IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.2296 OF 2012

1. P.Chinnammal
2. P.Vijay (Minor)
3. P.Sanjay (Minor)
(Minors 2 & 3 rep. by mother & n.f. 1st appellant)
4. P.Mala
5. P.Vignesh (Minor)
6. P.Subhalakshmi (Minor)
7. P.Mariammal (Minor)
(Minors 5 to 7 rep. by mother & n.f. 4th appellant)
8. S.Purappa Konnar
9. P.Pethayee Ammal ... Appellants/Claimant

Vs.

1. V.Veeraswamy
(Set exparte in the Trial Court)

2. Royal Sundaram Alliance Insurance Co. Ltd.,
No.21, Pattulas Road,
Chennai 600 002. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2012 made in MACT O.P.No.3828 of 2010 on the file of the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants : Ms.T.Salim Fathima

For 2nd Respondent : Mr.N.Vijayaraghavan

J U D G M E N T

(Judgment delivered by S.VAIDYANATHAN,J.)

Heard the learned counsel for the appellants and the learned counsel appearing for the 2nd respondent.

2. Aggrieved by the award of the Tribunal dated 09.03.2012 made in MACTOP.No.3828 of 2010 on the file of the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai, the claimants have come up with the present appeal seeking enhancement of compensation.

3. This is a case of fatal accident. On 25.07.2009, about 11.30 hours, when one P.Palaniswamy, who was riding his motorcycle bearing Registration No.TN-45-AZ-5314 was proceeding near the junction of Madurai to Chennai National Highway, the lorry bearing Registration No.TN-58-K-6669 came from south to north in a rash and negligent manner to the extreme wrong side of the road and dashed the motorcycle, due to which the deceased sustained crush injury and died on the spot.

4. According to the appellants/claimants, the deceased was aged 37 years at the time of accident and was a Heavy Vehicles Driver, also doing Agency work in building materials and coconut residue items and earned a sum of Rs.15,000/- to Rs.20,000/- per month. The 1st appellant/1st claimant is the 1st wife of the deceased; appellants/claimants 2 and 3 are his sons through his 1st wife; the 4th appellant/4th claimant is the 2nd wife of the deceased; appellants/claimants 5 to 7 are his son and daughters through the 2nd wife and appellants/claimants 8 and 9 are the parents of the deceased. Alleging that the driver of the lorry is solely responsible for the accident and that the 1st respondent, owner of the Lorry and the 2nd respondent, insurer of the Lorry are jointly and severally liable to pay compensation, the appellants/claimants filed a claim petition in M.C.O.P.No.3828 of 2010, seeking a sum of Rs.23,00,000/- as compensation.

5. On the side of the appellants/claimants, the 1st claimant, viz., the 1st wife of the deceased was examined as P.W.1 and one Mr.N.Lakshmanan, an eye-witness to the accident was examined as P.W.2 and Exs.P-1 to P-5 were marked, the details of which are as follows:

Ex.P-1	Copy of FIR
Ex.P-2	Copy of post-mortem Certificate
Ex.P-3	Death Certificate
Ex.P-4	Certified copy of judgment copy in O.S.No.351/2009
Ex.P-5	Certified copy of Decreetal order in O.S.No.351/2009

6. On the side of the 2nd respondent/Insurance Company, none were examined and no exhibits were marked.

7. The Tribunal, taking note of the oral evidence of P.W.1 and Ex.P1-F.I.R. and also taking note of the corroborating evidence of P.W.2, an eye-witness to the occurrence, which has been adduced to prove that the Lorry was driven in a rash and negligent manner and the documentary evidence, held that the accident took place due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN-58-K-6669 and awarded a sum of Rs.7,68,000/- as compensation to the claimants with interest at 7.5% per annum, under the following heads:

Loss of pecuniary benefits	Rs.6,48,000/-
Loss of consortium to the 1st petitione	Rs. 20,000/-
Loss of love and affection to petitioners 2 to 9 (each Rs.10,000/-)	Rs. 80,000/-
Funeral expenses	Rs. 10,000/-
Loss of expectation of life	Rs. 10,000/-
Total compensation	Rs.7,68,000/-

Aggrieved by the said award, the claimants have come up before this Court by way of the present appeal.

8. Learned counsel for the appellants/claimants would mainly contend that the Tribunal erred in coming to the conclusion that the deceased was earning only a sum of Rs.4,500/- per month, and also deducted 1/5th towards personal expenses, when the claimants are nine in numbers. It is also his contention that the Tribunal erred in applying the multiplier of '15' instead of a higher multiplier.

9. In reply, learned counsel appearing for the 2nd respondent/Insurance Company would submit that the monthly income fixed by the Tribunal is correct and that the multiplier of '15' adopted by the Tribunal is also correct.

10. We have given careful consideration to the submissions made by the learned counsel on either side and gone through the materials available on record. This appeal is by the claimants seeking enhancement of compensation. Admittedly, there is no cross-appeal by the Insurance Company and the owner of the alleged vehicle, viz. Lorry has also been set exparte.

11. At the time of accident, the deceased was aged 37 years as could be seen from Ex.P2-Post mortem Certificate. The Tribunal has fixed a sum of Rs.4,500/- as monthly income of the deceased and after deducting one-fifth towards his personal expenses, arrived at a sum of Rs.3,600/- as monthly contribution to his family. Thus, the Tribunal awarded a sum of Rs.6,48,000/- [Rs.3,600 x 12 x '15'] towards 'loss of pecuniary benefits'. It is seen that the deceased was working as a Heavy Vehicles Driver. Apart from the said avocation, it is represented by the claimants that the deceased had also been doing agency work in building materials and coconut residue items. Though, no proof is produced in support of the agency work carried on by the deceased, practically, it would have been difficult for him to run his family with a meagre salary of Rs.4,500/-.

12. The Supreme Court, in Syed Sadiq and others v. Divisional Manager, United India Insurance Company Ltd., (2014 (2) SCC 735), has held that the income of Rs.6,500/- per month of a Vegetable Vendor was very reasonable. Relevant portion of the said judgment would read thus:

> "7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the whole-sale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the

appellant/claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant/claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income.

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 unorganized sector doing his own business is expected to produce documents to prove his monthly income."

13. In view of the said judgment and taking into account the avocation of the deceased as also the present economic situation, this Court is inclined to fix the monthly income of the deceased at Rs.7,500/-. Moreover, we find that the Tribunal has applied the correct multiplier of '15' to the age of the deceased, in view of the dictum laid down by the Supreme Court in Sarla Verma -Vs- Delhi Transport Corporation and another [2009 (6) SCC 121]. Thus, after deducting 1/5th towards his personal expenses, the compensation towards loss of pecuniary benefits is arrived at a sum of Rs.10,80,000/- [Rs.7,500/- x 4/5 x 12 x '15']. Thereby, the compensation towards 'loss of pecuniary benefits' is enhanced from Rs.6,48,000/- to a sum of Rs.10,80,000/-.

14. As regards the compensation of a sum of Rs.20,000/- awarded towards 'Loss of Consortium to the 1st petitioner', this Court is of the view that it is certainly on the lower side. Also, taking note of the ratio laid down in the decision of the Supreme Court in Rajesh v. Rajbir Singh, 2013 (2) TNMAC (SC), the compensation towards 'loss of consortium' is enhanced to a sum of Rs.1,00,000/-.

15. Under the head 'loss of love and affection to the petitioners 2 to 9', though the Tribunal has awarded a sum of Rs.80,000/-, the claim of the appellants to enhance the same to a sum of Rs.1,00,000/- is ordered and accordingly, the compensation towards 'loss of love and affection to the petitioners 2 to 9' is enhanced to a sum of Rs.1,00,000/-.

16. The Tribunal has granted a sum of Rs.10,000/- towards 'funeral expenses', which according to this Court is certainly on the higher side and therefore, it is reduced to a sum of Rs.5,000/-. Coming to the compensation of a sum of Rs.10,000/- awarded towards 'Loss of expectation of life', this Court is inclined to strike down the same, as enough compensation has been awarded under the head 'loss of pecuniary benefits'.

17. In fine, the compensation awarded by the Tribunal under various heads is modified and enhanced to a sum of Rs.12,85,000/- (Rupees Twelve Lakhs Eighty Five Thousand only) and the break-up details of the revised award, are as under:

Compensation under the Head	Compensation awarded by the Tribunal	Compensation modified by this Court
Loss of pecuniary benefits	Rs.6,48,000/-	Rs.10,80,000/-
Loss of consortium to the 1st petitioner	Rs. 20,000/-	Rs.1,00,000/-
Loss of love and affection to petitioners 2 to 9 (each Rs.10,000/-)	Rs. 80,000/-	Rs.1,00,000/-
Funeral expenses	Rs. 10,000/-	Rs.5,000/-
Loss of expectation of life	Rs. 10,000/-	Struck down
Total compensation	Rs.7,68,000/-	Rs.12,85,000/-

18. It is made clear that if no amount is deposited by the 2nd respondent/Insurance Company, the Insurance Company is directed to deposit the entire compensation awarded by the Tribunal including the enhanced compensation awarded by this Court, in toto, a sum of Rs.12,85,000/- (Rupees Twelve Lakhs Eighty Five Thousand only) along with accrued interest at the rate of 7.5% per annum to the credit of M.C.O.P.No.3828 of 2010 on the file of the Motor Accidents Claims Tribunal/Small Causes Court, Chennai, within a period of six (6) weeks from the date of receipt a copy of this judgment. It is needless to mention

that on such deposit, the appellants/claimants 1,4,8 and 9 are entitled to withdraw the entire amount with accrued interest @ 7.5% from the date of filing the petition till the date of realization as per the ratio fixed by the tribunal. In other aspects, the award is confirmed.

With the above modification and direction, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To :

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

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No.6841
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.7368

Judgment in
C.M.A.No.2296 of 2012

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