

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.880 of 2016

Dharmalingam (Died)

1.Nagammal

..Appellant/Claimant

vs.

1.K.R.Parthasarathy

2.United India Insurance Company Limited

No.134, Greams Road

Chennai-600 006

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.10.2014 made in M.A.C.T.O.P.No.3454 of 2009 on the file of Motor Accident Claims Tribunal, Special Sub Judge-1, Chennai.

For Appellant : Ms.M.Malar

For Respondent No.2 : Mr.P.Sankaranarayanan

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH, J.)

This appeal is by the claimant seeking enhancement of the award dated 15.10.2014 made in M.A.C.T.O.P.No.3454 of 2009 on the file of Motor Accident Claims Tribunal, Special Sub Judge-1, Chennai. The claimant is the mother of the deceased viz., Dharmalingam.

2. It is a case of fatal accident. On 02.04.2009, at about 3.30 p.m., when the deceased Dharmalingam was riding his Motor Cycle bearing Reg.No.TN-22-BX-7114 from Kelambakkam to Vandalur, a Lorry bearing Reg.No.TN-09-C-9565, driven by its driver in a rash and negligent manner dashed behind the Motor Cycle, due to which, the deceased sustained grievous injuries and inspite of treatment, he succumbed to the injuries and died on 04.08.2010. According to the claimant/mother, the deceased was a Machine Operator working in a Private Company and was earning Rs.8,000/- per month. She filed a claim petition for a compensation in a sum of Rs.20,00,000/-.

3. In support of the claim, the claimant examined herself as P.W.1, Eyewitness Mr.Ramesh was examined as P.W.2, Dr.M.Saravanabavanandam was examined as P.W.3 and one Ms.Priya, Attender cum Nurse was examined as P.W.4. Exhibits P.1 to P.11 were marked. On behalf of the Insurance Company, neither any witness was examined nor any document was marked.

4. The Tribunal, after taking note of the oral evidence of P.W.2 and Ex.P.1 and Ex.P.2, held that due to the rash and negligent driving by the driver of the Lorry bearing Reg.No.TB-09-C-9565, the accident occurred and consequently, fixed the liability on the 2nd respondent/Insurance Company.

5. Based on the evidence, the Tribunal fixed the age of the deceased at 22 years and while adopting the multiplier, determined the age of the mother as 50-55 and adopted 11 as the multiplier. Further, fixing the monthly income of the deceased at Rs.6,000/- per month, while deducting 50% towards the personal expenses of the deceased, since the deceased was a bachelor, arrived at the loss of annual income at Rs.3,96,000/-. [Rs.3,000/- x 12 x 11]. 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. 3,96,000/-
2	Attender's Charges	Rs. 20,000/-
3	Loss of Love and affection	Rs. 25,000/-
4	Funeral expenses	Rs. 15,000/-
	Total	Rs. 4,51,000/-

6. Insofar as the issue regarding negligence is concerned, the learned counsel for the Insurance Company has no serious objection, hence, the same is confirmed.

7. The learned counsel for the appellant/claimant submitted that the deceased was working as a Machine Operator in a Private Company and his salary was Rs.8,000/- per month, however, the Tribunal, without considering the same, fixed the income along with future prospects at Rs.6,000/- which requires interference by this court. She further submitted that the Tribunal failed to apply the proper multiplier, taking into account the age of the deceased as per the dictum of the Supreme Court in Munna Lal Jain and another vs. Vipin Kumar Sharma and others (2015 (6) SCC 347).

8. On the other hand, the learned counsel appearing for the Insurance Company contended that the compensation awarded is just and proper and therefore, prayed for confirming the award.

9. On a perusal of the award, it is seen that even though it was pleaded by the claimant before the Tribunal that the deceased was working as Machine Operator in a Private Company, there was no document filed to substantiate the same. In any event, even for a coolie, normally, income is taken at Rs.8,000/- per month. In such view of the matter, we are inclined to take the notional income at Rs.8,000/- per month as salary of the deceased. Secondly, it is seen that the age of the deceased at the time of the accident was 22 years. Having regard to future prospects of the deceased, by following the decision of the Hon'ble Supreme Court in Sarla Verma and Others Vs. Delhi Transport Corporation and another (2009 (2) TN MAC 1 (SC)), as has been approved by the Supreme Court in Munna Lal Jain case (supra), the multiplier is taken at 18 and the future prospects. Further, calculating the future prospects at 50% of actual salary, the pecuniary loss is calculated as under:-

Rs.8000/- + 50% Future Prospects (Rs.4000/-) = Rs.12,000/-

Rs.12,000 - 50% deduction towards personal

expenditure = Rs.6,000/-

Rs.6,000 x 12 x 18 multiplier = Rs.12,96,000/-.

Accordingly, pecuniary loss is fixed at Rs.12,96,000/-

10. It is also a matter of record before the Tribunal, by way of evidence of P.W.4/Attender cum Nurse that she attended the deceased from 01.01.2010 to 01.07.2010 and she was paid Rs.7,000/- per month. The Tribunal, however, pointed out that no self serving document was produced to that effect. Since it is a fact that the deceased met with an accident on 02.04.2009, but died on 04.08.2010 after treatment, we are inclined to enhance the compensation awarded under the head Attender charges to Rs.60,000/-.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Pecuniary loss	Rs. 3,96,000/-	Rs. 12,96,000/-
2	Attender's Charges	Rs. 20,000/-	Rs. 60,000/-
3	Loss of Love and affection	Rs. 25,000/-	Rs. 25,000/-
4	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
	Total	Rs. 4,51,000/-	Rs. 13,96,000/-

12. In the result, the Civil Miscellaneous Appeal filed by the appellant/claimant is Partly Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.13,96,000/- from Rs.4,51,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition.

(iii) The 2nd respondent/Insurance Company is directed to deposit the entire amount as modified above, less the amount, if any, already deposited along with interest, within a period of two months from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw the amount by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra.

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

-s/d-

Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

nvsri

To

The Motor Accident Claims Tribunal/Special Sub Judge-I
Court of Small Causes, Chennai.

+1 cc to M/S.M.Malar Advocate sr.26431/16

kgk(co)
aa29/06/2016

C.M.A.No.880 of 2016