IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.03.2016

CORAM

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

C.M.A. NO.612 OF 2016

1. Rangan
2. Sumathi
3. Vinoth ... Appellants/Petitioners

- Vs -

1. P.Raju

2. Royal Sundaram Alliance Insurance Co. Ltd.,
Subramaniyam Building,
1st Floor, No.1, Club Road,
Chennai - 2. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 30.06.2015 passed by the Motor Accident Claims Tribunal (Special Sub-Judge No.II), Chennai, made in M.C.O.P.No.4263 of 2013.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.S.Manohar - R2

J U D G M E N T
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials placed before this Court.

2. The appellant/claimant has filed the appeal challenging the Award dated 30.06.2015 passed by the Motor Accident Claims Tribunal (Special Sub-Judge No.II), Chennai, made in M.C.O.P.No.4263 of 2013.

3. It is a case of fatal accident. On 12.06.2013 at about 01.00 hours when the deceased Prabhu was riding a motorcycle bearing Registration No.TN-10-AD-8644 along with one Sudhakar, who was travelling as a pillion rider, from Chennai to

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Tindivanam, near Thenpakkam Coot Road and GST Road, a lorry bearing Registration No.TN-21-F-7727 came in a rash and negligent manner in the same direction and dashed against the said motorcycle. As a result, the deceased Prabhu died on the spot and pillion rider, viz., Sudhakar sustained grievous injures. Hence, the claimants, who are father, aged 53 years, mother, aged 47 years and brother aged 22 years have filed a claim petition claiming a sum of Rs.43,00,000/- as compensation. According to the claimants, the deceased Prabhu was a proprietor of M/s.S.K.R. Industries and was earning a sum of Rs.25,000/- per month.

4. In support of the claim petition, the injured Sudhakar was examined as P.W.1; K.Rangan, father of the deceased Prabhu, was examined as P.W.2; Dr.K.J.Mathiazahagan, who issued disability certificate to the injured, was examined as P.W.3 and V.Thulasiraman, who is stated to be the former employer of the deceased Prabhu, was examined as P.W.4 and Exs.P-1 to P-35 were marked, the details of which are as follows:-

Ex.P-1	Xerox copy of the Accident Register
Ex.P-2	O.P. Chits
Ex.P-3	Photo with CD of the petitioner
Ex.P-4	Xerox copy of the FIR
Ex.P-5	Medical Bills
Ex.P-6	Xerox copy of the rough sketch
Ex.P-7	Final report
Ex.P-8	Xerox copy of the MVI report
Ex.P-9	X-ray
Ex.P-10	Death intimation report
Ex.P-11	Postmortem certificate
Ex.P-12	Death Certificate
Ex.P-13	Legal Heirship Certificate
Ex.P-14	Registration Certificate, Department of Industries and Commerce.
Ex.P-15	Registration Certificate of Central Sales Tax
Ex.P-16	Certificate of Registration for VAT
Ex.P-17	Balance Sheet for the year ended 31.03.2008
Ex.P-18	Balance Sheet for the year ended 31.03.2009
Ex.P-19	Balance Sheet for the year ended 31.03.2010
Ex.P-20	Balance Sheet for the year ended 31.03.2011
Ex.P-21	Acknowledgement of Income Tax 2008-2009

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Ex.P-22	Acknowledgement of Income Tax 2009-2010
Ex.P-23	Invoice Book of the S.K.R. Industries
Ex.P-24	Delivery Challan of the S.K.R. Industries
Ex.P-25	IOB Statement of Account
Ex.P-26	Another set of IOB Statement of Account
Ex.P-27	Visiting Card of the deceased
Ex.P-28	Experience Certificate
Ex.P-29	Salary Certificate
Ex.P-30	Voter's Identity Card of the Deceeased
Ex.P-31	Disability Certificate
Ex.P-32	X-ray
Ex.P-33	X-ray report
Ex.P-34	Xerox copy of the Provisional Registration Certificate
Ex.P-35	Xerox copy of the PAN Card with IT Returns

5. On the side of the respondents, neither any witness was examined nor any document was marked.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence that the rider of the motorcycle was having valid driving licence to drive the vehicle and further there being no satisfactory evidence adduced on behalf of the second respondent/Insurance Company to refute the evidence as to the rash and negligent driving of the lorry, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the lorry, and therefore, the liability was fixed on the second respondent, since the lorry was insured with the second respondent and consequently the second respondent was directed to compensate the claimant. On this issue, learned counsel for the second respondent has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the Tribunal. Accordingly, the Tribunal awarded compensation under the following heads:-

Loss of dependency	-	Rs. 7,02,000/-
Loss of love and affection	-	Rs. 2,00,000/-
Funeral and Ritual expenses	-	Rs. 25,000/-
Total Compensation	-	Rs. 9,27,000/-

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7. In all, the Tribunal awarded a compensation of Rs.9,27,000/= with interest at the rate of 7.5% from the date of filing of the claim petition i.e. from 24.06.2013 till the date of realization. Aggrieved by the said award, the appellants – claimants are before this Court by filing this appeal seeking enhancement of the award.

8. Learned counsel appearing for the appellants-claimants submitted that even though documents viz., Exs.P.14 to P.24 have been marked that the deceased was running an industry, the Tribunal without taking into consideration that the deceased was a proprietor of an industry, fixed the monthly income at Rs.6,500/-. Further, the Tribunal had not awarded any amount towards future prospects. Hence, the award of the Tribunal may be enhanced. Per contra, it is submitted by the learned counsel for the second respondent/Insurance Company that taking into consideration that there is no proof for the monthly income of the deceased, the Tribunal had correctly awarded compensation. Therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record.

10. It is seen that the claimants have filed documents, viz., Exs.P.14 to P.24 with regard to the running of the concern. However, the said documents reveal that they were in the name of the father of the deceased only. The father of the deceased, in his cross examination has stated that the deceased was the proprietor of the concern. But no documents have been filed in support of the said deposition. It is further seen that P.W.4 has issued a certificate, Ex.P.28, which was marked through P.W.2, stating that the deceased was working in his concern, viz., Shree Sapthagiri Industries as a Welder from July 2005 to December, 2007. P.W.4 has filed a proof affidavit stating that deceased was paid a salary of Rs.4,000/- at the initial stage of his joining and the same was increased to Rs.7,500/- in the year 2007.

11. Even though the father of the deceased had stated in his cross examination that the deceased was the proprietor of the industry, we find that in the absence of any documents showing that the deceased was the proprietor of the industry, it is not possible to fix the monthly income of the deceased. However, taking into consideration the evidence of P.W.4 and Ex.P.28, wherein it was stated that the deceased was earning a sum of Rs.7,500/- per month in the year 2007, we fix the same as monthly salary of the deceased. It is seen that the Tribunal has not awarded any amount towards future prospects. Hence, as per the decision in the case of Sarla Verma & Others V. Delhi

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Transport Corporation & Another reported in CDJ 2009 SC 779 50% of the actual salary of the deceased should be taken towards future prospects if the age of the deceased was below 40 years. In the present case, the deceased is only 23 years and his salary is increased from Rs.4,000/- to Rs.7,500/-. Hence, when there is an increase in the salary and the same is not a fixed one, future prospects should be added to the monthly salary. Accordingly, the annual income of the deceased is fixed as Rs.7,500 + 3,750 = 11,250 x 12 = Rs.1,35,000/-. If 50% of the income is deducted towards personal expenses of the deceased, the contribution of the deceased to the family comes to Rs.67,500/- per annum. Applying multiplier 18, the amount towards loss of dependency to the family of the deceased comes to 67,500 x 18 =Rs.12,15,000/-.

12. Accordingly, we modify the award of the Tribunal as follows:

	Compensation awarded by the Tribunal	Compensation now ordered by this Court
Loss of dependency	Rs. 7,02,000/- (Rs.39,000 x 18)	Rs.12,15,000/- (Rs.67,500 x 18
Loss of love and affection	Rs. 2,00,000/-	Rs. 2,00,000/-
Funeral and Ritual expenses	Rs. 25,000/-	Rs. 25,000/-
Total Compensation	Rs. 9,27,000/-	Rs.14,40,000/-

13. In the result, this Civil Miscellaneous Appeal stands disposed of as follows:

(i) the award of the Tribunal is enhanced from Rs.9,27,000/- to Rs.14,40,000/-.

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

(iii) The enhanced award amount shall carry interest at 7.5% p.a. from the date of filing of the claim petition before the Tribunal, i.e., 24.06.2013 till the date of realization.

(iv) Learned counsel appearing for the second respondent seeks time to deposit the award amount. The second respondent is granted eight weeks time to deposit the award amount now ordered by this Court, less the amount, if any deposited already, along with interest and costs.

(v) On such deposit being made by the second respondent, the claimants 1 and 2 are permitted to withdraw the amount now ordered by this Court along with interest and costs.

(vi) As the appellants were exempted from paying the Court fee by order dated 27.1.2016 in C.M.P.No.453 of 2016, the

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appellants 1 and 2/claimants 1 and 2 are directed to deposit the Court fee within a period of 15 days from today.

(vii) However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
   (Special Sub-Judge No.II),
   Chennai

2. The Record Keeper
   V.R. Section
   High Court, Madras.

+1cc to Mr.F.Terry Chellaraja, Advocate, S.R.No.19562
+1cc to Mr.S.Manohar, Advocate, S.R.No.19560

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KJI(CO)
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