

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2016

Coram:-

The Hon'ble Mr. Justice M.DURAI SWAMY
and
The Hon'ble Mr. Justice R.SURESH KUMAR

C.M.A.No.2875 of 2012
and M.P.No.1 of 2012

M/s.National Insurance Co. Ltd.,
No.63, Rasi Plaza
West Pradikshanam Road
Karur ... Appellant / 3rd Respondent

vs.

1.R.Veni
2.Minor R.Vaishnavi
3. Minor R.Gayathri
Minors 2 and 3 are represented by
their mother 1st respondent as next
friend and natural guardian R.Vani

4.R.Mohanavalli ... Respondents 1 to 4/ Claimants
5. R.Sundaram
6. K.Subramanian ... Respondents 5 & 6/ Respondents
1 & 2

C.M.A. filed under Section 173 of the Motor Vehicles Act,
1988 against the Judgment and decree passed in
M.A.C.T.O.P.No.741 of 2005 dated 19.01.2010 on the file of the
Motor Accidents Claims Tribunal, I Additional District Judge,
Coimbatore.

For Appellant : Ms.N. B.Surekha

For Respondents 1 to 4: Mr.V.V.Sairam
R5 & R6 not ready in notice

J U D G M E N T

(Judgement of the court was delivered by M.DURAI SWAMY, J.,)

Challenging the award dated 19.01.2010 passed in
M.A.C.T.O.P.No.741 of 2005 on the file of the Motor Accident
Claims Tribunal, (hereinafter referred to as "the Tribunal"), I
Additional District Court, Coimbatore, the Insurance Company has
filed the above appeal.

2. The respondents 1 to 4 filed M.A.C.T.O.P.No.741 of 2005, claiming compensation to the tune of Rs.60,00,000/-, for the death of one P.R.Ramesh, who is the husband of the 1st respondent and father of the minor respondents 2 and 3. The 4th respondent is the mother of the deceased P.R.Ramesh.

3.1 It is the case of the claimants that on 14.04.2004, the deceased Ramesh was riding a motor cycle bearing Registration No.TN37AF 0839 on Sarada Mill Road near IOB at Pothanur from west to east and at that time, a lorry bearing Registration No.TN 59Y 2035, coming from the opposite direction dashed against the motorcycle and the said T.R.Ramesh had died on the spot.

3.2 At the time of the accident, the deceased was 40 years old and he was a LIC Agent, earning a sum of Rs.12,000/- p.m.

3.3 The Insurance Company filed their counter and contested the original petition.

3.4 Before the Tribunal, on the side of the claimants, 3 witnesses were examined and 24 documents, Exs.P-1 to P-24 were marked and on the side of the respondents neither any witness was examined nor any oral or documentary evidence was marked.

3.5 The Tribunal, after taking into consideration the oral and documentary let in by the claimants, relying upon the evidence of P.W.2, Branch Manager of LIC and also taking into consideration Exs.P.14 to P.16 documents, came to the conclusion that the deceased would be earning a sum of Rs.1 lakh p.a. and out of the said amount of Rs.1 lakh, 1/3rd was deducted towards personal expenses of the deceased and a sum of Rs.70,000/- was taken as the contribution payable to the family by the deceased. Further, the Tribunal, adopted the multiplier of 15 and awarded the total compensation of a sum of Rs.10,50,000/- towards loss of income. The Tribunal, also awarded a sum of Rs.25,000/- towards loss of consortium; Rs.5,000/- towards transportation charges and a sum of Rs.5,000/- towards funeral expenses. Thus, the Tribunal awarded a total compensation of Rs.10,85,000/- together with interest @ 7.5 % p.a. as detailed below:-

Sl.No.	Head	Amount of Compensation awarded (Rs.)
1	Loss of income	10,50,000
2	Loss of consortium	25,000
3	Transport Charges	5,000

Sl.No.	Head	Amount of Compensation awarded (Rs.)
4	Funeral Expenses	5,000
	Total	10,85,000

As against the said award passed by the Tribunal, the Insurance Company has filed the above appeal.

4. Heard Ms.B.Surekha, learned counsel appearing for the Insurance company and Mr.V.V.Sairam, learned counsel appearing for the claimants/respondents 1 to 4.

5. The learned counsel for the appellant/Insurance Company submitted that the Tribunal ought to have deducted 10% towards Income Tax and she further submitted that the Tribunal ought not to have fixed the loss of income at Rs.70,000/- p.a. for the reason that even after the death of the deceased, his family members would be getting the renewal commission. Therefore, according to the learned counsel for the appellant, there would not be any loss of income to the claimants.

6. Countering the submissions made by the learned counsel for the appellant, Mr.V.V.Sairam, learned counsel for the respondents 1 to 4/claimants submitted that the Tribunal ought to have awarded more amount towards loss of earning, when the deceased was only 40 years old and was earning more than Rs.12,000/- per month as renewal commission. Further, the learned counsel submitted that the deceased would have earned more, if he had continued to live a normal life span. That apart, the learned counsel submitted that the award of Rs.5,000/- each towards transportation charges and funeral expenses are on the lower side and hence the same may be enhanced. Besides, according to the learned counsel for the claimants, the Tribunal ought to have awarded a sum of Rs.1 lakh towards loss of love and affection to the minor children.

7. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, there is no dispute that the deceased was aged 40 at the time of accident and as per the Sarla Verma's case the Tribunal adopted the correct multiplier of 15 and calculated the loss of earning. In order to establish the income of the deceased, the claimants examined P.W.2 - the Branch Manager of the LIC and also produced Ex.P.14 LIC payment towards renewal commission to the deceased, Ex.P.15, which is also the document to show that the payment made to the deceased towards commission and Ex.P.16, Saral Income Tax Form 2 submitted by the deceased. Relying upon

those documents and the oral evidence of the Branch Manager, LIC, P.W.2, the Tribunal had fixed the annual income of the deceased at Rs.1,00,000/- As rightly pointed out by the learned counsel for the claimants, the deceased would have earned more, if he had continued to live a normal life span and therefore, fixation of a sum of Rs.1,00,000/- as annual income of the deceased by the Tribunal, in our view, is a reasonable amount. The Tribunal also deducted 1/3rd towards the personal expenses of the deceased and after deducting 1/3rd, the contribution to the family was taken at Rs.70,000/-. By applying multiplier 15, the total compensation of Rs.10,50,000/- towards loss of earning was arrived at by the Tribunal. So far as the contention with regard to deduction of income tax is concerned, it is settled position that 10% has to be deducted towards income tax. If 10% towards income tax is deducted, the claimants are entitled to a compensation of Rs.9,45,000/- towards loss of earning.

8. The Tribunal awarded a sum of Rs.25,000/- towards loss of consortium. We do not find any reason to interfere with the award of Rs.25,000/- towards loss of consortium, since we are of the view that the award of said amount is reasonable.

9. As far as the contention with regard to the compensation under the head "loss of love and affection" is concerned, the Tribunal has not awarded any amount under the said head. Therefore, we award a sum of Rs.40,000/- each under the head loss of love and affection to the minors/respondents 2 and 3. We also increase the award of Rs.5,000/- towards transportation charges to Rs.10,000/- and similarly, we increase the award of Rs.5,000/- towards funeral expenses to Rs.10,000/-, since we are of the view that the amount awarded under the heads transportation charges and funeral expenses on the lower side.

10. In all, the claimants are entitled to a total compensation of Rs.10,70,000/- together with interest at the rate of 7.5% as awarded by the Tribunal as detailed below:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Loss of earning capacity	10,50,000/-	9,45,000/-
2	Loss of consortium	25,000/-	25,000/-
3	Love and affection	-	80,000/-
4	Transportation charges	5,000/-	10,000/-
5	Funeral expenses	5,000/-	10,000/-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
	Total	10,85,000/-	10,70,000/-

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced from Rs.10,85,000/- to Rs.10,70,000/-

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) This Court, while granting the interim order in M.P.No.1 of 2012 on 12.10.2012, directed the Insurance Company to deposit the entire award amount to the credit of M.A.C.T.O.P.No.751 of 2005 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Coimbatore and this Court has also permitted the claimants 1 and 4 to withdraw 50% of the award amount apportioned to their respective shares along with proportionate interest and the remaining award amount was directed to be deposited in any one of the Nationalised Bank under reinvestment scheme till the disposal of the appeal. Further, insofar as the compensation payable to the minor claimants is concerned, the same was directed to be deposited in any one of the Nationalised Bank under reinvestment scheme till the disposal of the appeal and the 1st respondent/mother of respondents 2 and 3 was permitted to withdraw the interest accrued on the minors' deposit once in three months directly from the Bank. In view of the modification of the award amount, the respondents 1 to 4 are entitled to the following amounts:-

(a) The 1st respondent/wife is entitled to a sum of Rs.3,40,000/-.

(b) Respondents 2 and 3 are entitled to a sum of Rs.3,15,000/- each and

(c) respondent No.4, mother of the deceased is entitled to a total compensation of Rs.1,00,000/- as awarded by the Tribunal.

(iv) It is brought to the notice of this Court that the 2nd respondent was aged 10 years and 3rd respondent was aged 6 years at the time of filing of the claim petition. At this distance of time, the respondents 2 and 3 would have attained majority. In any

event, we permit the respondents 1 to 4 to withdraw the entire amount now modified by this Court as apportioned by this Court less the amount already withdrawn lying to the credit of the Nationalised Bank under reinvestment scheme in Fixed Deposit, by filing necessary applications before the Tribunal. While filing applications before the Tribunal for withdrawal, It is made clear that the proof with regard to the age of the minors shall also be produced before the Tribunal for attaining majority.

(v) Since we have reduced the award amount, it is needless to mention that the Insurance Company is permitted to withdraw the balance excess amount lying to the credit of the Bank Account.

There will be no order as to costs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

The I Additional District Judge,
Motor Accident Claims Tribunal
Coimbatore.

1 cc to Ms.N.B. Surekha, Advocate, Sr. 64300
1 cc to Mr.V.V. Sairam, Advocate, Sr. 64731

C.M.A.No.2875 of 2012

KGK (CO)
kk 22/12