

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.52 of 2014

1. Palaniammal
2. Minor Govindammal
3. Minor Kuppusami
Minor appellants 2 & 3 rep.by
NF mother Guardian Palaniammal .. Appellants

-vs-

1. S.Ravikumar
2. United India Insurance Co.Ltd.,
Salem .. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 17.7.2013 made in M.C.O.P.No.1753 of 2007 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Salem.

For Appellant :: Mr.A.A.Venkatesan

For Respondents :: Mr.T.Ravichandran for R2
No appearance for R1

JUDGMENT

The appellants, being the claimants, having lost their breadwinner at the age of 35 years in the accident that took place on 8.1.2007 at about 8.00 A.M., aggrieved by the impugned award dated 17.7.2013 passed in M.C.O.P.No.1753 of 2007 by the Motor Accident Claims Tribunal, I Additional District Judge, Salem awarding a sum of Rs.4,29,000/- with interest at the rate of 7.5% per annum, have

brought this appeal for enhancement of the compensation.

2. Learned counsel for the appellants/claimants submitted that when the breadwinner of the claimants' family was working as a Powerloom Supervisor and earning a sum of Rs.10,000/- per month, the Tribunal has unreasonably fixed the notional monthly income of the deceased at Rs.3,000/- on the ground that no documentary proof was produced to prove the same and after deducting one-third thereof towards his personal maintenance, has taken a sum of Rs.2,000/- to arrive at the loss of dependency. This is unjustified in the light of the ratio laid down by the Apex Court in **Syed Sadiq and others v. Divisional Manager, United India Insurance Co.Ltd., 2014 ACJ 627**, wherein the Apex Court, while fixing the notional monthly income of a vegetable vendor, keeping in mind the price rise of agricultural products, has fixed Rs.6,500/- as the notional monthly income even in the absence of documentary evidence to prove the income. When this is the settled legal position, in the present case, it was pleaded in the claim petition that the breadwinner, at the time of accident, was working as a Powerloom Supervisor and earning Rs.10,000/- per month. While so, the Tribunal ought to have fixed Rs.6,500/- as the notional monthly income of the deceased, adding 50% of the actual salary towards the future prospects, applying the correct multiplier, after deducting one-third thereof, ought to have arrived at the just and reasonable compensation towards the loss of dependency. Whereas in the present case, no amount has been added towards future prospects. Secondly, towards the loss of

consortium, the Tribunal has awarded only a sum of Rs.10,000/- to the wife of the deceased and Rs.10,000/- each to the two children of the deceased towards loss of love and affection. Moreover, a sum of Rs.5,000/- alone has been fixed towards the funeral expenses apart from Rs.10,000/- towards the loss of estate. Therefore, it was contended that the compensation has to be enhanced suitably in the light of the decision of the Apex Court in **Syed Sadiq and others v. Divisional Manager, United India Insurance Co.Ltd., 2014 ACJ 627** and also following the ruling of the Apex Court in **Rajesh and others v. Rajbir Singh & others, 2013 (9) SCC 54**, a just and reasonable compensation has to be fixed towards the loss of consortium and also towards the loss of love and affection.

3. Heard the learned counsel for the second respondent.

4. It is not in dispute that the appellants/claimants lost their breadwinner in the accident that took place on 8.1.2007. Although the first respondent, the owner and rider of the offending Yamaha motorcycle, who was examined as R.W.1, had deposed before the Tribunal that while he was driving the Yamaha motorcycle bearing Registration No.TN 30 D 8679 from Illampillai to Salem on the left side of the road, the deceased came in a moped (TVS 50) bearing Registration No.TN 27 J 8683 from the left side foot pathway and hit his motorcycle, as there was no evidence adduced by the second respondent insurance company to corroborate the evidence of R.W.1, the Tribunal, accepting the evidence of P.W.2, which was

also supported by the First Information Report, Ex.P1 showing that immediately after the accident the first information report was registered against the rider of the Yamaha motorcycle in Crime No.7 of 2007 for the offence under Sections 279, 337 & 304-A of IPC, has come to the conclusion that the first respondent, being the rider of the offending Yamaha motorcycle, was responsible for the accident. On this basis, since the second respondent is the insurer of the offending vehicle, the Tribunal held that the second respondent is liable to compensate the appellants. This Court finds no infirmity in the said finding.

5. With regard to the quantum of compensation payable to the appellants, it has been claimed that the breadwinner was earning a sum of Rs.10,000/- per month as powerloom supervisor. But the Tribunal has unreasonably fixed a sum of Rs.3,000/- alone as the notional monthly income on the ground that no documentary evidence was produced to prove the income. In this context, it is pertinent to extract the relevant paragraphs of the judgment of the Apex Court in **Syed Sadiq and others v. Divisional Manager, United India Insurance Co.Ltd., 2014 ACJ 627**, wherein the Apex Court, while fixing the notional monthly income in respect of a vegetable vendor in the absence of any documentary evidence, has held as follows:-

"8. The appellant claimant in his appeal further claimed that he had been earning Rs 10,000 p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs 3500 p.m.

considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganised sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in *Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.*, 2011 ACJ 2436 (SC), held as under:

“(14). In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs 4,500 per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs 3,000 only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs 100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs 3,000 per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any

documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time. In the present case, the appellant was working as a coolie and in and around the date of the accident, the wage of a labourer was between Rs. 100 to Rs 150 per day or Rs 4,500 per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs 4,500 to Rs 3,000 per month. We, therefore, accept his

statement that his monthly earning was Rs 4,500."

9. There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs 6,500 per month."

6. In the light of the above ratio laid down by the Apex Court, this Court is inclined to fix the notional monthly income of the deceased at Rs.6,500/- and 50% of the said income is added towards future prospects. As the deceased was aged about 35 years at the time of accident, the proper multiplier '16' is to be adopted. Since the claimants are three in number, namely, wife and two children, one-third deduction is to be made towards the personal expenses of the deceased. Accordingly, a sum of Rs.12,48,000/-($\text{Rs.}6500 + 3250 - 3250 \times 12 \times 16 = \text{Rs.}12,48,000$) is arrived at towards the loss of dependency. The Tribunal has awarded only a sum of Rs.10,000/- towards the loss of consortium to the wife and a sum of Rs.10,000/- each towards the loss of love and affection to the children of the deceased. Again the judgment of the Apex Court in **Rajesh and others v. Rajbir Singh & others, 2013 (9) SCC 54** would show that for the loss of consortium, it would be just and reasonable that the Courts award at least Rs.1,00,000/-. In this context, it is pertinent to extract the relevant portion of the said judgment of the Apex

Court as follows:-

“17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in ***Santosh Devi v. National Insurance Company Limited and others, 2012 (2) TN MAC 1 (SC)***. We may, therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs. 2,500 to Rs.10,000 in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (2) TN MAC 1 (SC)***, it was held that compensation for loss of consortium should be in the range of Rs.5,000 to Rs.10,000. In legal parlance, “consortium” is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the

major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

Accordingly, in view of the above legal position, a sum of Rs.1,00,000/- is awarded towards loss of consortium to the first appellant/wife and a sum of Rs.1,00,000/- each is awarded towards the loss of love and affection to the appellants 2 & 3/daughter & son of the deceased. Since a sum of Rs.10,000/- has been awarded towards loss of estate, the same is sustained. However, a sum of Rs.25,000/- is awarded towards the funeral expenses.

7. In the result, the appellants are entitled to a total compensation of Rs.15,83,000/- together with interest at the rate of 7.5% per annum from the date

of petition till the date of realisation payable by the second respondent as the insurer. Out of the said amount, the first appellant is entitled to Rs.8,83,000/- and the appellants 2 & 3 are each entitled to Rs.3,50,000/-. With the above modification, the civil miscellaneous appeal is disposed of. No costs.

8. The second respondent is directed to deposit the entire balance amount of compensation to the credit of the M.C.O.P.No.1753 of 2007 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Salem along with interest within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants/claimants are entitled to withdraw the entire amount along with accrued interest by moving appropriate applications before the Tribunal.

Index : yes

02.11.2016

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To

1. The I Additional District Judge
Motor Accident Claims Tribunal
Salem

T.RAJA, J.

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