

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 16.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.183 of 2014

1.Parameswari
2.Arun Pandiyan (Minor),
3.Aruna (Minor),
4.Arunmozhi (Minor),
5.Marimuthu (died) ... Appellants/Petitioners

Vs

1.D.S.Senthivel
2.The Oriental Insurance Co. Ltd.,
Manappar Building, North Nada,
Kodungalur - 680 064. ... Respondents/Respondents

C.M.A.No.183 of 2014 is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 07.09.2011, made in MCOP.No.296 of 2008, on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1, Chennai.

For Appellant : M/s.M.Malar
and Mr.F.Terry Chellaraja

For R2 : Mr.S.Manohar

For R1 : Exparte before the Tribunal

JUDGMENT

This appeal is preferred by the appellants/claimants against the award dated 07.09.2011, made in MCOP.No.296 of 2008, on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1, Chennai, in and by which, the Tribunal has awarded a sum of Rs.5,00,000/- for the death of one Anbalagan / sole breadwinner of the claimants' family.

2. On 28.07.2006 at about 14.30 hrs., while the deceased was crossing the Ulundurpet - Chennai National Highways, opposite to Periyakuppam bus stand, Villupuram Distirct, a lorry bearing Registration No.TN-58-B-2989 belonging to the first respondent and insured with the second respondent

Insurance Company, driven by its driver in a rash and negligent manner, dashed against the deceased, as a result, he died on the spot. Immediately after the accident, a case was registered against the driver of the lorry in Cr.No.259 of 2006 on the file of the Thirunavallur Police Station, Villupuram District. Subsequently, the claimants, being the wife, children and father of the deceased, have filed the claim petition claiming a sum of Rs.10,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the first respondent and awarded a sum of Rs.5,00,000/- with interest at 7.5% per annum. Aggrieved by that award, the claimants have filed the present appeal.

4. Learned counsel appearing for the appellants / claimants submitted that at the time of accident, the deceased was working as mason and he was earning Rs.500/- per day, therefore, the Tribunal ought to have fixed at least Rs.6500/- as his notional monthly income, by following the judgment of the Hon'ble Apex Court in Syed Sadiq and others V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), instead of fixing meagre sum of Rs.3000/- per month. It is his further contention that while computing compensation towards loss of dependency, the Tribunal ought to have added 50% of his income towards future prospects as per the judgment of the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh and others (2013 (3) CTC 883 (SC), instead of awarding a lump sum of Rs.60000/- towards future prospects. Apart from this, he contended, the Tribunal has awarded very meagre sums towards loss of consortium, loss of love and affection and funeral expenses, therefore, he prayed for enhancement of compensation on these heads also.

5. Learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal has considered all the materials available on record and has rightly awarded a just and reasonable compensation, therefore, he pleaded, the award passed by the Tribunal may be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. At the time of accident, the deceased was 35 years old and to prove that, Ex.P2-postmortem certificate was marked before the Tribunal, wherein it is certified the age of the deceased as 35 years. It is claimed by the claimants that the deceased was working as mason, but, no document was marked to substantiate the same. Therefore, the Tribunal has fixed Rs.3000/- as the monthly income of the deceased, which is in my

view very meagre amount, hence, by following the judgment of the Honourable Apex Court in Syed Sadiq's case (cited supra), wherein, for a vegetable vendor, in respect of the accident of the year 2008, the Honourable Apex Court, fixed the monthly income at Rs.6500/-, even in the absence of any material evidence, this Court is inclined to fix a sum of Rs.6,500/- as the monthly income of the deceased. Accordingly, by fixing so, this Court also hereby adopts multiplier '16' as the deceased was 35 years old, as per the judgment of the Hon'ble Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another [2009 (2) TNMAC 1 (SC)], and again, by following the said judgment, 1/4th is deducted towards personal expense of the deceased, as the claimants in the deceased family are 5.

8. The Tribunal has also committed yet another mistake as it did not add 50% of his income towards future prospects, though it has deducted 1/3rd of his income towards personal expenses while arriving compensation towards loss of dependency as per the judgment of the Hon'ble Apex Court in Rajesh's case (cited supra). At this juncture, it is more appropriate to refer to the said judgment and the relevant portion thereof is extracted below:

"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."

A mere perusal of the above said judgment shows that the Court can award 50% of the actual salary to the income of the deceased towards future prospects if the deceased was below 40 years. In the case on hand, as stated above, the deceased was 35 years old at the time accident. Therefore, this Court is of the considered view that the Tribunal ought to have added 50% of his salary towards future prospects. Finally, this Court arrives at the compensation towards loss of dependency by considering the income of the deceased at Rs.6500/- per month as stated below:

Salary of the deceased = Rs.6,500/- p.m.

50% of the salary to be added as future prospects= Rs.6500+3250
= Rs.9750/- p.m.

1/4th of Rs.9750/- is deducted as personal expenses= Rs.7300/- p.m.

Loss of dependency after multiplier of
16 is applied (Rs.7300 x 12 x 16) = Rs.14,01,600/-

9. Further, as per the judgment of Rajesh's case (cited supra), this Court, on taking note of the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years, deems fit to award a sum of Rs.1,00,000/- towards loss of consortium to the wife, instead of Rs.25,000/- awarded by the Tribunal, as she was only 28 years at the time of death of her husband. Again, based on the above said judgment, this Court hereby awards a sum of Rs.1,00,000/- each to the children and Rs.50000/- to the father towards loss of love and affection and Rs.25000/- towards funeral expenses, instead of Rs.25000/- and Rs.6,000/- respectively awarded by the Tribunal, for, had the deceased been alive, he would have taken care of his family by working hard and he would have given good education to his children.

10. Thus, in toto, this Court hereby awards a sum of Rs.18,76,600/- as total compensation. The second respondent Insurance Company is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited if any, to the credit of M.C.O.P.No.296 of 2008, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.1, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment, failing which, they will have to pay interest at 12% p.a. On such deposit, the claimants 1 and 5 are entitled to withdraw their respective share amount as apportioned by the Tribunal by moving necessary application. In respect of the minors' shares i.e. Claimants 2 to 4, it is made clear that the same shall continue to be in the deposit in any nationalized bank till they attain the majority. The first claimant is also permitted to withdraw the interest accrued in the deposit of the minors' shares once in three months on making proper application. The claimants are directed to pay the additional Court fee for the enhanced award amount.

11. In fine, for the reasons stated above, the Civil Miscellaneous Appeal is allowed. No Costs. Consequently, M.P.No.1 of 2014 is allowed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkm

To

1. The Motor Accidents Claims Tribunal,
Additional District Judge,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras 104.
(For following at the amendment
in Claim Petition)

+1cc to Mr.M.Malar, Advocate, S.R.No.66285

+1cc to Mr.S.Manohar, Advocate, S.R.No.66321

C.M.A.No.183 of 2014

MSM(CO)
CA(06/04/2017)

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