

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

C O R A M

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH,J.,
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU,J.,

C.M.A.No.706 of 2015

1. Pichaiappan
2. Sarasu
3. Sudagar ...Appellants/Petitioners

vs

1. R.Padmanabhan
2. The Branch Manager
National Insurance Company Limited
Kancheepuram ...Respondents/Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act 1988 against the judgment and award dated 30.07.2014 passed by the learned I Additional District Judge [Motor Accident Claims Tribunal], Tindivanam in MCOP No.167 of 2013.

For Appellant Mr.UM.Ravichandran
For Respondents Mr.G.Udaya Sankar for R2
R1- No appearance

J U D G M E N T

(Judgment of the Court was delivered by
HULUVADI G.RAMESH,J.,)

The claimants are the appellants, who are before this Court, challenging the award dated 30.07.2014 passed by the learned I Additional District Judge [Motor Accident Claims Tribunal], Tindivanam in MCOP No.167 of 2013, seeking enhancement of compensation.

2. The brief facts of the case is as follows:

(i) This is a case of fatal accident.

(ii) On 18.03.2012 at about 13.30 hours, when the deceased was riding his motor cycle bearing Regn.No.PY-01-AY-0119 in Tindivanam-Gingee Road, a lorry bearing Regn.No.TN-05-Z-2428, insured with the second respondent-Insurance company, came in a rash and negligent manner and dashed against the deceased due to

which the deceased fell down and who suffered multiple injuries and died on the spot. The claimants/appellants, who are the parents and brother of the deceased -Vijay went before the Tribunal claiming compensation in a sum of Rs.50,00,000/-. The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.10,30,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

3. The learned counsel for the appellants submits that the Tribunal had erred in taking into account the age of the parents for fixing the multiplier contrary to the decision of the Hon'ble Apex Court reported in (2015) 6 SCC 347 [Munna Lal Jain and another vs. Vipin Kumar Sharma and others] wherein it is held that multiplier has to be fixed considering the age of the deceased. It is his further contention that the Tribunal ought not to have reduced the income of the deceased to Rs.15,000/- per month, when proof of income for earning a sum of Rs.18,000/- p.m. has been produced, which clearly shows that the deceased was a qualified Engineer. It is further submitted that the Tribunal has not awarded any amount towards future prospects as per the dictum laid down by the Hon'ble Apex Court reported in (2012) 6 SCC 421 [Santosh Devi vs. National Insurance Company Limited and others]. Accordingly, he prays for enhancement of the compensation awarded by the Tribunal.

4. Per contra, the learned counsel for the Insurance company submits that the compensation awarded by the Tribunal is excessive when no proof regarding age, occupation and income of the deceased have been produced. He further submits that the pecuniary loss should have been arrived at by the Tribunal taking into account the number of dependents. Accordingly, he prays for the dismissal of the appeal.

5. We have heard the learned counsel for the respective parties.

6. It is seen that the deceased is an Engineering Graduate and his proof of income has been produced by the claimants to show that he was earning a sum of Rs.18,000/- at the time of the accident. Further, the deceased is a bachelor. Therefore, the Tribunal fixed his monthly income at Rs.15,000/- and after deducting 50% towards his personal expenses had arrived at Rs.90,000/- p.a towards loss of income. Further, adopting 11 multiplier taking into account the age of the parents arrived at a sum of Rs.9,90,000/- towards pecuniary loss. In addition to that the Tribunal has also awarded a sum of Rs.5,000/- each towards funeral expenses and transportation charges and another sum of Rs.30,000/- towards love and affection to the parents. Totally, a sum of Rs.10,30,000/- has been awarded as Compensation.

7. The claimants, though have sought for enhancement of the compensation awarded by the Tribunal in this appeal, however have restricted their claim to Rs.19,00,000/-.

8. In Munna Lal Jain's case (supra), relied on by the learned counsel for the claimants, the Supreme Court, considering the decision rendered by the Apex Court in Reshma Kumari & Ors. - Vs - Madan Mohan & Ors. (2013 (9) SCC 65) has reiterated that the multiplier should be fixed on the basis of the age of the deceased and not on the basis of the mother of the deceased. For better clarity, the relevant portion is extracted hereunder :-

"12. The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:

"36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma."

13. In Sarla Verma (supra), at paragraph-19, a two-Judge Bench dealt with this aspect in Step 2. To quote:

"19. xxxxxxx xxx Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age 6 Page 7 of the deceased."

9. In the present case, the Tribunal has taken the age of the mother of the deceased and applied the multiplier of 11, which is erroneous in view of the ratio laid down above by the Supreme Court and the correct multiplier would be 17 based on the age of the deceased.

10. Insofar as the issue pertaining to non award of "Future Prospects" by the Tribunal is concerned, the Supreme Court in Munna Lal Jain's case (supra), following the decision in Rajesh & Ors. - Vs - Rajbir Singh & Ors. (2013 (9) SCC 54), which in turn had followed the decision in Santosh Devi's case (supra) has held that if the age of the deceased is below 40 years, then 50% has to be given towards future prospects and where the age of the deceased is more than 40 years, 30% should be awarded towards future prospects. In the present case, the deceased, on the date of the accident, was aged 27 years and, therefore, 50% of the income fixed should be awarded towards future prospects as the deceased being a qualified Engineer would have definitely earned more during his life span, but for the accident. For better clarity, the relevant portion is extracted herein below :-

"11. As far as future prospects are concerned, in Rajesh and others v. Rajbir Singh and others , a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there

must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, 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. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

The deceased being of the age of 30 years, 50% is the required addition."

11. In view of the law laid down by the Supreme Court, quoted above, this Court, while accepts the income of the deceased as fixed by the Tribunal at Rs.15,000/=, while deducting 50% towards personal expenses, awards future prospects on the income at 50% and accordingly, arrives at the loss of dependency to the family at Rs.11,250/= per month. Accordingly, the loss of dependency is computed as hereunder by adopting a multiplier of 17 :-

$$\text{Rs.11,250} \times 12 \times 17 = \text{Rs.22,95,000/=}$$

12. Insofar as the compensation granted under the head "Loss of Love and Affection" is concerned, this Court feels that it is on the far lesser side. Accordingly, this Court enhances the same to Rs.1,00,000/= for the 2nd claimant, viz., the mother of the deceased while claimants 1 and 3 are entitled to a sum of Rs.50,000/= each under the above head. In all, a sum of Rs.2,00,000/= is quantified under the head "Loss of Love & Affection".

13. As regards the compensation awarded under the head "Funeral Expenses", in view of the law laid down by the Supreme Court in Rajesh's case (supra), wherein the Supreme Court, considering the cost of living index in relation to the charges to be paid to the crematorium and other religious practices and conventions has held that a sum of Rs.25,000/= would be a just compensation towards "Funeral Expenses". Accordingly, this Court enhances the compensation under the above head to Rs.25,000/=.

14. It is further seen that no amount has been awarded towards "Transportation Expenses". Accordingly, this Court awards a sum of Rs.10,000/= towards "Transportation Expenses".

15. Accordingly, the awarded passed by the Tribunal is modified in terms as mentioned below :-

Head	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Dependency	Rs.9,90,000/=	Rs.22,95,000/=
Loss of Love & Affection	Rs.30,000/=	Rs.2,00,000/=
Funeral Expenses & Transportation	Rs.5000/=	Rs.25,000 + Rs.10,000 = Rs.35,000/=
Total	Rs.10,30,000/=	Rs.25,30,000/=

16. The compensation, as quantified above, is apportioned among the appellants/claimants in the following proportion :-

1 st Claimant / Father	-	Rs.7,00,000/=
2 nd Claimant / Mother	-	Rs.15,00,000/=
3 rd Claimant / Brother	-	Rs.3,30,000/=
Total	-	Rs.25,30,000/=

17. The second respondent-Insurance Company is directed to deposit the entire amount as enhanced by this Court with proportionate interest and costs to the credit of MCOP No.167 of 2013 on the file of the learned I Additional District Judge [Motor Accident Claims Tribunal], Tindivanam within a period of three months from the date of receipt of a copy of this order. On such deposit being made, the appellants/claimants are entitled to withdraw the share as apportioned above along with

accrued interest on making out appropriate application before the Tribunal.

18. With the above modification, this Civil Miscellaneous Appeal is allowed. No costs.

-s/d-
Assistant Registrar (CS-II)

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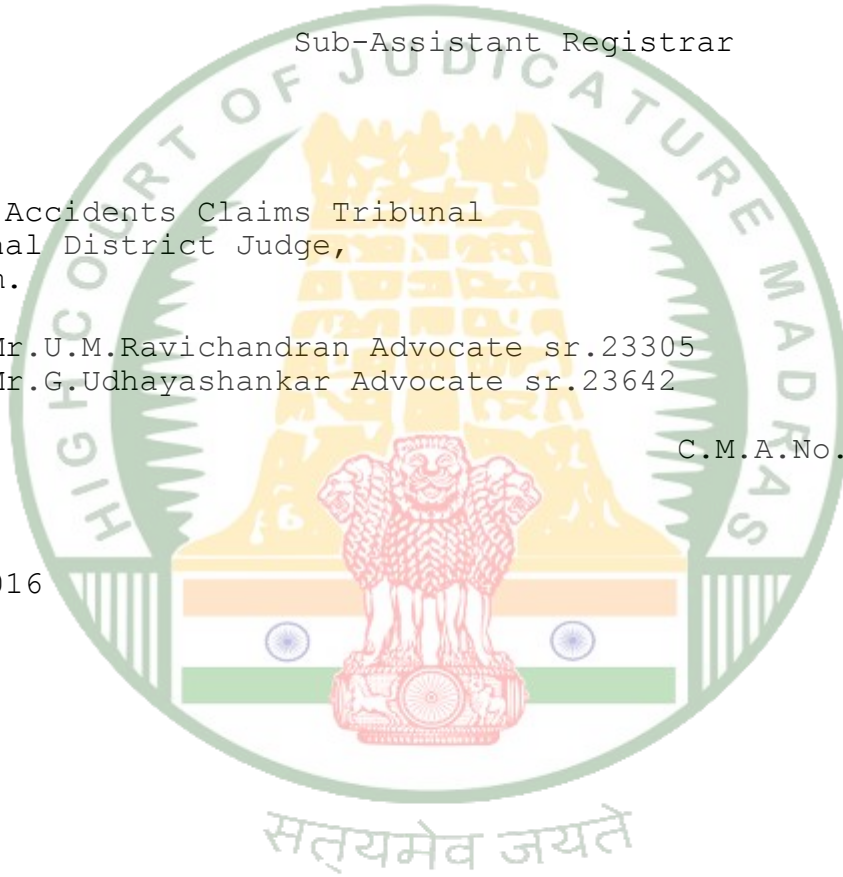
Sub-Assistant Registrar

vj2
To
The Motor Accidents Claims Tribunal
I Additional District Judge,
Tindivanam.

+1 cc to Mr.U.M.Ravichandran Advocate sr.23305
+1 cc to Mr.G.Udhayashankar Advocate sr.23642

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