

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4/10/2016

C O R A M

The Honourable Mr. Justice S. Manikumar
and
The Honourable Mr. Justice N. Authinathan

Civil Miscellaneous Appeal No. 2357 of 2016

1. M. Vinodhini
2. M. Shalini (minor)
rep. By her mother &
Natural guardian/first respondent
3. N Lakshmi
4. G. Narasimhan ... Appellants/Petitioners

Vs

1. M. Thirumaran
2. United India Insurance Co Ltd
Silingi Building
New No.134 Old No.40-45
Greens Road
Chennai 6. ... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 22/8/2013 in M.C.O.P.No.188 of 2012 on the file of the Motor Accident Claims Tribunal/Chief Judge, Court of Small Causes, Chennai.

For appellants ... Mr. A. N. Viswanatha Rao
For 2nd Respondent ... Mr. D. Bhaskaran

J U D G M E N T

(Judgment of the Court was made by S. Manikumar, J)

Seeking enhancement of compensation, awarded in M.C.O.P.No.188 of 2012, dated 22/8/2013, on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai, instant appeal is filed.

2. Short facts leading to the appeal are that on 22/10/2011, about 05.30 hours, while N.Manikandan, was riding a motor cycle, bearing Registration No.TN09P-9032, at GST road, near Chromepet Municipality office signal, from north to south direction, of a private bus, bearing Registration No.TN10A-5931, driven in a rash and negligent manner, hit the motorcycle from behind and due to that, the motorcyclist had sustained fatal injuries and died on the spot, leaving behind his wife, minor child and parents, as his legal heirs.

3. A case in Crime No.1729 of 2011, was registered against the bus driver, on the file of Mount Traffic Investigation, Pallavaram. The deceased was aged 32 years, at the time of accident and he was working as Credit and Collections Associate in Perotsystems, Chennai. He was drawing a salary of Rs.27,211/- p.m. Legal representatives of the deceased, joined together and filed M.C.O.P.No.188 of 2012, before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai, claiming a compensation of Rs.65,00,000/-, but restricted the same to Rs.50,00,000/-.

4. United India Insurance Company Limited, Chennai, opposed the claim.

5. Evaluating the pleadings and evidence, Tribunal held that the driver of the bus, bearing Registration No.TN19A-5931, insured with the United India Insurance Company Limited, Chennai, was negligent in causing the accident. Based on the oral and documentary evidence, accepting the avocation, the Tribunal, fixed the monthly income of the deceased at Rs.17,126/-. By adding 50% of the income, towards future prospectus, {Rs.17,126/- x 50/100= Rs.8563 (17126 + 8563)}, arrived at Rs.25,683/- as income. After deducting 10% towards income and professional tax, rounded off the same to Rs.23,120/-. From this 1/4th was deducted towards the personal expenses of the deceased. Therefore, the loss of dependency arrived at by the Tribunal is Rs.23,120/- x $\frac{3}{4}$ x 12 x 16 = Rs.33,29,280/-. The first appellant/wife has been awarded Rs.25,000/- for loss of consortium, Rs.25,000/- for loss of love and affection to the appellants 2 to 4, Rs.10,000/- for loss of estate, Rs.10,000/- for funeral expenses and Rs.5,000/- for transport expenses. Altogether, the Tribunal awarded the compensation at Rs.34,04,280/-, with interest at the rate of 7.5% p.a., from the date of claim till realisation.

6. The claimants/legal representatives of the deceased has sought for enhancement under the following heads, viz., loss of consortium, loss of love and affection, funeral expenses and filed the instant appeal.

7. Placing on record the above submission, we advert to the same.

8. We heard Mr.A.N.Viswanatha Rao, learned counsel for the United India Insurance Company Limited, Chennai/second respondent.

9. At the time of accident, wife/first appellant was aged about 29 years. Quantum of compensation of Rs.25,000/- awarded under the head loss of consortium is less.

10. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Apex Court, held as follows:

"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

In the light of the above decision, compensation for loss of consortium of Rs.25,000/- is enhanced to Rs.1 lakh.

11. Minor child, aged about 2 1/2 years, has lost the love and affection of the father, for the rest of the life time. As per the judgment reported in 2013 (2) TNMAC 55 {Rajesh v. Rajbir

Singh} , the Hon'ble Apex Court has awarded Rs.1,00,000/- each, to the legal representatives of the deceased, towards loss of love and affection.

12. Third and fourth appellants/mother and father of the deceased, were aged about 56 and 70 years respectively. They had lost the love and affection of their son and that therefore, they should be adequately compensated. Loss of love and affection cannot be measured in precise terms of money, but there should be a just and reasonable compensation. Hence we deem it fit to award Rs.50,000/- each under the head loss of love and affection.

13. Quantum of Compensation of Rs.10,000/- awarded under the head, funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

"21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

14. A sum of Rs.5,000/- has already been awarded under the head transportation and there is no award for damages to clothes and articles. We deem it fit to award Rs.5,000/- under the said head. Compensation of Rs.34,04,280/- is enhanced to Rs.2,70,000/- (Rupees Two lakhs and

seventy thousand only), with interest at the rate of 7.5%, till realisation and the same is apportioned as hereunder:-

Loss of contribution to the family Rs. 33,29,280/-

Loss of consortium	Rs.	1,00,000/-
Loss of love and affection to minor child	Rs.	1,00,000/-
Loss of Love and Affection to the parents (Rs.50,000/- each)	Rs.	1,00,000/-
Funeral expenses	Rs.	25,000/-
Damages to clothes	Rs.	5,000/-
Loss of estate	Rs.	10,000/-
Transportation	Rs.	5,000/-

15. In view of the above, this Civil Miscellaneous Appeal is partly allowed. Apart from the compensation already determined, United India Insurance Company Limited, Chennai, is directed, to deposit the enhanced compensation of Rs.2,70,000/-, with interest and costs, at the rate of 7.5% till realisation, within a period of four weeks, from the date of receipt of a copy of this order. The entire share amount of the minor shall be deposited in any one of the Nationalised banks in reinvestment scheme till she attains majority. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal/Chief Judge,
Court of Small Causes, Chennai.

+1cc to Mr.A.N. Viswanatha Rao, Advocate, S.R.No.56962

gj (CO)
md(14/12/2016)

C.M.A.No.2357 of 2016