IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM

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

C.M.A.No.1738 of 2014

1. Jayalakshmi,
   W/o Late A.Jayakumar

2. Prabhu,
   S/o Late A.Jayakumar

3. Minor Kamala
   D/o Late A.Jayakumar
   Rep. by her mother and National
   Guardian Jayalakshmi

4. A.Appasamy
   S/o Ananda vijayan

5. A.Santha,
   W/o A.Appasamy ..Appellants/Claimants

Vs.

1. I.G.Sasikumar

2. Royal Sundaram Alliance
   Insurance Company Ltd.,
   Chennai Business Unit,
   No.3, Khader Nawaz Khan Road,
   III Floor, Chennai - 600 006. ..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award of the Motor Accident Claims Tribunal, Chennai, Special Sub Judge-I for M.C.O.P. Cases, Chennai dated 04.12.2013 in M.A.C.T.O.P.No.130 of 2010.

For Appellant : Mr.Bharatha Chackaravarty
for M/s. Sai Bharath and Ilan

For respondents: Mr.M.Krishnamurthy for R2
NA. for R1

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH, J.)

This appeal has been filed by the claimants seeking enhancement of compensation against the judgment and decree dated 04.12.2013 made in M.C.O.P.No.130 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Judge I for M.C.O.P. Cases, Chennai.

2. It is a case of fatal accident. On 03.08.2009, at about 11.00 p.m. when the deceased Jayakumar was travelling from Tiruvannamalai to Vellore and was sitting in the front seat as a passenger in the Toyota Qualis Car bearing Registration No. TN-20-T-3616 driven by the 1st respondent herein, who is the owner of the vehicle. The vehicle was driven by the 1st respondent in a rash and negligent manner and while trying to avoid a pedestrian crossing the road, the driver lost control of the vehicle and dashed the vehicle against a tamarind tree on the right side of the road, due to which, both Jayakumar and the driver/first respondent were injured. The deceased sustained grievous internal chest injury and external injury on the forehead and was admitted to the Christian Medical College Hospital, Vellore and subsequently, he died in the said hospital at 6.15 p.m. on 04.08.2009.

3. The claimants/ wife, son, daughter and parents of the deceased have filed a claim petition in MCOP.No.130 of 2010 seeking compensation of Rs.33,78,500/-. In support of the claim, the wife of the deceased examined herself as P.W.1 and one Ramachandran was examined as P.W.2 and Exhibits P1 to P13 were marked. Neither any oral evidence was adduced nor any document was marked on the side of the respondents.

4. The Tribunal, after taking note of the oral and documentary evidence held that the accident had happened only due to the rash and negligent driving by the driver of the car and fastened the liability on the insurer of the car/2nd respondent and consequently, the insurer was directed to pay the compensation.

5. Accordingly, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Head	Amount granted by the Tribunal
1	Pecuniary Loss	Rs.8,10,000/-
3	Funeral expenses	Rs.10,000/-
4	Loss of love and affection	Rs.50,000/-

Sl.No	Head	Amount granted by the Tribunal
5	Loss of consortium	Rs.50,000/-
	Total	Rs.9,20,000/-

6. In the present appeal, the claimants seek enhancement of the quantum of compensation.

7. Learned counsel for the claimants contended that the deceased, aged 42 years, died in the accident that had occurred on 03.08.2009. The deceased was doing business under the name and style "Magaram Agencies" and he was a Marketing Agent of M/s.Castrol India Ltd. and other Oil Companies. The deceased had developed the business and had earned popularity with the customers. Therefore, the finding of the Tribunal in holding that the said agency still exists even after the demise of the deceased Jayakumar, is unsustainable. Learned counsel further contended that the deceased has filed Income Tax return for the year 2006-2007 showing an income of Rs.1,12,749/- and for the year 2007-2008, the income shown is Rs.1,64,356/-. The deceased died during August 2009 and the income tax returns was filed for the year 2008-2009, showing the income at Rs.1,14,723/- which is only for four months and the average if taken for the whole year, would come to Rs.3,44,169/-. The average income of the deceased for the years 2007 to 2009 is Rs.2,07,091/- and adding 50% towards future prospects, the annual income of the deceased comes to Rs.3,10,136/-. Therefore, the monthly income of the deceased should be Rs.25,844/- and after deducting 1/4th towards personal expenses, the loss of income to the family comes to Rs.19,423/- and adopting the multiplier 15, the loss of income would be Rs.34,98,840/-. Learned counsel further contended that the Tribunal has taken the monthly income of the deceased as Rs.4,500/- only and after deducting 1/4th towards his personal expenses, has awarded pecuniary loss at Rs.8,10,000/-, which is unsustainable and the same has to be enhanced. Learned counsel further contended that the amount awarded towards loss of consortium, loss of love and affection and funeral expenses is on the lower side and therefore, the amount awarded under those heads need to be enhanced.

8. Per contra, learned counsel for the Insurance Company submitted that the Income Tax returns filed has to be calculated as per the decision of the Apex Court in Rani Gupa & others -Vs- United India Insurance Co. Ltd., & ors. (2009 ACJ 1605 SC). Insofar as the future income is concerned, the income is based on the average assets and also contended that assets remain available to the claimants and hence, the award of compensation passed by the Tribunal should be confirmed.

9. Heard the learned counsel for the claimants and the learned counsel appearing for the Insurance Company.

10. It appears that the petitioner was working as a Marketing Agent in M/s. Castrol India Co. Limited and the facts remains that for every sale of barrel of oil/lube, he gets commission and it also depends upon the promotion of the business and supply of Castrol to purchasers and dealers. Marketing involves skill and earnings in the said business also depends upon intelligence and hard work. According to the claimants, though the assets viz., the immoveable property remains, the income from the business has stopped as the agency is not functioning properly after the death of the deceased Jayakumar and therefore, the decision relied on by the learned counsel for the insurer cannot hold water. This Court is of the considered opinion that the contention of the claimants on this aspect deserves acceptance.

11. Insofar as the pecuniary loss is concerned, the Tribunal has fixed the monthly salary at Rs.4500/- and arrived at the loss at Rs.8,10,000/-. However, a perusal of the order of the Tribunal clearly reveals that the Tribunal has not taken into consideration the income tax returns filed by the deceased for the past years as also the income tax return filed for the current year. Further, as already pointed out above, the deceased was in the marketing business, which involves intelligence and hard work and being in the line of business, definitely, the deceased would have put in more effort for securing higher amounts for the benefit of his family. Therefore, this Court feels that the income fixed by the Tribunal is on the lower side and accordingly, this Court feels that the monthly income could be safely fixed at Rs.13,000/-. Accordingly, fixing the monthly income of the deceased at Rs.13,000/- and deducting on-fifth towards the personal expenses of the deceased and adding future prospects at 30%, since the deceased was aged 42 years on the date of accident, and adopting a multiplier of 14, the contribution of the deceased to the family would have been Rs.13,520/- per month. Accordingly, this Court arrives at the pecuniary loss to the family at Rs.22,75,000/- (Rs.13250x12x14).

12. As regards the amount awarded towards "Loss of Consortium" is concerned, considering the age of the deceased vis-a-vis the age of the wife of the deceased, this Court is of the considered opinion that the award of the Tribunal on the head of "Loss of Consortium" and "Loss of Love & Affection" at Rs.50,000/- each is definitely on the lower side. This court feels that an amunt of Rs.1,00,000/- each under the head "Loss of Consortium" and "Loss of Love & Affection" would meet the ends of justice. Accordingly, considering the cost of living index and the expenses that are incurred for performing the

religious rites in today's scenario, this court fees that an award of Rs.25,000/- under the head "Transport & Funeral Expenses" would be a reasonable compensation. Accordingly, the compensation awarded by the Tribunal stands modified as hereunder with interest at 7.5% per annum:-

Sl. No	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Pecuniary Loss	Rs.8,10,000/-	Rs.22,75,000/-
2	Transport and Funeral expenses	Rs.10,000/-	Rs.25,000/-
3	Loss of love and affection	Rs.50,000/-	Rs.1,00,000/-
4	Loss of consortium	Rs.50,000/-	Rs.1,00,000/-
	Total	Rs.9,20,000/-	Rs.25,00,000/-

13. Accordingly, Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The award of the Tribunal is enhanced from Rs.8,10,000/- to Rs.25,00,000/-.

(ii) Out of the award amount as modified by this Court above, the first claimant/ wife of the deceased is entitled to a sum of Rs.10,00,000/-; the second and third claimants/son and daughter of the deceased are entitled to a sum of Rs.5,00,000/- each; the fourth claimant/father of the deceased is entitled to a sum of Rs.2,00,000/- and the fifth claimant/ mother of the deceased is entitled to a sum of Rs.3,00,000/-.

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

(iv) The 2nd respondent Insurer is directed to deposit the award amount granted by this Court along with accrued interest and costs within a period of three months from the date of receipt of a copy of this order to the credit of M.C.O.P.No.130 of 2010, if not already deposited.

(v) On such deposit being made, the first, second, fourth and fifth claimants are permitted to withdraw the award amount as per the apportionment ordered by this Court above on filing appropriate application.

(vi) The share of the minor / 3rd claimant shall be invested in Fixed Deposit in any one of the Nationalised Banks initially for a period of three years and the same shall be renewed periodically till she attains majority. The interest accrued on the share of the minor 3rd claimant shall be paid to 1st claimant/ mother of the minor 3rd claimant once in three months till the 3rd claimant attains majority.

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

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

vsi

To

The Special Sub Judge I for M.C.O.P. Cases,
Motor Accident Claims Tribunal,
Chennai.

+1cc to M/s. Sai Bharath & Ilan, Advocate, S.R.No.26711
+1cc to Mr.M. Krishnamoorthy, Advocate, S.R.No.26598

RSY(CO)
EU(27/06/2016)

C.M.A.No.1738 of 2014