

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

CIVIL MISCELLANEOUS APPEAL No.2756 of 2015

1. Kalaiarasi
 2. Indirabanu
 3. Sanmathi
 4. Minor Sarumathi alias Monika
(4th appellant represented by her mother
and guardian, the 1st appellant, Kalaiarasi)
 5. Minor Ramanan
 6. Minor Rahini
 7. Minor Rahul
- ... Appellants
(Appellants 5 to 7 are represented by their
mother and Guardian, Latha)

Vs.

1. Abdul Latif
 2. National Insurance Company Ltd.,
Mayiladuthurai Branch,
Rastha Manavalli Street,
No.2 Road, Mayiladuthurai Town,
Nagapattinam District.
- ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.03.2014 made in MACTOP.No.41 of 2013 on the file of the Principal Subordinate Judge, (Motor Accidents Claims Tribunal), Mayiladuthurai.

For Appellants : Mr.A.Muthukumar
For 2nd Respondent : Mr.J.Chandran
For R1 : set exparte

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Heard the learned counsel for the claimants/appellants and the learned counsel appearing for the 2nd respondent/Insurance Company.

2. Aggrieved by the award of the Tribunal dated 25.03.2014 made in MACTOP.No.41 of 2013 on the file of the Principal Subordinate Judge, (Motor Accidents Claims Tribunal), Mayiladuthurai, the claimants have come up with the present appeal seeking enhancement of compensation.

3. This is a case of fatal accident. The deceased in this case is one Sankar. On 21.06.2012, about 4.30 p.m., when the deceased along with his brother Sakthivel was walking from east towards west on Vaitheeswarankoil Millady Street, on the left side of the road, a mobile Concrete Mixer Machine bearing Registration No.THRU-TRPT-KA 19A 2673 came from the same direction in a rash and negligent manner and hit the deceased. Consequently, his head was caught in the front wheel of the said vehicle and the deceased was crushed to death on the spot.

4. According to the appellants/claimants, the deceased was aged 46 years at the time of accident and he was working as a Music Teacher in Vaitheeswarankoil Government Girls High School, earning a sum of about Rs.26,543/- per month. The 1st claimant is the wife of the deceased and claimants 2 to 4 are his children. Claimants 5 to 7 are the children of the deceased through his second wife, viz. Latha. Alleging that the accident occurred due to the rash and negligent driving of the driver of the Mobile Concrete Mixer, the claimants filed a claim petition before the Tribunal seeking a sum of Rs.25,00,000/- as compensation from the owner and insurer of the alleged vehicle.

5. On the side of the appellants/claimants, the 1st claimant, viz. Kalaiarasi, the wife of the deceased was examined as P.W.1; one Mrs.Pavunammal, Headmistress of the Government School, where the deceased was working was examined as P.W.2; one Sakthivel was examined as P.W.3 and Exs.P-1 to P-9 were marked, the details of which are as follows:

Ex.P-1	Copy of FIR, dated 21.06.2012
Ex.P-2	Copy of post-mortem Certificate, dated 22.06.2012
Ex.P-3	Copy of the Report of the Motor Vehicles Inspector, dated 24.06.2012
Ex.P-4	Legal Heir Certificate, dated 06.12.2012
Ex.P-5	Copy of the Policy
Ex.P-6	Copy of the Driving Licence
Ex.P-7	Copy of the Temporary Vehicle Registration Certificate
Ex.P-8	Sales Certificate, dated 30.01.2012
Ex.P-9	Primary Certificate, dated 25.11.2012

6. On the side of the 2nd respondent/Insurance Company, one Mr.Thangaraj was examined as R.W.1 and one Mr.R.Ramesh, Insurance Officer, was examined as R.W.2. But, no documents were marked on the side of the Insurance Company. Apart from the above, two documents, viz. Copy of the Salary Register was marked as Ex.W-1 and copy of the Investigation Report was marked as Ex.W-2.

7. The Tribunal, taking note of the oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving of the driver of the Mobile Concrete Mixer, bearing Registration No.THURU-TRPT-KA 19A 2673 and fixed the liability to compensate the claimants, on the 2nd respondent/Insurance Company. Taking into account the avocation and income of the deceased, though the Tribunal arrived at a sum of Rs.42,00,040/- as compensation payable to the claimants, it rounded off the award to a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) with interest at 7.5% per annum, as the claim made in the claim petition is only for a sum of Rs.25,00,000/-. The details of the award passed by the Tribunal under different heads, are tabulated below:

Loss of contribution to the family	Rs. 41,35,040.00
Loss of companion for 1 st claimant	Rs. 25,000.00
Loss of love and affection towards claimants 2 to 7 @ Rs.5000/- each, i.e. Rs.5000 x 6	Rs. 30,000.00
Funeral and other expenses	Rs. 5,000.00
Loss of damage to property	Rs. 5,000.00
Total compensation	Rs.42,00,040.00
Compensation awarded to the claimants	Rs.25,00,000.00

Feeling aggrieved, the claimants have come up before this Court by way of the present appeal.

8. It is the contention of the learned counsel for the appellants/claimants that though the Tribunal arrived at a sum of Rs.42,00,040/- as compensation to the claimants, it has erred in granting only a sum of Rs.25,00,000/- merely on the ground of technicalities. He would submit that the claimants are entitled to a higher compensation and sought enhancement of the same.

9. On the other side, learned counsel appearing for the 2nd respondent/Insurance Company, mainly taking note of the manner of accident and the fact that the Temporary Certificate of Registration of the alleged vehicle had expired on the date of accident, would contend that when the 2nd respondent/Insurance Company is not exactly liable to compensate the claimants, the compensation of a sum of Rs.25,00,000/- awarded by the Tribunal is itself excessive. Strenuously objecting enhancement of compensation sought by the claimants, he prayed for dismissal of the appeal.

10. Heard the rival contentions made by the learned counsel on either side and perused the relevant material records.

11. Since this appeal is by the aggrieved claimants seeking enhancement of compensation, the only question before us is whether the claimants are entitled for enhancement of compensation.

12. Admittedly, at the time of accident, the deceased was working as a Music Teacher in Vaitheeswarankoil Government Girls High School. He was aged 46 years at that time, as could be seen from Ex.P2-Post mortem Certificate. A perusal of his Salary Certificate filed before the Court below would show that his monthly salary was Rs.26,543/-. The same was confirmed by the evidence of P.W.2, who is the Headmistress of the Government School, where the deceased worked. In view of the above, the Tribunal, fixing the monthly income of the deceased as Rs.26,500/- and adding 30% of the said monthly income towards future prospects, i.e. a sum of Rs.7,950/- to Rs.26,500/-, which comes to Rs.34,450/-, and deducting 1/5th towards personal expenses, i.e. a sum of Rs.6,890/-, rounded off the monthly contribution of the deceased from Rs.27,560/- to Rs.27,600/- and arrived at a sum of Rs.3,31,200/- (Rs.27,600/- x 12) as yearly loss of income. Further, deducting 10% towards Income Tax, the Tribunal taking Rs.3,18,080/- as yearly loss of income and applying the multiplier of '13', arrived at a sum of Rs.41,35,040/- as 'Loss of contribution to the family'.

13. On a perusal of the documentary evidence, this Court is of the view that the monthly income of the deceased has to be fixed after deducting the Travelling allowance granted to him. Thus, a sum of Rs.1,95,840/- is arrived as yearly loss of

contribution to the family (Rs.26,500/- - Rs.6,100/- = Rs.20,400/- x 1/5 = Rs.16,320/- x 12). In view of the dictum laid down by the Supreme Court in the case of Sarla Verma -Vs- Delhi Transport Corporation and another [2009 (6) SCC 121], the correct multiplier to be adopted in this case is '13'. Thus, applying the multiplier of '13' to the yearly contribution of a sum of Rs.1,95,840/-, a sum of Rs.25,45,920/- (Rs.1,95,840/- x '13') is arrived as compensation towards "Loss of contribution to the family".

14. Coming to the compensation awarded under the heads 'Loss of Consortium' and 'Loss of love and affection to claimants 2 to 7', this Court feels that the amounts are certainly on the lower side. Hence, the compensation under the head 'Loss of Consortium' is enhanced to a sum of Rs.1,00,000/- and the compensation towards 'Loss of love and affection to claimants 2 to 7' is enhanced to a sum of Rs.2,10,000/- (Rs.35,000/- each).

15. Further, we find that the compensation of Rs.5000/- awarded towards 'Funeral expenses' is certainly on the lower side and hence, the same is enhanced to a sum of Rs.25,000/-. Striking down the compensation of a sum of Rs.5,000/- awarded towards 'Damage to property', this Court awards a sum of Rs.45,000/- towards 'Loss of Estate' and a sum of Rs.25,000/- towards 'Transportation expenses'.

16. In all, the award passed by the Tribunal is enhanced to a sum of Rs.29,51,000/- (Rupees Twenty Nine Lakhs Fifty One Thousand only), though, not exactly granting the compensation sought by the claimants in this appeal. The interest fixed by the Tribunal at 7.5% per annum is confirmed. Break-up details of the revised award are as under:

Compensation under the Head	Amount arrived at by the Tribunal	Amount awarded by this Court
Loss of contribution to the family	Rs. 41,35,040.00	Rs.25,45,920.00
Loss of Consortium	Rs. 25,000.00	Rs. 1,00,000.00
Loss of love and affection towards claimants 2 to 7	Rs. 30,000.00	Rs. 2,10,000.00
Funeral and other expenses	Rs. 5,000.00	Rs. 25,000.00
Loss of damage to property	Rs. 5,000.00	-
Loss of Estate	-	Rs. 45,000.00
Transportation Expenses	-	Rs. 25,000.00
Total compensation	Rs.42,00,040.00 r/off to Rs.25,00,000.00	Rs.29,50,920.00 r/off to Rs.29,51,000.00

17. It is made clear that if no amount is deposited by the 2nd respondent/Insurance Company, the Insurance Company is directed to deposit the entire compensation awarded by the Tribunal including the enhanced compensation awarded by this Court, in toto, a sum of Rs.29,51,000/- (Rupees Twenty Nine Lakhs Fifty One Thousand only), along with accrued interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit to the credit of M.C.O.P.No.41 of 2013 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Judge, Mayiladuthurai, within a period of six (6) weeks from the date of receipt a copy of this judgment.

18. It is needless to mention that on such deposit, the major appellants/claimants are entitled to withdraw their respective share of the entire award amount along with accrued interest @ 7.5% per annum from the date of filing the claim petition till the date of realization. The proportionate share of the minor appellants/claimants shall be deposited in any one of the Nationalised Banks initially under reinvestment scheme for a period of three years, renewable thereafter periodically and the interest accrued thereon shall be withdrawn by their respective natural guardian, once in three months, till the minors attain majority.

19. It is also made clear that the award amount shall be paid to the major claimants in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. In the case of minor claimants, the proportionate share of the award amount shall be paid to them in the form of a crossed Account Payee Cheque, once they attain majority.

With the above modification and direction, this Civil Miscellaneous Appeal is partly allowed. No costs.

सत्यमेव जयते
-s/d-

Assistant Registrar (CSIV)

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Sub-Assistant Registrar

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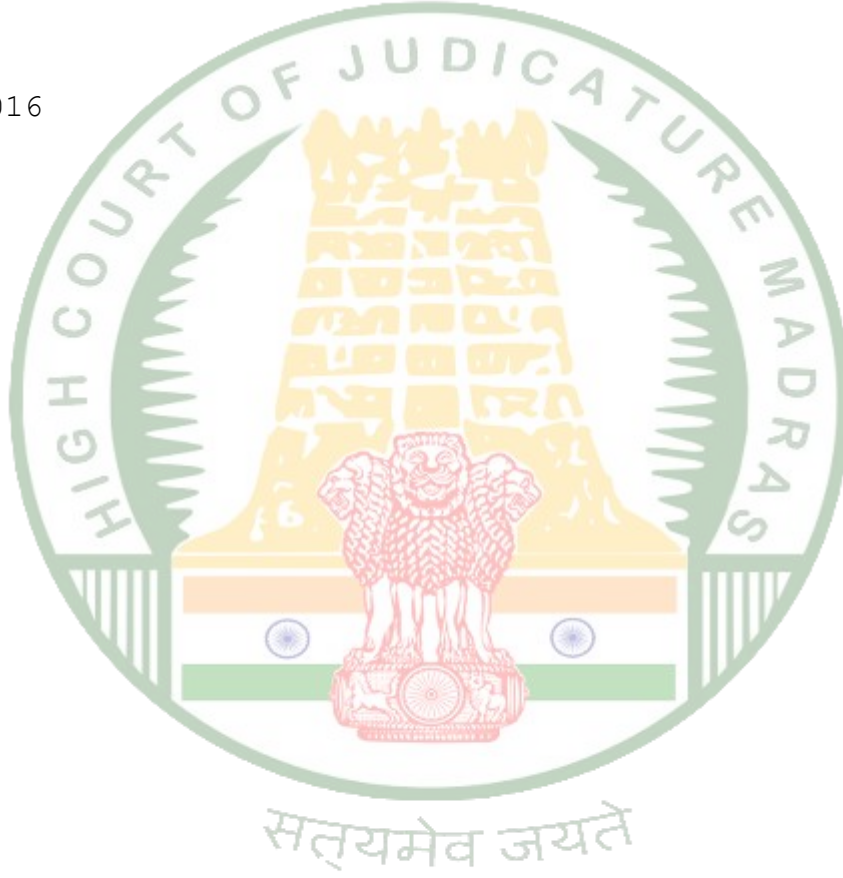
To :

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Mayilduthurai.

+1 cc to M/s.A.Muthukumar Advocate sr.10044

C.M.A.No.2756 of 2015

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