IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2016

CORAM

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

C.M.A.No.260 of 2016
and
C.M.P.No.2149 of 2016

The Branch Manager
M/s National Insurance Co. Ltd.,
Salem Division - I,
II Floor, LRN Building,
Saradha College Road
Salem ... Appellant/2nd Respondent

Vs.

1.Jayalakshmi
2. Anitha
3.Vanitha
4. Kailasapathi ... Respondents 1-4/Petitioners 1-4

5. M.Ravi ... 5th Respondent/1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 29.04.2014 passed in M.C.O.P.No.855 of 2011 on the file of the Motor Accidents Claims Tribunal , Subordinate Judge, Tiruppur District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Ma.Pa.Thangavel (R1-4)
R5- not ready in notice

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

The Insurance Company has preferred this Civil Miscellaneous Appeal challenging the Judgment and decree dated 29.04.2014 passed in M.C.O.P.No.855 of 2011 on the file of the Motor Accidents Claims Tribunal , Subordinate Judge, Tiruppur District.

2. It is a case of fatal accident. On 14.05.2011 at about 19.30 hours when the deceased Dhanuskodi @ Thangavel was going in a vehicle bearing Registration No.TN 38 BE 1348 from North to South in the Sathy to Covai Road, near Kalpana Textiles, Kunnathur, a vehicle bearing registration No.TN 30 AJ 1633, driven by the owner cum driver, was coming from South to North in a rash and negligent manner, dashed against the deceased Dhanuskodi @ Thangavel, thereby, the deceased sustained grievous injuries and immediately, he was taken to CMC Hospital, Covai, however, his life could not be saved and he died. The wife, two daughters and one son of the deceased, who are the claimants have filed a claim for compensation for a sum of Rs.15,00,000/-.

3. In support of the claim, Jayalakshmi, wife of the deceased was examined as P.W.1; one Sabayullah was examined as P.W.2.and one Vimalkumar Singh, an eye witness was examined as P.W.s and Exs.P-1 to Ex.P.5 were marked, the details of which are as follows:-

Ex.No.	Details
P1	FIR
P2	Charge sheet
P3	Death certificate
P4	Legal heir certificate
P5	Postmortem certificate

On behalf of the Insurance Company, no witness was examined and no document was marked before the Tribunal

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to a conclusion that due to the rash and negligent driving of the driver of the offending vehicle the accident had occurred and he alone was responsible for the accident and consequently liability was fixed on the appellant, to compensate the claimants.

5. Based on the oral and documentary evidence, 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 income	Rs. 10,92,000/-
2	Loss of estate	Rs. 50,000/-
3	Loss of love and affection	Rs. 2,00,000/-
4	Funeral expenses	Rs. 25,000/-
	Total	Rs. 13,67,000/-

6. The learned counsel for the appellant Insurance Company would submit that awarding a compensation of a sum of Rs.13,67,000/- towards the death of a 48 year old, who is stated to be working as a milk vendor, in favour of his wife, two daughters and one son is highly excessive and unsustainable. The learned counsel would further submit that the Tribunal has erred in fixing the monthly income of the deceased at Rs.7,000/- since the income from cow's produce is not permanent and in view of the fact that the income may differ depending upon the circumstances, the Tribunal ought not have added future prospects. He would further add that there is no evidence to the fact that there was a regular income to the deceased. That apart, according to him, the finding arrived at by the Tribunal shows that the assessment is purely on its discretion rather than on the basis of either oral and documentary evidence available on record. He would further add that since two married daughters who are also claimants are not dependents, the Tribunal ought to have deducted 1/3rd instead of 1/4th. The other objection raised by the learned counsel for the appellant Insurance Company is that the Tribunal ought not to have awarded compensation under the head "Loss of Estate' since enough compensation has been awarded towards loss of income by adding future prospects. Hence, the learned counsel for the appellant has sought for allowing of the Civil Miscellaneous Appeal.

7. On the other hand, the learned counsel for the claimants submitted that the claimants are not in a position to pay the Court fees to claim enhanced compensation. Therefore, he would submit that this Court may enhance the compensation in this appeal itself, so that they need not prefer any appeal for enhancement.

8. The learned counsel for the claimants relying on the decision of the Hon'ble Apex Court reported in 2015(1) TNMAC 161 (SC) (Neeta vs. Divisional Manager, MSRTC, Kolhapur), wherein, a sum of Rs.12,000/- has been fixed for a Carpenter, has submitted that the Tribunal erred in fixing the income of the

deceased at Rs.7,000/-, when the deceased having three cows, was earning a sum of Rs.12,000/- as a milk vendor by selling milk to shops in Kunnathur. Further, he would submit that the Tribunal erred in not awarding any amount towards loss of consortium.

9. This Court heard the submissions made by the learned counsel on either side and perused the materials available on record.

10. As far as the Hon'ble Apex Court's Judgment relied on by the learned counsel for the claimants referred to above is concerned, the Hon'ble Supreme Court has taken note of the minimum wages fixed as per the notification under the Minimum Wages Act, 1948 while granting compensation. However, that is the not the case here. As far as the case in hand is concerned, there is no evidence with regard to the earning of income at Rs.12,000/-, the deceased being a milk vendor. Hence, this Court is of the view that fixing the monthly income of the deceased at 12,000/-, who was working as milk vendor is highly excessive.

11. The Honourable Apex Court, in the judgment rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), in respect of a vegetable vendor, who sustained injuries in an accident which occurred in 2008, determined Rs.6500/- as the monthly income.

12. Taking note of the Syed's case referred to above, since the accident in this case had occurred in the year 2011, we are of the view that fixing the income of the deceased at Rs.7,500/- would be just and proper.

13. At this juncture, it is useful to refer to Paragraph No.30 of the Judgment reported in (2009) 6 SCC 121(Sarla Verma v. Delhi Transport Corporation), wherein the Hon'ble Apex Court has held as follows:-

> "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra[4], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family

members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six".

As per the dictum laid down by the Hon'ble Supreme Court in the Sarla Verma's Case, referred to above, since the number of dependent family members as far as the case in hand is concerned is 2, as the married daughters are not dependents, 1/3rd deduction has to be made.

14. It is settled law that in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects and in case, the deceased was in the aged group of 40 to 50 years, there must be an addition of 30%. In the present case, admittedly, the deceased was 48 years at the time of accident. Therefore, we are of the view that the Tribunal is right in adding 30% to the actual income of the deceased while computing future prospects.

15. Thus, by taking Rs.7,500/- as the monthly income, deducting 1/3rd towards personal expenses and adding 30% towards future prospects and applying 13 multiplier, the loss of income would be Rs.10,14,000/- (7500-2500(1/3)+1500 (30%) x 12 x 13).

16. As far as the plea of non grant of any amount under the head Loss of consortium is concerned, it is useful to refer to the judgment of the Hon'ble Supreme Court in the case of 'Rajesh and others versus Rajbir Singh and others, reported in 2013 ACJ 1403, wherein, the Hon'ble Supreme Court has held as under in para 20.

> "20. ....We may therefore, revisit the practice of awarding compensation under conventional heads, loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the some needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. 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 the head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium'."

17. Therefore, having regard to the above, we are inclined to grant a sum of Rs.1,00,000/- towards loss of consortium to the first claimant/wife of the deceased and Rs.50,000/- to the son of the deceased, towards loss of love and affection and Rs.25,000/- towards funeral expenses together with transport expenses.

18. As far as the objection with regard to the grant of compensation towards Loss of Estate is concerned, as the Tribunal has granted loss of future prospects, we feel that the Tribunal has erred in granting compensation towards loss of estate also. Since compensation towards both for loss of estate and loss of future prospects could not be granted, the amount of Rs.50,000/- granted towards loss of estate stands deleted.

19. There is no serious objection with respect the interest granted at 7.5% per annum.

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

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs. 10,92,000/-	Rs. 10,14,000/-
2	Loss of consortium to first claimant/ wife	Rs.	Rs. 1,00,000/-
3	Loss of love and affection	Rs. 2,00,000/-	Rs. 50,000/-
4	Funeral expenses&Transport	Rs. 25,000/- (Only Funeral)	Rs. 25,000/-
5	Loss of Estate	Rs. 50,000/-	Rs. -
	Total	Rs. 13,67,000/-	Rs. 11,89,000/-

21. Since it is represented that the claimants are not in a position to pay the Court fees for claiming enhanced compensation and they sought enhancement in this appeal itself and after considering the submissions made by the learned counsel on either side, we have also modified the compensation awarded by the Tribunal.

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

(i) The award of the Tribunal is reduced to Rs.11,89,000/- from Rs.13,67,000/--.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant insurance company is directed to deposit the entire award amount together with interest to the credit of MCOP No.855 of 2011 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tiruppur District if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimants are entitled to withdraw their respective shares as apportioned by the Tribunal on filing necessary applications before the Tribunal.

(iv) The appellant insurance company is at liberty to withdraw the excess amount if deposited before the Tribunal.

(v) There will be no order as to costs in this appeal.

(vi) If any excess court fee is paid, the same shall be refunded.

(vii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
Subordinate Judge,
Tiruppur District.

+1cc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No.19140
+1cc to Mr.J.Chandran, Advocate, S.R.No.19522

C.M.A.No.260 of 2016

MG(CO)
CA(27/04/2016)