IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2016

CORAM:

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

C.M.A.Nos.974 and 1253 of 2015
and M.P.No.1 of 2015

In C.M.A.No.974 of 2015:

1. Devi
2. S.Harish (Minor)
3. S. Sadhanan (Minor) (Minors rep. by
   mother & NF 1st appellant)
4. Vanaroja … Appellants

Vs.

1. E. Kuberan

2. Reliance General Insurance Co. Ltd.,
   Rai's Tower, 2nd Floor,Plot No.2054
   2nd Avenue, Anna Nagar
   Chennai 600 040

Service At:
   Reliance GI. Insurance Co.Ltd.,
   Reliance House
   Haddows Road
   Nungambakkam, Chennai 600 034 … Respondents

In C.M.A.No.1253 of 2015:

M/s. Reliance General Insurance Co. Ltd.,
Rai's Tower, 2nd Floor
Plot No.2054,2nd Avenue
Anna Nagar, Chennai - 600 040 ... Appellant

Vs.

1. Devi
2. S.Harish (Minor)
3. S. Sadhanan (Minor) (Minors rep. by
   mother & n.f. 1st appellant)
4. Vanaroja
5. E. Kuberan … Respondents

Civil Miscellaneous Appeals under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 09-12-2014 made in M.C.O.P.No.4042 of 2011 on the file of V Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For appellants :: Mr. K. Suryanarayanan
(in CMA.974/2015)

For respondents :: Mr. N. Vijayaraghavan for R2
(in CMA.974/2015) R1 - No appearance

JUDGMENT

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

Challenging the judgment and decree dated 09-12-2014 made in M.C.O.P.No.4042 of 2011 on the file of V Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai. The claimants have filed C.M.A.No.974 of 2015 for enhancement and the Insurance Company has filed C.M.A.No.1253 of 2015 for reduction of compensation.

2. The brief history of the case is as under:
On 16-09-2011, at about 20:30 hours, the deceased was proceeding on his Motor Cycle TN 02 AL 2908 at 200 feet Road from North to South direction in Dadankuppam Bridge up-gradient on the northern side of the Road. At that time, the Mini Lorry TN 20 AM 5762 which was proceeding in a very high speed, rash and negligent manner, endangering to the public safety, suddenly came on the reverse direction and dashed against the Motor Cycle, thereby the deceased was thrown out and sustained head injuries and other injuries and died on the way to the Hospital. The wife, children and mother of the deceased, claiming compensation filed M.C.O.P.No.4042 of 2011 before the V Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai wherein an award was passed for a sum of Rs.20,70,000/- with interest at 7.5% per annum.

3. Before the Tribunal, on the side of the claimants P.Ws.1 and 2 were examined and Exs-P1 to P9 were marked, the details of which are as follows:

1. Ex-P1, copy of FIR
2. Ex-P2, Postmortem Certificate
3. Ex-P3, Death Certificate
4. Ex-P4, Legalheirship Certificate
5. Ex-P5, Deceased's letter pad and visiting card
6. Ex-P6, Bank statement
7. Ex-P7, Pan Card
8. Ex-P8, Copy of Driving license
9. Ex-P9, Incometax return

The Insurance Company did not choose to examine any witness nor marked any documents.

4. The Tribunal placing reliance upon the deposition of P.W.2, has come to the conclusion that due to the rash and negligent driving of the lorry, the accident occurred and held that the Insurance Company is vicariously liable to compensate the claimant.

5. On consideration of the evidence of P.W.1, who claims that her husband was running a business under the name and style of “Pooja Auto Consultant”, Ex-P5 letter and visiting card, Ex-P6 bank statement, Ex-P7 Pan Card, Ex-P8, saral for the assessment year 2010-11, the Tribunal came to the conclusion that since no proper evidence has been produced with regard to proper income, the income can be fixed only at Rs.7500/- (Rupees Seven thousand and five hundred only) as per Syed Sadiq and others Vs. Divisional Manager, United India Insurance Co. Ltd., (2014 ACJ 627) and added 50% addition towards future prospects. Further, the Tribunal, by applying 16 as multiplier taking into consideration the age of the deceased as 32 and deducting ¼ towards personal expenses of the deceased, fixed the pecuniary loss at Rs.16,20,000/- (Rupees Sixteen lakhs and twenty thousand only). In addition, the Tribunal also granted the compensation under the following conventional heads and the same is tabulated as follows:

Head	Award of compensation
Loss of Income	16,20,000
Loss of consortium	1,00,000
Loss of love and affection	1,00,000
Loss of Expectancy of life	1,00,000
Loss of Estate	1,00,000
Funeral Expenses	50000
Total	20,70,000

6. The claimants have filed the appeal for enhancement of compensation and the Insurance Company to reduce the compensation amount awarded by the Tribunal.

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

8. The finding of negligence on the part of the driver of the lorry who is responsible for the accident and consequential liability fixed on the Insurance Company to compensate the claimants is not seriously disputed and such finding is confirmed.

9. The Saral form, Ex-P9 produced by the claimants clearly shows that the annual income of the deceased is Rs.1,80,000/- (Rupees One lakh and eighty thousand only) from which we find that the deceased was earning a sum of Rs.15000/-(Rupees fifteen thousand only) per month. In this regard, the learned counsel appearing for the claimants would submit that the Tribunal has taken the income at Rs.7500/-, which is erroneous. The following extract from the decision of the Supreme Court in Puttamma & Ors. Vs. K.L. Narayana Reddy & ANR.(2014 ACJ 526), gives the manner in which we can deal with the present case.

" 54. A letter dated 5th December, 2012 issued by the Joint Secretary, Ministry of Road Transport & Highways, New Delhi has been brought to our notice by Mr. P.P. Malhotra. Giving reference to the present case therein, the officer has informed that the Motor Vehicles (Amendment) Bill, 2012,inter alia, to amend Section 163A of the Motor Vehicles Act, 1988 was passed by the Rajya Sabha on 8th May, 2012.

The said Bill proposes to substitute Section 163-A(3) of the Act by empowering the Central Government to revise the amount or the multiplier specified in the Second Schedule after every three years and furthermore, the Bill also seeks to substitute the Second Schedule so as to provide that for death of non-earning persons, a fixed compensation of Rs.1,00,000 for children up to 5 years of age and Rs.1,50,000/- for persons more than 5 years of age. It is informed that though the Bill has been passed by the Rajya Sabha and it is still pending consideration before the Lok Sabha for its approval.

The letter dated 5th December, 2012 reads as follows: "No. RT-11021/19/2012-MVL Dated December 5th, 2012 Sub:- Special Leave Petition (Civil) No.4639 of 2010 filed by Puttamma & Ors. v. K.L. Narayana Reddy & Anr. before the Supreme Court of India. Sir, Kindly refer to your D.O. letter No.117/Genl/ASG (PPM)/2012 dated 29th November, 2012 regarding SLP(C) No.4639 of 2010 titled as Puttamma & Ors. v. K.L. Narayana Reddy & Anr. before the Supreme Court of India.

2. In this connection, I am to inform that the Motor Vehicles (Amendment) Bill, 2012, inter alia, to amend Section 163A of Motor Vehicles Act, 1988, was passed by Rajya Sabha on 8.5.2012. The said Bill proposes to substitute Section 163A(3) of the Act by the following section: "The Central Government keeping in view the cost of living and the rise in the price

index, may, by notification in the Official Gazette, revise the amount or the multiplier specified in the Second Schedule after every three years."

2.1. Furthermore, the Bill also seeks to substitute the Second Schedule so as to provide that for death of non-earning persons, a fixed compensation shall be payable as under:-

i) Rs.1,00,000 for children up to 5 years of age

ii) Rs.1,50,000/- for persons more than 5 years of age. The minimum amount payable is sought to be revised to Rs.1,00,000.

2.2. The following steps have been proposed for working out compensation:-

a) The proven annual income of the victim is to be worked out:

b) Appropriate multiplier (higher of the multiplier based on the age of the victim and the age of the surviving/dependent parents/spouse/children) to be applied:

c) Multiply the proven annual income by the appropriate multiplier to arrive at compensation amount, subject to following, namely:-

i) The amount of compensation payable for Permanent Total Disablement as defined in Schedule 1 of the Workmen's Compensation Act, 1923 (8 of 1923) shall be determined by application of appropriate multiplier to proved income, subject to maximum of Rs.10 lakhs.

ii) The amount of compensation so arrived shall be reduced by 1/3rd in respect of fatal accidents (reduction of 1/3rd represents living expenses for deceased person, had he been alive)

2.4 The Bill is presently pending in Lok Sabha.

3. You are requested to place the above facts before the Hon'ble Supreme Court of India. Further development in this matter may please be intimated to this Ministry.

Yours sincerely,

(Sanjay Bandopadhyaya)

As per decision in 'Sarla Verma' 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 6.”

10. From the above, this Court is of the view that since there is no reliable evidence showing the source of income, except the letter pad and visiting card and the bank statement, which cannot be a proof of income, this Court finds it just and proper to fix the monthly income at Rs.10,000/- per month on a notional basis with 50% future prospects.

Therefore, the compensation in this case is fixed as tabulated below:

Head	Award of compensation
Loss of Income (10000+10000x50%)x3/4x12x16	21,60,000
Loss of consortium	1,00,000
Loss of love and affection	1,00,000
Loss of Expectancy of life	1,00,000
Loss of Estate	1,00,000
Funeral Expenses	25,000
Total	25,85,000

The compensation fixed on the other heads requires no modification as they are just and reasonable, except the Funeral expenses,which is reduced to Rs. 25,000/-(Rupees Twenty five thousand only) vide 2013 ACJ 1403(Reshma Kumari Reshma Kumari and others Vs. Madan Mohan and another).

11. In the result, the Civil Miscellaneous Appeal, C.M.A.No.974 of 2015 is allowed and C.M.A.No.1253 of 2015 is dismissed.

(i) The award of the Tribunal is enhanced to Rs. 25,85,000/- (Rupees Twenty five lakhs Eighty five thousand only) from Rs.20,70,000/-(Rupees Twenty lakhs seventy thousand only)

(ii) There is no modification in the interest granted by the Tribunal and the same is fixed at 7.5% per annum.

(iii) Eight weeks' time is granted to deposit the entire award amount as ordered by this Court, less the amount, if any, already deposited.

(v) On such deposit being made, the major claimants are permitted to withdraw the award amount as apportioned below:

1. Wife, the first claimant - Rs.12,00,000/-(Rupees Twelve lakhs only)
2. Minor sons, the second and third claimant - Rs.5,50,000/- (Rupees Five lakhs fifty thousand only) each

3. Mother, the fourth claimant - Rs.2,85,000/- (Rupees Two lakhs eighty five thousand only)

(vi) The share of the minors is directed to be deposited in any of the Nationalised Bank and the interest accrued thereon, shall be withdrawn by the mother/natural guardian, till they attain majority.

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

(vii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp

To

The Motor Accident Claims Tribunal
V Judge, Small Causes Court,
Chennai.

+2 ccs to Mr.M.B.Gopalan, Advocate, sr.15406,15407
+1 cc to Mr.Suryanarayanan, Advocate, sr.15110

C.M.A.Nos.974 and 1253 of 2015

ad co
kra 04.05.2016