IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

CORAM

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

C.M.A.No.3597 of 2014

1. L.Jacintha
2. S.Josephine Divya
   (Minor rep. by M.N.F.L.Jacintha)
3. S.Jothi
4. S.Sukumar .Appellants/petitioners

vs.

1. M/s Lucas TVS Ltd.,
   Padi, Ambattur,
   Chennai 50
   (exparte in lower Court)

2. The United India Ins.Co. Ltd.,
   W-122, III Avenue,
   Anna Nagar,
   Chennai 14 .Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 27.03.2014 passed in M.C.O.P.No.4972 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judge, (Court of Small Causes), Chennai.

For Appellants :Mr.S.Sankaralingam

For Respondents :Mr.S.Arunkumar (R2)
R-1 Exparte

JUDGMENT

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

The claimants, who are the wife, daughter and parents of the deceased S.Sankar Ganesh have filed this appeal, challenging the award dated 27.03.2014 passed in M.C.O.P.No.4972 of 2011 on the file of the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

2. It is a case of fatal accident. The deceased viz., S.Sankar Ganesh, 30 years old, died in a road accident which took place on 23.09.2011. While the deceased was travelling as a pillion rider on motor cycle bearing Registration No.TN-22-AR-8683 on 23.09.2011 at about 15.20 hours, by the side of Rajeev Gandhi salai (OMR Road) with one Jothi from north to south direction, the 1st respondent's car bearing Registration No.TN-01-AF-0892, which was driven in a rash and negligent manner in the same direction, dashed against the tri cycle, which was going ahead of it and further dashed against the motor cycle and caused fatal injuries on both the rider and the pillion rider of the motor cycle. They were sent to hospital for treatment and subsequently they died. At the time of accident, the deceased was working as Key Operational Manager in M/s ICICI Prudential Life Insurance Company Limited and earned Rs.4,00,000/- per annum plus other allowances. The claimants who are the wife, daughter and parents of the deceased have filed a claim for compensation for a sum of Rs.80,00,000/-.

3. In support of the claim, the wife of the deceased was examined as P.W.1; Kandan @ Kandasamy and M.Manoharan, eye witnesses were examined as P.Ws.2 and 4 respectively and one K.Murali was examined as P.W.3; and Exs.P-1 to Ex.P.18 were marked, the details of which are as follows:-

Ex.No.	Details
P1	xerox Copy of the FIR
P2	Copy of rough sketch
P3	copy of charge sheet
P4	copy of death certificate
P5	copy of post mortem certificate
P6	Legal heir certificate
P7	Copy of birth certificate of 2nd petitioner
P8	Copy of M.B.A. degree certificate of the deceased
P9	Copy of transfer certificate of the deceased
P10	Copy of Insurance Policy
P11	Copy of bank statement of the deceased
P12	Authorisation letter
P13	Copy of Appointment order of the deceased

Ex.No.	Details
P14	Copy of Salary bill for August 2011
P15	Proof for salary and tax deduction Form 16 and Form 12 BA
P16	Salary slip for July 2011
P17	Salary slip for September 2011
P18	Form No.16

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 1st respondent 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	Rs.43,20,000/-
2	Loss of Consortium	Rs. 25,000/-
3	Loss of Love and Affection for petitioners 2 to 4	Rs. 25,000/-
4	Loss of Estate	Rs. 10,000/-
5	Funeral Expenses	Rs. 10,000/-
6	Transportation	Rs. 5,000/-
	Total	Rs.43,95,000/-

This Civil Miscellaneous Appeal is filed by the claimants seeking enhancement of compensation.

5. The learned counsel for the appellants pleaded that even though P.W.3, who is working as Human Resources Manager in the employer company of the deceased has clearly deposed that if the deceased had not died in the fateful accident, he would get further promotions and would get more income in the future, the Tribunal erroneously fixed the monthly income at Rs.30,000/- without considering the proof of salary and omitted to add future prospects. Relying on the decision in the case of Sarla Verma vs. Delhi Transport Corporation reported in (2009) 6 SCC 121, the learned counsel would submit that there should be 50% addition in case the deceased was in the age group of below 40 years. He would further plead that compensation awarded under the heading "Loss of consortium" to the 1st appellant, being the wife of the deceased, aged 24 years at the time of

accident is very meagre. He would further plead that compensation under the heading "Loss of love and affection" the Tribunal has granted only a sum of Rs.25,000/-He would urge that considering the age of the daughter who was one year old at the time of accident and considering the fact that the parents have lost their son in the fateful accident, the Tribunal ought to have awarded a sum of Rs.1,00,000/- under this head to each of the appellants. Besides, he would plead that the compensation awarded under the headings "Funeral expenses"and "Transportation" are very meagre. In support of the above contentions, the learned counsel also relied on the Judgment of the Hon'ble Supreme Court in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 ACJ 1403 .

Based on the above, the learned counsel for the appellants has pleaded for enhancement of compensation.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. The Tribunal, considering the age of the deceased, family circumstances, the educational qualifications of the deceased and the evidence of P.Ws.1 and 3, fixed the income of the deceased at Rs.30,000/- p.m. and deducting 1/4th towards his personal expenses and adopting the multiplier 16, in the light of the decision reported in 2009 ACJ 1298 SC (Sarala Verma & Ors. vs. Delhi Transport Corporation and Anr.), awarded a sum of Rs.43,20,000/- towards loss of pecuniary benefits.

8. In the case of Reshma Kumari and others - vs. - Madan Mohan and another reported in 2013 ACJ 1253, particularly para 36, the Apex Court held as follows:-

> "36.The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50 per cent of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30 per cent if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-

employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.”

9. In para 40 clause (v) of the judgment, in Reshma Kumari's case, the Apex Court has directed “while making addition to income for future prospects, the Tribunals shall follow para 11 of the judgment in Sarla Verma (supra).”

10. At this juncture, it is relevant to extract below para 11 of the judgment in the case of Sarla Verma – vs. - Delhi Transport Corporation reported in 2009 ACJ 1299 (SC):

"(11) In Susamma Thomas, 1994 ACJ 1 (SC), this court increased the income by nearly 100 per cent in Sarla Dixit, 1996 ACJ 581 (SC), the income was increased only by 50 per cent and in Arati Bezbaruah, 2003 ACJ 680 (SC), the income was increased by a mere 7 per cent. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50 per cent 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 per cent if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations 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."

11. We find that the Tribunal has erred in not granting any amount towards future prospects. Taking note of the decisions of the Hon'ble Apex Court in Sarala Verma's case Rajesh's case and also Reshma Kumari's case, cited supra, insofar as the loss of income to the dependents is concerned, we are inclined to grant a sum of Rs.56,16,000/ towards loss of dependency by taking the income of the deceased as Rs.30,000/-; by adding 30% towards future prospects, and deducting 1/4th towards the own expenses of the deceased and by adopting 16 multiplier.

12. Since compensation towards both for loss of estate and loss of future prospects could not be granted, the amount of Rs.10,000/- granted by the Tribunal towards loss of estate stands deleted.

13. As far as award under the head "Loss of love and affection" is concerned, the Tribunal has awarded only a sum of Rs.25,000/-, which is in the opinion of this Court, is very meagre and hence we are inclined to grant a sum of Rs.1,50,000/- to the aged parents and daughter.

14. As far as the award of compensation under the heading "funeral expenses" also, the Tribunal has awarded a sum of Rs.10,000/- which in the opinion of the Court is only meagre. Hence, applying the principle laid down by the Hon'ble Apex Court in the decisions cited supra, we are inclined to grant a sum of Rs.20,000/- towards funeral expenses.

15. 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	Loss of dependency	Rs.43,20,000/- (Rs.30,000/- - 1/4 x 12x16)	Rs.56,16,000/- (Rs.30,000/- + 30% - 1/4 x 12 x16)
2	Loss of Consortium	Rs. 25,000/-	Rs. 1,00,000/-
3	Loss of Love and affection	Rs. 25,000/-	Rs. 1,50,000/-
4	Loss of Estate	Rs. 10,000/-	Rs. -
5	Funeral Expenses	Rs. 10,000/-	Rs. 20,000/-
6	Transportation	Rs. 5,000/-	Rs. 5,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
	Total	Rs.43,95,000/-	Rs.58,91,000/-

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

17. Accordingly, the Civil Miscellaneous Appeal is allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.58,91,000/- from Rs.43,95,000/- and the claimants are entitled to share the compensation amount awarded by this Court as apportioned by the Tribunal.

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

(iii) The respondents are directed to deposit the entire award amount as ordered by this Court, after deducting the amount already deposited if any, to the credit of M.C.O.P.No.4972 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal by filing necessary applications before the Tribunal.

(v) As far as the share amount of the minor is concerned, the entire share amount of the minor shall be deposited in any one of the nationalized banks in reinvestment scheme till she attains majority and the 1st petitioner is entitled to withdraw the interest accrued therein once in six months.

(vi) The excess Court fee paid is directed to be refunded to the appellants as per rule.

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

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judge,
Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

+2 ccs to Mr.S.Sankaralingam, Advocate, sr.11552
+1 cc to M/s.S.Arunkumar, Advocate, sr.11888

C.M.A.No.3597 of 2014

ug co
kra 21.03.2016