IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29.11.2016

Judgment Pronounced on : 21.12.2016

CORAM: THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2809 of 2009

1.A.Jothi
2.R.Kanniammal ...Appellants/Claimants

Vs.

1.R.Ganesan

2.United India Insurance Company Limited,
C/o.Motor Third Party Claim Offices,
No.38, Anna Salai, Chennai - 2.

3.A.Thirumurugan @ Ramesh ...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.02.2009 made in MCOP.No.3468 of 2006 on the file of the Motor Accident Claims Tribunal,(Chief Judge of Small Causes Court), Chennai.

For Appellants : Mr.T.G.Balachandran
For Respondents : Mr.C.Paranthaman [for R2]
R1 & R3 - Ex parte

JUDGMENT

The legal representatives, who are the daughters of the deceased victim in a road accident have come forward with this appeal seeking enhancement of compensation awarded in MCOP.No.3468 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

2. One Mangala Mary was knocked down by a speeding auto rickshaw bearing registration No.TN04-E-7938 on the night of 03.06.2006 at about 10.30 p.m. She was immediately taken to Santhosh Hospital, Besant Nagar, Chennai, from where she was shifted to Government General Hospital, Chennai, where she died on the following day i.e., 04.06.2006.

3. Mangala Mary was aged 63 years at the relevant time and she was receiving a sum of Rs.3,028/- per month as her pension,

besides a family pension of Rs.2,373/- as widow of her husband. On various heads including loss of support to the family her dependence, Mangala Mary's two daughters have preferred a claim petition for Rs.4,00,000/-, against which, the Tribunal had awarded Rs.1,00,000/-. On the second limb of the claim namely loss to the estate of the deceased which the Tribunal assessed notionally by resorting to the annual notional income as suggested in second schedule to the Motor Vehicle Act and has applied multiplier of 5, that commensurate with the age of the deceased as per the second schedule. The amount claimed by the appellants and the amount awarded by the Tribunal under various heads is tabulated below :

Heads	Amount Claimed (Rs.)	Amount Awarded (Rs.)
Transport to Hospital	10,000.00	5,000.00
Damage to clothing and articles	5,000.00	
Loss to the estate	3,75,000.00	75,000.00
Funeral Expenses	10,000.00	5,000.00
Loss of love and affection	20,000.00	10,000.00
Loss of expectation to life	10,000.00	
Compensation for pain and suffering	20,000.00	
Medical Expenses		5,000.00
Total :	4,45,000.00 (Claim restricted to Rs.4,00,000/-)	1,00,000.00

4. The learned counsel for the appellant contended :

- That the Tribunal should not have resorted to notional fixation of income of the deceased as the claimants have produced Ex.P6 & Ex.P7. When income is known, there is no reason to hold the daughters/legal representatives are not entitled to claim compensation with reference to the actual earnings from the sources.

- The claimants have also contended that since her retirement, the deceased mother was engaged in some textile business more in the nature of self-employment and was making about Rs.4,000/- per month, which is a actual loss for her estate, but the Tribunal has overlooked it. Even if the Tribunal was presumed to have ignored it for want of any material evidence before it, still her contribution to the family has to be reasonably valued.

- The Tribunal has proceeded on the footing that inasmuch as the daughters are married and settled, they are not dependent on the income of the deceased. In this regard P.W.1, namely the second claimant has testified in the course of her cross-examination that both she and her sister had married their uncles (mother's brothers) and that they were all living together as borne by Ex.P10-Ration Card. This entire evidence was overlooked by the Tribunal. At any rate it is not appropriate to quantify the compensation payable as a component of loss of dependency in all cases, but must be reckoned as lost to the estate. If so reckoned, then the total monthly income of the deceased after providing 1/3rd of the gross income towards her personal expenses would be Rs.6,060/- and accordingly Rs.72,720/- will be the multiplicand on which a multiplier 7 as declared in Sarala Varma case, needs to be applied.

- On various heads of general damages, the Tribunal has been unduly parsimonious and it is necessary to interfere with the same.

Arguing further, that compensation to be awarded should be just and fair to the legal representatives of the victims of the road accident and it is immaterial whether the claimants have filed an application for enhancing the compensation beyond the amount they originally claimed or not since the Court in fixing what it considers as the just and fair compensation does not suffer any such procedural restrictions but in the petition, it is still permissible for the Court to enhance it by invoking Order 41 Rule 33 of C.P.C., Reliance was placed on the authority of this Court in Chief Works Manager, Southern Railways Carriage Works, Perambur, Chennai-600 023 V. V.Manimekalai [2015(2) TNMAC 691 (DB)].

5. Per contra, the learned counsel for the second respondent submitted that the Court may not ignore the law that was prevailing at the time of accident and may go slow in telescoping the effect of march of law on an accident that had

taken place long prior thereto. He also added that in the eventuality of this Court finding any justification for enhancing the compensation with a direction to pay interest @ 9% p.a. as ordered by the Tribunal, it would be a bonanza since the interest would be reckoned from the year 2006, when the claim petition was originally filed. He reminded the Court that the Tribunal should be presumed to have granted only just and fair compensation and in the process it shall not be unduly charitable to one of the parties to the litigation.

6. I find merit in the submissions in aid of a need to enhance compensation. It may now be stated that when once the law is settled vide authorities in Hafizun Begum Vs. Md. Ikram Hegue & Other [2008(1) ACC 368: 2007(4) CTC 335 : 2007 (2) TNMAC 143] and Manjura Bera Vs. Oriental Insurance Co. Ltd., [2007 10 SCC 643], to refer a few, that married daughters too are entitled to compensation for the death of their parent it is just not required of the claimants/appellants to strain much to demonstrate that both of them were actually residing along with their mother with help of a ration card. A ration card, in the absence of any contra evidence, may indicate that all those to whom the ration card pertain to live in the same address. It therefore, is hardly an evidence to decide on the dependency-factor as between those who so live in the same address. Therefore, married daughters, with their spouses otherwise pursuing an avocation of their own, can never be termed as dependents on their parent.

7. However, that should not deter this Court from considering the point if there was any loss to the estate of the deceased which her daughters might have succeeded to as the heir of the deceased. It needs to be remembered that, that which the victim would not have spent would have been saved and this would be an accretion to the estate of the deceased which in turn would go to the benefit of her heirs. It is an admitted fact the victim's only source of income was her twin pensions, one her own and the other the family pension relatable to her husband. Exts.P-3 and P-4 show that the consolidated pension amount that the victim received on both the heads was Rs.5,401/-. On reduction of 1/3 for her personal expenses and applying 7 as multiplier, the total loss on this head would be Rs.3,02,456. On general heads of compensation, for loss of love and affection, both the daughters will be entitled to get Rs.50,000/- each as compensation. The final figure of compensation payable is denoted in the table below:

Heads	Amount Awarded (Rs.)	Amount Enhanced (Rs.)
Transport to Hospital	5,000.00	5,000.00
Damage to clothing and articles		
Loss to the estate	75,000.00	3,02,456.00
Funeral Expenses	5,000.00	5,000.00
Loss of love and affection	10,000.00	1,00,000.00
Loss of expectation to life		
Compensation for pain and suffering		
Medical Expenses	5,000.00	5,000.00
Total :	1,00,000.00	4,17,456.00

8. The compensation payable is thus determined at Rs.4,17,456 and is rounded off to Rs.4,17,500/-. If this is the just and fair compensation determinable at a very modest rate but still consistent with the law settled by the Supreme Court, then any argument countering it cannot merit consideration. Here it is required to be stated that the argument that the need for payment of interest from the inception of the claim should be factored in to deny enhancement of compensation is hugely misconceived for what is paid to compensate a loss forced on a victim of a road accident can never retrieve to them what was lost by them. Can money get the daughters their mother and the emotional succor she provided, or, generally to someone the limbs he has lost? If the insurance company is required to pay that which they are contractually bound to pay and statutorily mandated to pay, where is the room for such fantastic arguments? After all, in the statutory scheme of things an insurance company insuring a motor vehicle cannot be said to be engaged in a pure commercial activity that it should be preoccupied with the thought of its quarterly profits. It ought to know that it has undertaken a social responsibility, and wherever it has to play its role to fulfill that responsibility, it shall do it.

9.In the result this appeal is allowed without costs and the compensation amount is enhanced from Rs.1,00,000/- to Rs.4,17,500/-. The owner and the insurance company of the offending vehicle are directed to deposit the enhanced compensation of Rs.4,17,500/- with interest @ 9% per annum into court deposit within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the appellants are entitled to withdraw the same forthwith. The appellants are directed to pay the necessary court fee for the enhanced compensation.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.Balachangar, Advocate, S.R.No.74772
+1cc to Mr.Paranthaman, Advocate, S.R.No.74554

VD(CO)
RS(24/03/2017)

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