

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.03.2016

CORAM

**THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN**

**C.M.A. NO. 453 OF 2016
AND
C.M.P. NO. 3414 OF 2016**

The Divisional Manager
M/s. Oriental Insurance Co. Ltd.
DO, Eswaran Koil Street
Puducherry 605 001.

.. Appellant

- Vs -

1. Mrs. P.Latha
2. Mr. P.Balaram
3. Mr. P.Sriram
4. Mr. A.Balakrishnan
5. Mrs. B.Anjammal
6. Mr. Vijaya Santhosh

.. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2015, passed by the Motor Accident Claims Tribunal (Principal District Judge), Cuddalore, made in MCOP No.2414 of 2013.

For Appellant : Mr. J.Chandran

For Respondents : Mr. T.Gobinath for RR-1 to 5

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 5/claimants.

2. The appellant/insurer of the vehicle has filed the appeal challenging the award dated 09.04.2015, passed by the Motor Accident Claims Tribunal (Principal District Judge), Cuddalore, made in MCOP No.2414 of 2013.

3. It is a case of fatal accident. On 05.04.2013, at about 10.50 hrs., when the deceased Pazhamalanathan, aged about 50 years, was riding in the motorcycle bearing Regn. No.TN-59-O-1134 as pillion rider, on the Dindigul – Trichy National Highways, the Innova Car belonging to the sixth respondent herein, bearing Regn. No.K1-07-AW-7284, driven in a rash and negligent manner, hit the two wheeler in which the deceased was travelling from behind due to which the deceased was thrown away and sustained grievous injuries. The deceased was taken to the Government Hospital, Dindigul, where he was declared dead. A case was registered against the driver of the car.

4. The deceased, on the date of accident, was working as Sub Inspector of Police and earning Rs.35,000/= per month. The respondents 1

to 5, viz., the wife, children and parents of the deceased have filed the claim petition claiming a sum of Rs.75,00,000/= as compensation.

5. In support of the claim, the first claimant, viz., the wife of the deceased was examined as P.W.1. One Sivakumar, eye witness to the occurrence was examined as P.W.2 and Exs.P-1 to P-10 were marked, the details of which are as follows:-

Ex.P-1	-	Xerox Copy of First Information Report
Ex.P-2	-	Xerox Copy of Motor Vehicle Inspector Report
Ex.P-3	-	Xerox copy of post mortem certificate
Ex.P-4	-	Xerox Copy of Legal Heir Certificate
Ex.P-5	-	Death Certificate of the deceased
Ex.P-6	-	Identity Card of the deceased issued by Tamil Nadu Police
Ex.P-7	-	Pay slip of the deceased for the month of Jan., 2013
Ex.P-8	-	Xerox copy of insurance policy
Ex.P-9	-	Xerox copy of driving licence in the name of Shameel issued by Indian Union Kerala State
Ex.P-10	-	Xerox copy of driving licence in the name of one Sivakumar

6. On the side of the respondents, neither any oral evidence nor any documentary evidence was adduced.

7. The Tribunal based on the oral evidence of the P.W.1, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of

P.W.2, eye witnesses to the occurrence, which has been adduced to prove that the car was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the car, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the car and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads:-

Loss of Income	-	Rs.37,71,378/=
Loss of Consortium for first claimant	-	Rs.10,000/=
Loss of Love & Affection for claimants 2 to 5	-	Rs.40,000/=
Funeral Expenses		Rs.10,000/=
Transportation Expenses		Rs.10,000/=
Total Compensation	-	Rs.38,41,378/=

8. In all the Tribunal awarded a compensation of Rs.38,41,378/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit with appropriate apportionment between the claimants. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

9. Learned counsel appearing for the appellant contended that the income fixed by Tribunal is on the higher side. It is further contended that though the deceased has crossed 50 years of age, the Tribunal has added 30% towards future prospects, which is not sustainable in view of the decision of the Supreme Court in the case of ***Sarla Verma - Vs - Delhi Transport Corporation & Anr. (2009 (6) SCC 121***).

10. Per contra, learned counsel appearing for the claimants contended that the Tribunal, on the head of loss of income has rendered a well considered finding and has fixed the compensation and, therefore, no interference is called for with the order passed by the Tribunal. It is further contended by the learned counsel for the claimants that the amount of compensation awarded under the other heads is on the lower side and, therefore, this Court may consider enhancing the same.

11. This Court has given its careful consideration to the above contentions advanced by either parties and also has taken into consideration the judgment relied on by the learned counsel for the appellant. Admittedly, the respondents/claimants have not filed any appeal claiming enhancement.

12. A careful perusal of the order passed by the Tribunal reveals that the Tribunal has fixed the income of the deceased based on the pay slip marked as Ex.P-7. Therefore, the contention of the learned counsel for the appellant that the income fixed is on the higher side cannot be countenanced. However, the Tribunal has fixed the future prospects of the deceased at 30% and granted compensation, which is not permissible as per the decision of the Supreme Court in *Sarla Verma's case (supra)*, the deceased having crossed 50 years of age. In such view of the matter, this Court modifies the compensation awarded under the head "Loss of Income" as under :-

Rs.25,802 X 12	=	Rs.3,09,624/=
Less : Standard Dedn.	=	Rs.2,50,000/=
Taxable Income	=	Rs.59,624/=
Tax on income	=	Rs.5,962/=
Surcharge @ 2%	=	Rs. 179/=
Total	=	Rs. 6,141/=
Total income per year	=	Rs.3,03,483/=
1/4 dedn. towards personal exp.	=	Rs. 75,871/=
Loss of income to family	=	Rs.2,27,612 X 13
	=	<u>Rs.29,58,956/=</u>

13. Insofar as the compensation awarded by the Tribunal under the heads "Loss of Consortium", "Loss of Love & Affection", "Funeral Expenses"

and "Transportation Expenses" are concerned, it is evident that the compensation awarded under the above heads are on the lower side. Accordingly, this Court is of the considered view that the compensation awarded under the above heads requires to be enhanced and, accordingly, the compensation awarded under the above heads are enhanced as under :-

Loss of Consortium for first claimant	-	Rs.1,00,000/=
Loss of Love & Affection for claimants 2 to 5 (Rs.50,000 X 4 = Rs.2,00,000/=)	-	Rs.2,00,000/=
Funeral Expenses		Rs.15,000/=
Transportation Expenses		Rs.10,000/=

14. Accordingly, the compensation awarded by the Tribunal under the various heads are modified as under :-

	Compensation awarded by Tribunal	Compensation awarded by this Court
Loss of Income	Rs.37,71,378/=	Rs.29,58,956/ =
Loss of Consortium for first claimant	Rs.10,000/=	Rs.1,00,000/=
Loss of Love & Affection for claimants 2 to 5 (Rs.50,000 X 4 = Rs.2,00,000/=)	Rs.40,000/=	Rs.2,00,000/=
Funeral Expenses	Rs.10,000/=	Rs.15,000/=
Transportation Expenses	Rs.10,000/=	Rs.10,000/=
Total Compensation	Rs.38,41,378/=	Rs.32,83,956/=

15. Accordingly, this civil miscellaneous appeal is disposed of with the above modification in the award. The appellant/insurer is directed to deposit the entire award amount as modified above, less the amount, if any deposited at the time of preferring the appeal, along with interest @ 7.5%, as directed by the Tribunal, to the credit of MCOP No.2414/2013 within a period of eight weeks from today. On such deposit, the respondents/claimants are permitted to withdraw the amount, as per the above award passed by this Court as per apportionment made by the Tribunal. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

(R.S.J.) (S.V.N.J.)
02.03.2016

Index : Yes/No

Internet : Yes/No

GLN

To

The Principal District Judge
(Motor Accident Claims Tribunal)
Cuddalore.

R.SUDHAKAR, J.
AND
S.VAIDYANATHAN, J.

GLN

C.M.A. NO. 453 OF 2016

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