IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.3401 of 2014

M/s.New India Assurance Co. Ltd.,
Represented by its Divisional Manager
Divisional Office
No.2789, 1st Floor
Sairam Towers,
Nagarajupet Kadapa,
Andhra Pradesh 516 001 .. Appellant/2nd Respondent

vs

1.Davamani
2.Brinda
3.Minor Praveen
4.Minor Pradeep
(3 to 4 minors reptd by Next
Friend Mother I Respondent Davamani)
5.Chinnapillai @ Parvathi
6.Chinnappan .. Respondents 1 to 6/ Petitioners

7.K.Ramachandra .. 7th Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 20.03.2014, passed in M.C.O.P.No.224 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Hosur.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Mukund R.Pandian for RR1 and 3 to 6

RR2 & 7 not ready in notice

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The Insurance Company has filed this appeal, challenging the quantum of compensation awarded vide Award dated 20.03.2014, passed in M.C.O.P.No.224 of 2011, on the file of the Motor Accidents Claims Tribunal (Sub Court), Hosur.

2. The wife aged 36 years, and three children viz. one daughter and two minor sons, are the claimants. It is a case of fatal accident. The deceased viz., Murugan, 37 years old, died in a road accident at Kadappa to Piler Road, Andhra Pradesh, which occurred on 03.05.2011 at 9.00 P.M., owing to the injuries he suffered. The said accident had taken place while the deceased was proceeding in his new unregistered motorcycle viz. TVS Star City, and at that time, a Mahindra Maxx Cab bearing Registration No.AP-04 U 9615, was driven by it's driver in a rash and negligent manner, in the same direction and dashed his motorcycle. On account of the fatal injuries, he died on the spot. At the time of accident, he is self-employed. The dependants are the claimants and they have filed a claim petition for compensation for a sum of Rs.97,26,000/- restricted to 15,00,000/-.

3. In support of the claim, the wife of the deceased was examined as P.W.1; one Gangi Reddy, who is stated to be an eyewitness, was examined as P.W.2; one Thanikachalam was examined as P.W.3 and Exs.P1 to Ex.P8 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Copy of Postmortem certificate
P3	Copy of R.C. Book
P4	Copy of Insurance Policy
P5	Copy of Driving License of the Driver
P6	Copy of the Rough Sketch
P7	Copy of the Charge Sheet
P8	Copy of the Salary Certificate

On behalf of the appellant-Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 1st respondent in the M.C.O.P., remained exparte.

4. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation, with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of dependency by adopting multiplier 15	Rs.12,15,000/-
2	Loss of love and affection (50000x5)	Rs. 2,50,000/-
3	Loss of Consortium (1st petitioner)	Rs. 2,00,000/-
4	Funeral expenses	Rs. 10,000/-
5	Transportation charges	Rs. 10,000/-
	Total	Rs.16,85,000/-

5. Heard the submissions made by the learned counsel on either side, and perused the materials available on record.

6. The finding of negligence on the part of the driver of the Mahindra Maxx Cab, who is responsible for the accident, and consequential liability fixed on the appellant insurance company to compensate the claimants is not seriously disputed and such finding is confirmed. The appeal is canvassed mainly challenging the quantum of compensation.

7. The learned Standing Counsel for the appellant-Insurance Company pleaded that the compensation awarded, is highly excessive. He further pleaded that in the absence of any proof of age of the deceased, the Tribunal ought not to have proceeded to award compensation and hence the award is liable to be set aside.

8. The learned counsel for the respondents 1 to 6/claimants submitted that the compensation awarded, is just and reasonable and the Tribunal has taken into consideration the overall circumstances and thought fit to grant compensation. He further submitted that the well considered award of the Tribunal requires no interference.

9. The Tribunal, considering the age of the deceased and family circumstances, fixed the income of the deceased at Rs.6,000/- p.m. and deducting 1/4th towards his personal expenses, granting 50% addition towards future prospects, and adopting the multiplier 15, awarded a sum of Rs.12,15,000/- towards loss of dependency.

10. A plea is made by the learned Standing Counsel for the appellant that the future prospects should be 30% and not

50%. We are not inclined to accept such a plea. In the decision reported in (2009) 6 SCC 121 (Sarala Verma & Ors. vs. Delhi Transport Corporation and Anr.), the Supreme Court has held thus:-

> "Question (i) — Addition to income for future prospects
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> 20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.
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> 21. In Kerala SRTC v. Susamma Thomas [(1994) 2 SCC 176], this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs 1032 per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs 2000 as gross income before deducting the personal living expenses.
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> 22. The decision in Susamma Thomas was followed in Sarla Dixit v. Balwant Yadav [(1996) 3 SCC 179] where the deceased was getting a gross salary of Rs 1543 per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs 3000. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs 2200 per month.
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> 23. In Abati Bezbaruah v. Geological Survey of India [(2003) 3 SCC 148], as against the actual salary income of Rs 42,000 per annum (Rs 3500 per month) at the time of the

> accident, this Court assumed the income as Rs 45,000 per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.
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> 24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

From the above cited decision, it is clear that addition of 50% towards future prospects, should be given, if the deceased was aged below 40 years. The Tribunal has rightly arrived at the compensation towards loss of dependency, and we find no reason to interfere with the same.

11. The Tribunal has awarded a sum of Rs.2,50,000/- (Rs.50,000/- each) to the petitioners 2 to 6 towards loss of love and affection, and Rs.2,00,000/- to the first petitioner towards loss of consortium. The learned Standing Counsel for the appellant made a plea that the compensation awarded under the above heads, should be reduced. The deceased has left behind his wife and three children. She has to take care of three children, of whom two are minors, consequent upon the death of her husband. Considering the circumstances, we find

that the compensation towards loss of love and affection, should be increased from 2,50,000/- to Rs.3,00,000/- i.e., Rs.1,00,000/- each to the petitioners 2, 3 and 4/claimants, and Rs.50,000/- to the petitioners 5 and 6/claimants (Rs.25,000/- each) under the said head. At the same time, the compensation awarded to the first petitioner/wife towards loss of consortium, should be reduced from Rs.2,00,000/- to Rs.1,00,000/-.

12. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, and Rs.10,000/- towards transport charges. We are not inclined to interfere with the same.

13. Accordingly, the compensation awarded by the Tribunal, shall be made as follows:

Sl.No.	Head	Amount granted by the Tribunal	Modified/ confirmed
1	Loss of dependency by adopting multiplier 15	Rs. 12,15,000/-	Confirmed Rs.12,15,000/-
2	Loss of love and affection (Rs.50,000/- x 5)	Rs. 2,50,000/-	Modified (i)Rs.3,00,000/- Petitioners 2 to 4 (Rs.1,00,000/- x3) (ii) Rs. 50,000/- Petitioners 5 & 6 (Rs.25,000/- x 2)
3	Loss of Consortium (1st petitioner)	Rs. 2,00,000/-	Modified Rs. 1,00,000/-
4	Funeral expenses	Rs. 10,000/-	Confirmed Rs. 10,000/-
5	Transportation charges	Rs. 10,000/-	Confirmed Rs. 10,000/-
	Total	Rs. 16,85,000/-	Rs.16,85,000/-

Thus, the total compensation awarded by the Tribunal, does not get altered.

14. There is no serious objection in respect of the interest granted at 7.5% per annum.

15. In the result, the Civil Miscellaneous Appeal is dismissed. There will be no order as to costs in this appeal. Consequently, connected miscellaneous petitions are closed. The major claimants are permitted to withdraw their respective share amount as apportioned above. The share of the minors is directed to be deposited in any one of the nationalised bank till they attain majority. The mother of the minors is

permitted to withdraw the interest once in three months.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

nsv

To

The Subordinate Judge,
(The Motor Accidents Claims Tribunal)
Hosur

+1 cc to Mr.J.Chandran Advocate sr.12377

C.M.A.No.3401 of 2014

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