

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.02.2016

CORAM

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

C.M.A. NO. 3218 OF 2013

AND

M.P. NO. 1 OF 2013

M/s.ICICI Lombard
General Insurance Co. Ltd.
II & III Floor, 'Chottabai Centre'
No.140, Nungambakkam High Road
Chennai 600 034. ... Appellant/2nd Respondent

- Vs -

1. P.leelavathi
2. P.Paulraj
3. Om Sakthi Automobiles
No.2, Ponniammam Koil Street
Kotturpuram, Chennai 600 085. ... Respondents/Petitioners
1 & 2/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.06.2012, passed by the Motor Accident Claims Tribunal (XV Addl. Judge), Chennai, made in MCOP No.2883 of 2008.

For Appellant : Ms. R.Sree Vidhya

For Respondents: Mr. S.Gangaram Prasad for RR-1 & 2
R-3 - Exparte

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/claimants.

2. The appellant/insurer of the vehicle has filed the appeal challenging the award dated 26.06.2012, passed by the Motor Accident Claims Tribunal (XV Addl. Judge), Chennai, made in MCOP No.2883 of 2008.

3. It is a case of fatal accident. On 22.02.2008, at about 07.30 a.m., when the deceased John Premraj, aged 19 years, was riding his two wheeler bearing Regn. No.TN-01-H-4297 and proceeding on the St. Thomas Mount - Poonamallee Road, near C.A.C. Software Company, the tipper lorry belonging to the third respondent herein, bearing Regn. No.NGJ-12-DC-88T, driven in a rash and negligent manner, dashed the two wheeler driven by the deceased from behind due to which the deceased was thrown away and the tipper lorry ran over the head of the deceased, who sustained grievous injuries and died on the spot. A case was registered against the driver of the tipper lorry.

4. The deceased, on the date of accident, was a student, studying in Hindustan Engineering College. The respondents, viz., the mother and father of the deceased have filed the claim petition claiming a sum of Rs.25,00,000/= as compensation.

5. In support of the claim, the second claimant, viz., the father of the deceased was examined as P.W.1. One Rafeel, eye witness to the occurrence and Dinesh Kumar, who was studying along with the deceased, were examined as P.W.2 and P.W.3 and Exs.P-1 to P-21 were marked, the details of which are as follows:-

Ex.P-1	-	Xerox Copy of First Information Report
Ex.P-2	-	Xerox Copy of Post-mortem certificate
Ex.P-3	-	Copy of Death Certificate
Ex.P-4	-	Xerox Copy of Legal Heir Certificate
Ex.P-5	-	Plus Two Mark of the deceased
Ex.P-6	-	Identity Card issued by Hindustan Engineering College
Ex.P-7	-	Mark Sheets pertaining to the Engineering course
Ex.P-8	-	Letter of Remembrance
Ex.P-9	-	Driving licence of the deceased
Ex.P-10	-	School certificate showing the birth date of the deceased
Ex.P-11	-	PAN Card of the second claimant
Ex.P-12	-	ID card of the second claimant
Ex.P-13	-	Pay of the second claimant

Ex.P-14	-	Family card of the claimants
Ex.P-15	-	Course completion certificate of P.W.3
Ex.P-16	-	ID Card of P.W.3
Ex.P-17	-	Salary slip of P.W.3
Ex.P-18	-	Notice sent to the owner of the vehicle
Ex.P-19	-	Reply of the owner of the vehicle along with insurance policy
Ex.P-20	-	Invoice of the vehicle belonging to the third respondent herein
Ex.P-21	-	Insurance coverage of the owner of the vehicle

6. On the side of the respondents, one Kalaimathi was examined as R.W.1 and Ex.R-1 was marked, the details of which is as follows:-

Ex.R-1	-	Details of insurance coverage in respect of the tipper lorry issued by the insurer
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7. The Tribunal based on the oral evidence of the P.Ws.1 & 3, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.W.2, eye witnesses to the occurrence, which has been adduced to prove that the tipper lorry was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the tipper lorry, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the tipper lorry and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of Income	-	Rs.22,50,000 /=
Towards Funeral Expenses	-	Rs. 5,000/=
Loss of Love & Affection	-	Rs.75,000/=
Total Compensation	-	Rs.23,30,000/=

8. In all the Tribunal awarded a compensation of Rs.23,30,000/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit with further direction that each petitioner was entitled to one half share of the compensation along with interest. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant is that the income fixed is on the higher side, as admittedly, the deceased was studying engineering course and was not earning and, therefore, the notional income should have been fixed at Rs.12,000/= instead of Rs.25,000/= as fixed by the Tribunal. Per contra, it is submitted by the learned counsel for the claimants that the multiplier has been adopted keeping in mind the age of the mother/first claimant, which is not correct and that the age of the deceased alone should be the criteria for determining the multiplier to be adopted. Reliance was placed on the decision of the Supreme Court in Sarla Verma - Vs - Delhi Transport Corporation & Anr. (2009 (6) SCC 121).

10. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the decision relied on by the learned counsel for the respondents/claimants. Admittedly, the respondents/claimants have not filed any appeal claiming enhancement. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, it is seen that the age of the first claimant/mother of the deceased has been taken into account while deciding the multiplier to be adopted. In the considered opinion of this Court, the multiplier adopted is wrong, as has been propounded by the Supreme Court in Sarla Verma's case (supra). However, taking into consideration the entire gamut of facts and also keeping in mind the fact that the deceased is a student and, therefore, notional income has to be fixed keeping in mind the cost of living index prevailing as on the date of the accident, this Court is of the considered view that the award of the Tribunal requires modification. Accordingly, the award of the Tribunal is modified as hereunder :-

Loss of Income (Monthly Income fixed at Rs.12,000/= and Future prospects fixed at 50% of monthly income - Multiplier adopted is 18)	-	Rs.19,44,000 /=
Towards Transport & Funeral Expenses	-	Rs. 25,000/=

Loss of Love & Affection	-	Rs. 1,00,000/=
Total Compensation Payable	-	Rs.20,69,000/=

11. Accordingly, this Civil Miscellaneous Appeal is allowed with the above modification. It is stated that a sum of Rs.25,000/= has been deposited by way of demand draft, to the credit of MCOP No.2883/2008, at the time of filing this appeal. The appellant was also directed to deposit the entire award amount, along with interest, as directed by the Tribunal, to the credit of MCOP No.2883/2008, while granting stay. In such circumstances, the claimants/respondents are permitted to withdraw the amount in deposit, as per the above modification and the balance portion in deposit shall be withdrawn by the appellant. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The XV Addl. Judge,
(Motor Accident Claims Tribunal),
Chennai.
- 2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.10056
+2cc to Mr.S.Gangaram prasad, Advocate, S.R.No.10120

C.M.A. NO. 3218 OF 2013

gj (CO)
srg(11/03/2016)