

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-09-2016

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

**CMA No.3264 of 2014
and M.P.No.1 of 2012**

1.The Superintendent of Police,
Salem.

2.State of Tamil Nadu
rep.by District Collector, Salem.

... Appellants / Respondents 5 & 6

vs.

1.Dhanam
2.Minor Sewetha
3.Padmavathi
4.Lakshmi Devi
5.Minor Kiruthika
[Respondents 2 & 5 are minors
rep.by next friend and mother
the 1st respondent Dhanam]

... Respondents / Petitioners 1 to 5

6.Parruk Bahsa
7.Sayeed Sabeer
8.United India Insurance Company,
Oriental Complex, T.No.77,
A.A.Street, Salem.

9.P.Subramani

... Respondents / Respondents 6 to 9

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 06.12.2007 made in MCOP No.147 of 2005 passed by the Motor Accident Claims Tribunal (Addl. District Court), Dharmapuri.

For Appellants : Mr.M.Venugopal,
Special Govt. Pleader (CS)

For R-1 to R-5 : Mr.M.Selvam

JUDGMENT

The appeal has been filed by the Police Department against the award of Rs.8,71,000/- for the death of one Krishnakumar, the husband of the first respondent, father of the second and fifth respondent and the mother of the third respondent herein, for the accident occurred on 24.01.2005 when he was riding in a motor cycle as a pillion rider from Salem to Mettur, driven by the sixth respondent.

2. It is the case of the claimants before the Tribunal that when the deceased was riding as a pillion rider in a motor cycle driven by the 6th respondent, from Salem to Mettur, police jeep belonging to the appellant coming in the opposite direction, driven in a rash and negligent manner, dashed against the motor cycle, resulting in the death of the said Krishnakumar. Therefore, the claimants filed petition claiming a sum of Rs.15,00,000/- as compensation.

3. The appellants took a stand before the tribunal that the motor cycle was driven in a rash and negligent manner and the 6th respondent herein who drove the motor cycle was attending cell phone while riding the vehicle and

because of that, the accident occurred and in no way, the driver of the police jeep was responsible for the accident. However, the tribunal rejected the above said contention of the appellants based on the evidence of PW3, Pachamuthu, an eye-witness and also the evidence of RW1 who was the driver of the motor cycle, at the time of accident, who would depose that the driver of the police jeep alone was responsible for the accident. That apart, the tribunal also pointed out the discrepancies in the FIR which has been filed against the deceased and accepted the contention of the respondents/claimants that the FIR was filed against the deceased as the offending vehicle is a police jeep.

4. Though the tribunal pointed out that the driving licence of the driver of the police jeep was not produced before the court, it had also pointed out that the FIR filed at the first instance and the complaint given by the driver of the police jeep were found to be typed from the same typewriting machine. In view of that, the tribunal came to the conclusion that the police tried to cover up the issue by not filing the FIR against the driver of the police jeep and filed only the FIR against the deceased.

5. It was pointed out by the appellants before the tribunal that the FIR has been filed against the deceased and that itself would prove that the deceased alone was responsible for the accident. The said contention was rejected by the tribunal relying upon the judgment reported in 2007 ACJ 1529

wherein it has been categorically held that filing of FIR is not a conclusive proof of negligence and its relevance is virtually limited to see that accident, death or injuries have taken place. Merely because the case against the deceased was deferred and the criminal case was treated as closed, the tribunal held that the judgment of the criminal court is not binding on the civil court. The tribunal also found fault with the appellant for not examining Vivekanandan, Pasamuthu, Gopal and Kumar who were alleged to have been witnessed the accident. Even the driver of the police jeep who was examined as RW3 admitted that he joined the services only as police and not as a driver and therefore the tribunal held that it is not clear as to whether the person who drove the police jeep has got proper driving licence to drive the vehicle. Further, it is fortified by the fact that the driving licence of the driver of the police jeep was not produced before the court.

6. In view of the above finding, the tribunal rejected the contention of the appellants and found that the driver of the police jeep alone was rash and negligent and responsible for the accident. The said finding recorded by the tribunal is based on the factual evidence, eye-witnesses and other evidences, apart from the inconsistencies in the evidence of the appellants. Therefore, the above finding of the tribunal that the driver of the police jeep alone was responsible for the accident is confirmed.

7. The deceased Krishnakumar was said to have working as a

Salesman in Agro Auto Agencies earning a sum of Rs.6,000/- per month, as proved by Ex.P.10, income certificate. After deducting $1/3^{\text{rd}}$ towards personal expenses and by adopting appropriate multiplier 18, a sum of Rs.8,16,000/- $[6,000 \times 12 \times 2/3 \times 17]$ has been awarded by the tribunal towards loss of income. Including conventional damages, a sum of Rs.8,71,000/- has been awarded as compensation to the claimants.

8. A perusal of the entire facts of the case would reveal that the compensation awarded by the tribunal is on the lower side and hence proper compensation has to be awarded to the claimants. It is seen that the deceased Krishnakumar died at the age of 35 years, leaving behind his wife aged 28 years, children aged 3 & 2 years and age old mother. Though the tribunal fixed Rs.6,000/- as monthly income, no future prospects has been taken into consideration, as per the judgment of **Sarla Verma Vs. Delhi Transport Corporation & Anr.** reported in **2009 (2) TN MAC 1 (SC)** as the deceased was only 35 years at the time of accident. Following the aforesaid judgment, if 50% is added towards future prospects, the loss of income works out to Rs.9,000/- $[Rs.6000 + 50\%]$ and this court determines Rs.9000/- as the loss of income. The size of the family is four in numbers and therefore $1/4^{\text{th}}$ has to be deducted towards personal expenses of the deceased. Hence, the loss of income would be Rs.6,750/- $[9000 \times 3/4]$. Since the age of the deceased was 35 years at the time of accident, as per *SARLA VERMA's* case, the appropriate multiplier

would be 17 and the loss of income is calculated as Rs.13,77,000/- [6750 x 12 x 17].

9. It is more disturbing to note that only a sum of Rs.5,000/- each to the minor children has been awarded towards loss of love & affection. The respondents 2 and 5 who are aged about 3 and 2 years respectively at the time of accident had lost the love & affection, care and guidance of their father throughout their life which cannot be compensated by money. However, in an endeavour to compensate them, a sum of Rs.1,00,000/- is awarded together for the 2nd and 5th respondents towards loss of love & affection. Similarly, the tribunal failed to award any amount to the mother of the deceased namely the 3rd respondent herein who has lost her son and hence, a sum of Rs.25,000/- is awarded under the head loss of love & affection.

10. It is shocking to note that only a sum of Rs.10,000/- has been awarded towards loss of consortium to the first respondent. Losing husband itself is very cruel and painful, that too at the time of 28 years. Following the judgment of the Hon'ble Supreme Court in ***Rajesh & Ors. vs. Rajbir Singh & ors.*** reported in ***2013 (3) CTC 883***, at least Rs.1,00,000/- has to be awarded towards loss of consortium. In view of the above, Rs.10,000/- awarded by the tribunal towards loss of consortium is hereby enhanced to Rs.1,00,000/-. Similarly, Rs.5,000/- awarded by the tribunal towards funeral expenses is enhanced to Rs.10,000/-. No amount has been awarded towards transportation

and hence a sum of Rs.10,000/- is awarded under this head. Thus, the compensation awarded by the tribunal at Rs.8,71,000/- is enhanced as follows -

(1) Loss of income	...	Rs.13,77,000/-
(2) Loss of love & affection to 2 nd & 5 th respondents	...	Rs. 1,00,000/-
(3) Loss of love & affection to 3 rd respondent	...	Rs. 25,000/-
(4) Loss of consortium	...	Rs. 1,00,000/-
(5) Funeral expenses	...	Rs. 10,000/-
(6) Transportation	...	Rs. 10,000/-

Total	...	Rs. 16,22,000/-
		=====

Rounded off to Rs.16,22,000/-

11. Though the appellants have preferred the present appeal before this Court challenging the award of Rs.8,71,000/- awarded by the Tribunal in favour of the respondents/claimants, a perusal of the award would show that the tribunal has not taken into consideration the evidence on record properly and awarded a just compensation to the respondents/claimants. Even in the absence of appeal or cross objection by the respondents/claimants, this Court has got powers and jurisdiction under Order 41 Rule 33 and Section 151 of C.P.C and Article 227 of the Constitution of India to enhance the compensation, if it is found that a just compensation was not awarded. Moreover, the provisions of the Motor Vehicles Act are beneficiary in nature and it should be construed liberally in favour of the claimants, especially for no fault of the victim

who died in the accident.

12. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.8,71,000/- to Rs.16,22,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit.

13. It is represented by the learned counsel appearing for the respondents/claimants that the third respondent/claimant is reported dead. Hence, out of the total compensation of Rs.16,22,000/- awarded by this Court, the first respondent/claimant wife is entitled for a sum of Rs.8,22,000/- alongwith interest and costs. The minor children/respondents 2 and 5 are entitled to a sum of Rs.4,00,000/- each alongwith interest and costs. The appellants are directed to produce Demand Draft / Pay order for a sum Rs.8,22,000/- alongwith interest & costs in favour of the 1st respondent/claimant and Fixed Deposit Receipts for Rs.4,00,000/- alongwith interest & costs, each in favour of the 2nd and 5th respondents respectively, before this Court on or before 01.11.2016, failing which the Superintendent of Police, Salem shall appear before this Court on the same day. In case if the compensation amount is not paid or the Superintendent of Police, Salem does not appear on the above said date, this court will be constrained to summon the Director General of Police for payment of compensation to the claimants.

14. The learned counsel appearing for the respondents/claimants is directed to pay the necessary court fee for the enhanced compensation amount, as per Rules, within a period of one (1) week from the date of receipt of copy of this order.

15. In the result, the Civil Miscellaneous Appeal is disposed of with the above terms in so far as the relief is concerned. No costs. Consequently, connected Miscellaneous Petition is closed. However, the main appeal is kept pending to pass appropriate orders with regard to the queries raised by this Court on 10.07.2014, in the public interest.

16. Post the matter on 12.09.2016 alongwith CMA No.1994 of 2012.

07.09.2016

rg

Index : Yes/No

Note: Issue order copy by 21.09.2016

N.KIRUBAKARAN, J.

rg

To,

The Additional District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

CMA No.3264 of 2014

07.09.2016