

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM

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

C.M.A.No.807 of 2014

1. Mohamed Saleem
2. AsmaAppellants/Petitioners

Vs.

1. Ganapathy
2. The Divisional Manager,
National Insurance Company Limited,
372, J.N.Street,
Puducherry.Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 17.07.2012 passed in M.C.O.P.No.704 of 2010 on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), Pondicherry.

For Appellants : Mr.P.Nethaji

For Respondents: Mr.J.Chandran for R.2
R1 : NA

JUDGMENT

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

The claimants, who are the parents of the deceased - Raffiuk @ Mohammed Hasan Mydeen, who died in the road traffic accident, have preferred this appeal challenging the award dated 17.07.2012 passed in M.C.O.P.No.704 of 2010 on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), Pondicherry.

2. It is a case of fatal accident. On 10.09.2010, at about 00.45 hours at 100 feet road, Ellaipillaichavadi, Puducherry, when one Syed Madhar Kasim along with his brother

Raffique @ Mohammed Hasan Mydeen, aged 18 years as a pillion-rider were proceeding in a Bajaj Pulsar Motorcycle bearing Reg.No. PY 01-AU-8532 along the north to south direction in extreme left side of road, a Mahindra Tractor bearing Regn.No.PY-01-X-7009 came in the opposite direction in a rash and negligent manner with a high speed and suddenly turned towards west direction and dashed against the motorcycle. As a result, the rider as well as the pillion rider of the motor cycle were thrown on the road in a pool of blood. Immediately, they were admitted as in-patients in the Government General Hospital, Puducherry and were later referred to JIPMER Hospital, Puducherry for further treatment. Despite the treatment, both of them died in the Hospital itself. The deceased Raffiuk worked as a Basic Computer Instructor in Sudhasana Education Institution at Puducherry and was earning a sum of Rs.10,000/- per month and completed the test in module computer fundamentals, MS-Office and internet under Information technology Sector in the Ministry of Labour and Employment, Chennai. That apart, the deceased had also assisted his brother in running a footwear shop under the name and style of 'Western Footwear' at Pudcherry and was earning a sum of Rs.7,000/- per month. Due to the rash and negligent driving of the 1st respondent's driver, the deceased Raffiuk @ Mohammed Hasan Mydeen died and crippled the family of the claimants. Alleging that the 1st respondent, being the owner and the 2nd respondent, being the insurer of the accident vehicle, are jointly and severally liable, the appellants, the father and the mother of the deceased Raffique filed a petition before the Tribunal claiming a compensation of Rs.35,00,000/-.

3. In support of the claim, the 1st claimant - father of the deceased was examined as P.W.1 and Ex.P-1 to Ex.P-16 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Photo copy of First Information Report
P2	Xerox copy of RC Book of the R1's vehicle
P3	Xerox copy of the Insurance Policy of the R1's vehicle
P4	Xerox copy of Accident Inspection Report
P5	Xerox copy of the driving licence of the R1's driver
P6	Xerox copy of the Postmortem Examination report
P7	Xerox copy of the driving licence of the deceased
P8	Xerox copy of the final report

Ex.No.	Details
P9	Xerox copy of the Birth Certificate of deceased
P10	Xerox copy of the Ministry of Labour and Employment Certificate
P11	Xerox copy of the licence of M/s.Western Footwear
P12	Xerox copy of the Secondary School Leaving Certificate of the deceased
P13	Xerox copy of the Study Certificate of the deceased
P14	Xerox copy of passport of first petitioner
P15	Xerox copy of Family Ration Card
P16	Xerox copy of AADHAR Card of the 2 nd petitioner

On behalf of the Insurance Company, R.W.1 - the Motor Vehicle Inspector was examined and no exhibits were marked before the Tribunal.

4. The Tribunal based on the oral evidence of P.W.1, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to conclusion that the 1st respondent's driver was rash and negligence and was responsible for the accident and consequently liability was fixed on the 2nd respondent Insurance Company, since the vehicle belonging to the 1st respondent herein was insured with the 2nd respondent, to compensate the claimants. On this issue, learned counsel for the 2nd respondent has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

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

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 15	Rs.4,50,000/-
2	Loss of love and affection	Rs. 10,000/-
3	Funeral expenses	Rs. 10,000/-
	Total	Rs.4,70,000/-

6. The only serious objection raised by the appellants/claimants with regard to the grant of compensation is that the Tribunal failed to take into consideration that the deceased was an young man and educated. Further, the future prospects of the deceased were not taken into consideration and the multiplier adopted is also very low. The compensation awarded by the Tribunal towards loss of love and affection and funeral expenses are also very low. Reliance has been placed by the learned counsel for the appellants on the decision of the Supreme Court in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC).

7. Heard Mr.J.Chandran, learned counsel appearing for the 2nd respondent - Insurance company.

8. The Tribunal considering the education of the deceased arrived at a sum of Rs.6,000/- per month as income of the deceased. His contribution to the family was taken as Rs.2,500/- per month by the Tribunal and adopting multiplier 15, the loss of dependency to the claimants was arrived at Rs.4,50,000/- (Rs.2,500 x 12 x 15). It is to be pointed out that the multiplier 15 adopted by the Tribunal is not correct in view of the decision of the Supreme Court in Sarla Verma's case. The Tribunal has also not taken into consideration the future prospects of the deceased, who was an young man and educationally qualified. The accident in this case had occurred on 10.9.2010. We also notice that the amount of compensation awarded towards loss of love and affection to the parents of the deceased is very meagre. Therefore, finding that there has been gross injustice in granting compensation to the claimants, we are inclined to enhance the compensation. Accordingly, considering the fact that the monthly income of the deceased was Rs.6,000/- as on the date of accident, a further sum of 50% of the said amount i.e., Rs.3,000/- is added towards future prospects of the deceased. After deduction of 50% of the said amount of Rs.9,000/- (Rs.6,000/- + Rs.3,000/-), the contribution of the deceased towards the family could be arrived at Rs.4,500/- per month. Accordingly, loss of pecuniary benefits to the claimants could be awarded as Rs.9,72,000/- (Rs.4,500x12x18) by adopting multiplier 18 and enhancing the amount of Rs.4,50,000/- awarded by the Tribunal under the said head. A further sum of Rs.25,000/- could be awarded towards loss of love and affection to the claimants, who are parents of deceased by enhancing the sum of Rs.10,000/- awarded by the Tribunal under the said head. A further sum of Rs.15,000/- could be awarded towards funeral expenses by enhancing the sum of Rs.10,000/- awarded by the Tribunal under the said head. Thus, a total sum of Rs.10,12,000/- (Rupees ten lakhs and twelve

thousand only) could be awarded towards compensation to the claimants.

9. Accordingly, the compensation awarded by the Tribunal stands enhanced as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 18	Rs.4,50,000/-	Rs.9,72,0000/-
2	Loss of love and affection	Rs. 10,000/-	Rs. 25,000/-
3	Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
	Total	Rs.4,70,000/-	Rs.10,12,000/-

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

10. In the result, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.10,12,000/- from Rs.4,70,000/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The award amount is apportioned equally between the claimants.
- (iv) The 2nd respondent - Insurance Company is directed to deposit the entire amount of compensation as awarded by this Court together with interest before the Tribunal within a period of eight weeks from the date of receipt of copy of this judgment;
- (v) On such deposit, the claimants are permitted to withdraw the award amount as ordered and apportioned by this Court as above.
- (vi) The excess court fee paid in this appeal is directed to be refunded as per rule.
- (vii) There will be no order as to costs in this appeal.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

usk
To

1. Motor Accident Claims Tribunal,
The III Additional District Judge,
Puducherry.

2. The Section Officer, VR Section, High Court, Madras.

+1 cc to Mr.V.Rajkumar Vazhumuni, Advocate, sr.11464

C.M.A.No.807 of 2014

tej co
kra 18.03.2016



WEB COPY