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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 20.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.89 of 2014

1.S.Saraswathy
2.B.Shankar ... Appellants/Petitioners

Versus

1.A.Elumalai
2.The Oriental Insurance Company Limited,
No.115, New No.216, Prakasam Road,
Chennai 600 106. ... Respondents/Respondents
(R1 was set exparte in the Trial
Court)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree passed in MACTOP No.474 of 2012 dated 05.10.2013 on the file of the learned Motor Accident Claims Tribunal Chief Judge Small Causes Court at Chennai.

For Appellants :- Mr.K.Suryanarayanan
For Respondents :- R1-Exparte
Mr.M.Krishnamoorthy for R2

JUDGMENT

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

This appeal is filed by the claimants seeking enhancement of the compensation made in M.C.O.P.No.474 of 2012, dated 05.10.2013 on the file of the learned Motor Accident Claims Tribunal Chief Judge, Small Causes Court at Chennai.

2. It is a case of fatal accident. On 05.08.2011 at about 17.00 hours, while the deceased was driving the car bearing Registration No.TN-07-BF-9580 in East Coast road near Uthandi Pudu Koil opposite to Uthandi, the bus bearing Registration No. TN-21-AH-9532 driven in a rash and negligent manner, hit against the car, due to which, the deceased sustained grievous injuries and died on the spot. A case was



registered against the driver of the bus.

3. The claimants being the legal heirs of the deceased filed a claim petition in M.C.O.P.No.474 of 2012 seeking compensation of Rs.50,00,000/-. In support of the claim, P.Ws.1 to 3 were examined and Exhibits P.1 to P.21 were marked. On behalf of the respondents, neither any witness was examined nor any document was marked.

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.8,10,000/-
2	Loss of Love and Affection	Rs. 25,000/-
3	Funeral Expenses	Rs. 10,000
4	Transport to Hospital	Rs. 5,000/-
	Total	Rs.8,50,000/-

5. Insofar as the issue regarding negligence is concerned, there is no dispute and therefore, the finding of the Tribunal on the question of negligence is confirmed. While the insurer has not preferred any appeal questioning the compensation awarded, the appellants herein, who are the claimants are aggrieved only with regard to the quantum of compensation awarded by the Tribunal.

6. The learned counsel for the appellants/claimants submitted that the deceased was a final year engineering student and he was getting income of more than Rs.1,00,000/- per year from other sources. He further submitted that if the deceased had been employed after completion of his graduation, he would have earned income of more than Rs.30,000/- per month. The Tribunal without considering the above aspects and also the future prospects of the deceased, has fixed Rs.7,500/- towards income, which is on the lower side and therefore the same has to be enhanced. Further, he submitted that the parents of the deceased have also lost their only son and have been put to great mental turmoil and the compensation awarded under the head "Love and Affection" is also on the lower side. In support of his contention, the learned counsel relied on a decision of the Division Bench of this court reported in 2014(1) TNMAC 370 (DB), Managing Director, Metropolitan Transport Corporation Ltd., vs K.Murugesan, wherein the Division Bench of this Court, in similar circumstances, has awarded a total compensation of Rs.34,65,000/- with 7.5% interest p.a.



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7. Per contra, the learned counsel appearing for the Insurance Company relying on the decision of the Apex court reported in 2013(2) TNMAC 724(SC), (Radhakrishnan vs Gokule), contended that in similar circumstances, the Apex Court has awarded only Rs.7,00,000/-. Therefore, the compensation of 8,50,000/- awarded by the Tribunal is on the higher side and prayed for reduction of compensation on all heads.

8. Heard the learned counsel on either side and perused the materials available in the typedset of documents.

9. In R.K. Malik v. Kiran Pal, (2009) 14 SCC 1, the Supreme Court has held as under :-

"9. In cases of motor accidents the endeavour is to put the dependants/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely.

10. To put it simply-pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non-pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life, etc. The Act provides for payment of "just compensation" vide Sections 166 and 168. It is left to the courts to decide what would be "just compensation" in the facts of a case.

* * * * *

22. It is extremely difficult to quantify the non-pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy.

23. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can



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be easily visualised and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness, etc., which is sometimes described as compensation paid for "loss of expectation of life".

* * * * *

26. While quantifying and arriving at a figure for "loss of expectation of life", the court has to keep in mind that this figure is not to be calculated for the prospective loss or further pecuniary benefits that have been awarded under another head i.e. pecuniary loss. The compensation payable under this head is for loss of life and not loss of future pecuniary prospects. Under this head, compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. This compensation is paid for loss of prospective happiness which the claimant/victim would have enjoyed had the child not died at the tender age.

* * * * *

38. This Court has observed as follows in State of Haryana v. Jasbir Kaur (2003) 7 SCC 484 :

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense 'damages' which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be



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no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression 'which appears to it to be just' a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

* * * * *

40. Needless to say, pecuniary damages seek to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses. In contrast, non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. In this context, it becomes duty of the court to award just compensation for non-pecuniary loss. As already noted it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the court must be to provide a just, fair and reasonable amount as compensation keeping in view all relevant facts and circumstances into consideration."

10. In the present case, it is not in dispute that the deceased died in the accident which happened on 5.8.11 and at the said point of time, the deceased was in his final year in Engineering. It is further evident from the record that the deceased was an engineering student studying in Eswari Engineering College and that his parents, viz., the claimants were doing business. It is also further evident from the records that the deceased was holding shares in the companies run by his family and was receiving dividends on those shares, which fact is further evident from the income tax returns filed by the deceased. All the above factors clearly establish that the deceased was earning money in the form of dividends even while he was studying. Further, the deceased was an income tax assessee, which clearly proves that the deceased had an income. In such a situation, the fixation of notional income at Rs.7,500/= per month for an engineering student, who was getting income, cannot be justified. Further, in the present day



scenario, the average monthly salary of an fresh engineering graduate would certainly be in the region of Rs.20,000/=. In such view of the matter, this Court fixes the notional monthly income of the deceased at Rs.20,000/= per month.

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11.Further, as per the decision of the Hon'ble Supreme Court in Sarla Verma - Vs - Delhi Transport Corporation (2009 (6) SCC 121), while 50% of the income fixed should be deducted towards personal expenses of the deceased, similarly, in view of the ratio laid down by the Apex Court in Munna Lal Jain - Vs - Vipin Kumar Sharma (2015 (6) SCC 347), 50% of the notional income/income earned should be added towards 'future prospects' of the deceased. Accordingly, while fixing the notional income of the deceased at Rs.20,000/=: this Court, while deducts 50% towards the personal expenses of the deceased further adds 50% of the income towards future prospects of the deceased and arrives at the loss of income to the family per month at Rs.15,000/=. Accordingly, adopting the multiplier of 18, this Court is inclined to award a sum of Rs.32,40,000/= (Rs.15,000 X 12 X 18) under the head "Loss of Dependency".

12.This Court is also of the considered view that the amount of Rs.25,000/= awarded under the head "Loss of Love and Affection" to the claimants, viz., the parents of the deceased is also on the lower side. The claimants have lost their only son and their world would have been shattered on account of the same. No amount of money can give solace to the claimants as the loss cannot be compensated. This Court, therefore, awards a sum of Rs.1,15,000/= to each claimant under the head "Loss of Love & Affection". In all, a sum of Rs.2,30,000/= is awarded under the head "Loss of Love & Affection".

13.As has been laid down by the Supreme Court in Rajesh - Vs - Rajbir Singh (2013 (9) SCC 54), the 'price index' in the present day scenario has gone up and, therefore, the expenses that are shelved towards the funeral are substantially high. As rightly pointed out by the Supreme Court, "funeral expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/=" In such view of the matter, this Court deems it fit to enhance the amount awarded under the head "Funeral Expenses" to Rs.25,000/=".



14. Insofar as the amounts awarded under the head "Transportation to Hospital" in a sum of Rs.5,000/=-, the same is confirmed.

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15. Accordingly, the compensation awarded by the Tribunal stands modified as under :-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this court
1	Loss of Dependency	Rs.8,10,000/-	32,40,000/-
2	Loss of Love and Affection	Rs. 25,000/-	2,30,000/-
3	Funeral Expenses	Rs. 10,000	25,000/-
4	Transport to Hospital	Rs. 5,000/-	5,000/-
	Total	Rs.8,50,000/-	35,00,000/-

16. The Civil Miscellaneous Appeal is allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.35,00,000/- from Rs.8,50,000/-. Thus, a sum of Rs.26,50,000/- is awarded over and above the compensation granted by the tribunal.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition.
- (iii) In view of the compensation, being enhanced by this court, the Insurance Company/second respondent is directed to deposit the entire amount of compensation along with interest, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order.
- (iv) On such deposit being made, the claimants are permitted to withdraw their respective share of the award amount as apportioned by the Tribunal 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.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal
Chief Judge,
Small Causes Court,
Chennai.

copy to:

The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.K.Suryanarayanan Advocate sr.24382
+1 cc to Mr.M.Krishnamoorthy Advocate sr.24338

CMA No.89 of 2014

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