IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2016

CORAM

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

C.M.A.No.2854 of 2012
and M.P.No.1 of 2012

The Manager,
M/s.New India Assurance Co. Ltd.,
No.375, Anna Salai,
Canara Bank, 2nd Floor,
Saidapet, Chennai - 15.

... Appellant/2nd Respondent

vs.

1. Tmt. Rama Venkatraman @ Rama Lalith
2. Minor. Ila Tarana Laith
3. Tmt.Sundari Mohan Das
4. Thiru.K.P.Mohan Das

....Respondents/Petitioners

5.. Thiru.M.Krishnan

...Respondent/1stRespondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 28.02.2012 passed in M.C.O.P.No.36 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge), F.T.C.No.III, at Thiruvallur District.

For Appellant : Mr.J.Chandran
For Respondents: Mr.D.Baskar - R1 to R4

JUDGMENT

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

The Insurance Company is on appeal challenging the award dated 28.02.2012 passed in M.C.O.P.No.36 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge), F.T.C.No.III, at Thiruvallur District.

2. It is a case of fatal accident. On 20.09.2007, when the deceased Lalith Mohandass was driving a Santro Car bearing Registration No.T.N.37AF 2653 at 23.15 hours, opposite to Mcrennet Bakery on the Mount Poonamallee Road, Chennai, a water tanker lorry bearing Registration No.TN72 A 5752 came in an opposite direction in a rash and negligent manner, dashed against the Santro Car driven by the deceased Lalith Mohandass, in which the deceased was crushed inside the Car. Immediately, the deceased was taken to the nearby Balaji Hospital, where, inspite of the treatment given, the deceased Lalith Mohandass, died at 1.45 a.m. on 21.09.2007. The claimants, who are wife, aged 29 years, minor daughter, aged 1 year, mother

aged, 50 years and father aged 57 years of the deceased have filed a claim for compensation for a sum of Rs.1,50,00,000/-. According to the claimants, the deceased was working as Financial Analyst in KPMG Advisory in Kuwait and was earning a sum of Rs.12,30,750/- per annum.

3. In support of the claim, the wife of the deceased Lalith Mohandass was examined as P.W.1; Vikram, who is stated to be the eye witness to the accident and also injured in the accident was examined as P.W.2; Dr.J.R.R.Thiagarajan, was examined as P.W.3, one Ramachandran, was examined as P.W.4 and one M.C.Murali, was examined as P.W.5, and Ex.P-1 to Ex.P-28 were marked, the details of which are as follows:-

Ex.No.	*Details*
P1	Copy of the First Information Report
P2	Postmortem Certificate
P3	Sketch
P4	M.V.I. Report
P5	Charge Sheet
P6	Legalheirship Certificate
P7	I.D.Card
P8	Post Graduate Diploma Certificate in Management of the deceased
P9	Statement Account
P10	Passport of the deceased
P11	Flight Ticket of the deceased

Ex.No.	*Details*
P12	Discharge Summary at Sundaram Medical Foundation Hospital
P13	Discharge Summary at Sundaram Medical Foundation Hospital
P14	Photographs
P15	Medical Bills
P16	X-ray
P17	Disability certificate issued by Dr.J.R.R.Thiagarajan
P18	Authorisation letter given to P.W.4
P19	Authorisation letter given to P.W.4
P20	Confirmation of Employment of Lalit Mohandas
P21	Work Permit of Lalith Mohandas
P22	Letter given to Lalith regarding employment contract
P23	Civil I.D. Card Lalit Mohandass
P24	I.D. Card of P.W.4
P25	Receipt given to awarded of Thiru
P26	Letter given by KPMG company Kuwait
P27	Certificate given by the KPMG company with regard to value at Indian Currency equal to Kuwait Dinar
P28	Employment agreement of deceased Mohandass

On behalf of the Insurance Company, One C.Kannadu was examined as R.W.1 and no documents were marked.

4. The Tribunal based on the oral evidence of the witnesses, and the F.I.R. and taking into consideration that the deceased Lalith Mohandass had a valid driving licence to drive the four wheeler came to conclusion that the driver of the water tanker lorry had driven the

vehicle in a rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the vehicle was insured with the appellant, to compensate the claimants. On this issue, learned counsel for the appellant 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 amounts as compensation with interest at 7.5% per annum:-

Sl. No.	***Head***	***Amount granted by the Tribunal***
1	Loss of income (9,88,124x10)	Rs.98,81,240/-
2	Loss of Love & Affection	Rs. 15,000/-
3	Funeral Expenses	Rs. 5,000/-
	Total	Rs.99,81,240/-

6. The objection raised by the learned counsel appearing for the appellant is with regard to the quantum of compensation awarded by the Tribunal towards Loss of income. He further submits that the Tribunal has not deducted any deduction towards Income Tax.

7. Insofar as the quantum of compensation is concerned, the Tribunal considering the salary certificate of the deceased had fixed the income after deducting 1/3rd towards personal expenses. It is seen that the Tribunal had granted future prospects also at Rs.30,000/- per month. Considering the employment of the deceased Lalith Mohandass at Kuwait, we feel that the income arrived at by the Tribunal is very higher. Hence, we set aside the future prospects awarded by the Tribunal. It is seen that the Tribunal had adopted 10 multiplier. Since the deceased is aged 29 years at the time of accident, the proper multiplier adopted should be is 17. Hence, adopting multiplier 17 the income should be Rs.11,22,186 x 17 = Rs.1,90,77,162/-. After deducting 1/3rd towards personal expenses, the income of the deceased comes to Rs.1,27,18,108/-. After deducting TDS + Surcharges at 30%, which comes to approximately Rs.40.00 lakhs, the loss of income comes to Rs.87,18,108/-. The Tribunal has granted a sum of Rs.15,000/- towards loss of love and affection, which is very meagre. Hence, we grant a sum of Rs.2,00,000/-towards loss of love and affection and the Tribunal has granted a sum of Rs.5,000/- towards funeral expenses, which is very low and the same is enhanced to Rs.25,000/-.

8. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	***Head***	***Amount granted by the Tribunal***	***Amount awarded by this Court***
1	Loss of income	Rs.98,81,240/- (9,88,124 x 12)	Rs. 87,18,108/- (Rs.11,22,186-374062x17-40,00,000/-)
2	Loss of Love & Affection	Rs. 15,000/-	Rs. 2,00,000/-
3	Funeral Expenses	Rs. 5,000/-	Rs. 25,000/-
	Total	Rs.99,81,240/-	Rs. 89,43,108/-

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

10. At this juncture, learned counsel appearing for the claimants submits that the claimants have restricted their claim only to Rs.79.00 lakhs. Accordingly, the award of the Tribunal is modified to only Rs.79.00 lakhs.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is reduced from Rs.99,01,240/- to Rs.79.00 lakhs/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) Learned counsel appearing for the appellant submits that as per the order passed by this Court dated 28.09.2012, directing the appellant to deposit a lumpsum of Rs.25.00 lakhs, the appellant has deposited the same and the major claimants have withdrawn a sum of Rs.15.00 lakhs and the balance Rs.10.00 lakhs have been deposited in the name of the minor. He seeks further time to deposit the balance amount.

(iv) The appellant is granted eight weeks time to deposit the balance amount ordered by this Court.

(v) On such deposit being made, the claimants are permitted to withdraw the amount in the following manner:

a) wife of the deceased - Rs.5.00 lakhs

b) parents of the deceased - Rs.5.00 lakhs

c) the balance amount shall be deposited in the name of the minor child in the same bank along with the deposit already made for a period of three years under reinvestment scheme, which shall be renewed periodically till the minor attains majority.

d) the mother of the minor claimant is permitted to withdraw the interest accrued on the minor's deposit once in three months directly from the bank.

(vi) Except the above modification, the award of the Tribunal in all other aspects stands confirmed.

(vii) There will be no order as to costs in this appeal.

(viii) Consequently, connected miscellaneous petition is closed.

(R.S.,J) (S.V.N.,J)

25.02.2016

Internet: Yes

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To

The Motor Accidents Claims Tribunal
(Additional District and Sessions Judge),
F.T.C.No.III, at Thiruvallur District.

R.SUDHAKAR,J.
AND
S.VAIDYANATHAN,J.

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