs.20,000/- p.m. and 50% towards future prospects and by deducting 50% towards the own expenses of the deceased, the loss of dependency would be a sum of Rs.32,40,000/-.

11. On the head of Loss of love and affection, the Tribunal has awarded only a sum of Rs.50,000/- each, which is in the opinion of this Court, is very meagre and hence we are inclined to grant a sum of Rs.2,00,000/- (Rs.1,00,000/- each) to the aged parents.

12. The deceased had undergone the Pain and Suffering when he was treated as an inpatient. Hence, this Court is inclined to grant a sum of Rs.20,000/- towards Pain and Suffering and we are inclined to grant a sum of Rs.10,000/- towards transportation charges.

13. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 18	Rs. 8,64,000/-	Rs.32,40,000/-
2	Loss of love and affection	Rs. 1,00,000/-	Rs. 2,00,000/-
3	Transport expenses	Rs. 5,000/-	Rs. 10,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
4	Funeral expenses	Rs. 25,000/-	Rs. 25,000/-
	Total	Rs.9,94,000/-	Rs.34,75,000/-

14. There is no serious objection in respect of the interest granted at 7.5% per annum.

15. Since the claim made in this Civil Miscellaneous Appeal is restricted to a sum of Rs.25,00,000/-, though this Court has granted compensation to the tune of Rs.34,75,000/-, the total compensation which the appellants are entitled to get is only a sum of Rs.25,00,000/-, which includes the amount awarded by the Tribunal.

16. Accordingly, the Civil Miscellaneous Appeal is allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.25,00,000/- from Rs.9,94,000/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The award amount is apportioned equally between the claimants.
- (iv) The respondents are directed to deposit the entire award amount as ordered by this Court, after deducting the amount already deposited if any, to the credit of M.C.O.P.No.2375 of 2010 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this order.
- (v) On such deposit, the claimants are permitted to withdraw the award amount as ordered and apportioned by this Court as above.
- (vi) There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

The Chief Judge,
Motor Accidents Claims Tribunal
(Court of Small Causes)
Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.10276
+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.10257

C.M.A.No.1991 of 2015

JSV(CO)
CA(08/03/2016)



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