IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 28.04.2017

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.1025 of 2017

1.D.Sridhar
2.S.Shanthi ... Appellants/Claimants 1 & 2

Vs.

1. M.Arjun
2. V.Venugopal
3. M/s.Reliance General Insurance Co. Ltd.
   Having its Registered office at
   No.570, Naigum Cross Road
   Next to Royal Industrial Estate
   Wadala (W)
   Mumbai - 400 031
   Also its service office at
   1st Floor, Gee Jay Arcade
   No.141/71, T.V.Samy Road
   West R.S.Puram
   Coimbatore - 641 002
   ..Respondents 1 to 3/Respondents 1 to 3

4. Divya Rangadurai
   ...4th Respondent/3rd Claimant

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 30.04.2014 made in M.C.O.P. No.2659/2012, on the file of Motor Accident Claims Tribunal (Special Subordinate Judge), Coimbatore.

For Appellants : Mr.C.Veeraraghavan
For Respondents : Mr.S.Arunkumar for R3

JUDGMENT
(Made by S.MANIKUMAR, J.)

Not satisfied with the quantum of compensation of Rs.10,46,000/- with interest @ 7.5% and proportionate costs, awarded in M.C.O.P.No.2659 of 2012 on the file Motor Accident

Claims Tribunal (Special Subordinate Judge), Coimbatore, to the legal representatives of the deceased Rangadurai, present civil miscellaneous appeal has been filed for enhancement of compensation.

2. Short facts leading to the filing of the appeal are that, on 21.06.2012, when the son of the appellants 1 and 2, and husband of the 4th respondent, was riding a two wheeler, bearing Registration No.TN-38 BM-8203 from North to South direction, near Vellaikinnar Pirivu, Lakshmi Narayana Kalyana Mandapam, on Coimbatore to Mettupalayam Road, a Taurus lorry bearing Registration No.TN-04 AC-0468, which came, in the same direction, in a rash and negligent manner with high speed, hit the motorcyclist from behind and another vehicle, in which, the motorcyclist sustained serious injuries and died on the spot. A case in Crime No.387/2012, has been registered on the file of Thudiyalur Police Station, Mettupalayam Road, Coimbatore, for offences under Sections 279, 337 and 304-A of IPC, against the driver of the lorry bearing Registration No.TN-04 AC-0468, insured with the third respondent herein, Reliance General Insurance Company Ltd. Legal representatives, namely parents and wife of the deceased, filed MCOP No.2659 of 2002 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Coimbatore, claiming compensation of Rs.29,00,000/- under various heads.

3. Reliance General Insurance Co. Ltd, opposed the claim, denied the manner of accident, negligence attributed to the driver of the lorry bearing Registration No.TN-04 AC-0468. Insurance company further contended that at the time of accident, driver of the lorry was not having a valid and effective driving licence, to drive the lorry and that the vehicle was not having a valid permit and fitness certificate. There was violation of policy conditions and therefore, insurance company is not liable to pay compensation.

4. On evaluation of pleadings and evidence, the Tribunal held that the driver of the lorry bearing Registration No.TN-04 AC-0468 was negligent in causing the accident.

5. Based on the entry in Ex.P12 - Driving Licence, the Tribunal determined the age of the deceased as 30 years. At the time of accident, the deceased was engaged in Accin Management Services and earned a sum of Rs.20,000/- per month. To prove the same, income tax returns of the deceased have been marked as Exs.P13 and P14. Observing that the said documents as self serving documents, considering the age of the deceased, the Tribunal, fixed the monthly income of the deceased as Rs.6,000/-. Following the judgment in Sarla Verma's case, the tribunal applied multiplier '17' for computing loss of

dependency to the claimants. Taking note of the number of dependents, the Tribunal deducted 1/3rd towards the personal and living expenses of the deceased. By the abovesaid method, the Tribunal computed the loss of contribution to the family as Rs.8,16,000/- (Rs.6,000 x 12 x 17 x 2/3). In addition to the above, the Tribunal has awarded Rs.1,00,000/- towards loss of consortium; Rs.1,00,000/- under the head loss of love and affection to the appellants herein, Rs.25,000/- under the head funeral expenses and Rs.5,000/- under the head loss of estate. Altogether, the Tribunal has awarded a sum of Rs.10,46,000/- as compensation, and ordered the insurance company, to pay and recover the same from the owner of the vehicle.

6. Not satisfied with the quantum of compensation, legal representatives of the deceased, parents are on appeal. Mr.C.Veeraraghavan, learned counsel for the appellants submitted that the Tribunal has failed to consider the documents produced under Exs.P13 and P14, income tax returns marked through PW3 - Inspector of Income Tax, Income Tax Department. As per the said documents, gross income of the deceased was Rs.2,30,647/- per annum. He further submitted that the Tribunal erred in stating that the said documents are self serving documents and hence nothing can be decided on the basis of those documents.

7. Per contra, Mr.S.Arun Kumar, learned counsel for the insurance company, submitted that, the Tribunal, after evaluating the oral and documentary evidence, has awarded, just and reasonable compensation to the legal representatives of the deceased, and that the same does not warrant any interference or enhancement.

Heard the submission of the learned counsel for the parties and perused the materials available on record.

8. The only grievance of the appellants/legal representatives of the deceased Rangadurai, is that the Tribunal has erred in fixing the monthly income of the deceased as Rs.6,000/-, without considering the Tax Returns. Learned counsel for the appellants submitted that at the time of accident, the deceased was running Accin Management Services and earned Rs.20,000/- as monthly income.

9. Through PW3 - Inspector of Income Tax, Income Tax Department, appellants have produced Exs.P13 and P14 - Income Tax Reports. Ex.P10 is the PAN Card of the deceased. Ex.P11 is the PAN Card of the company, run by the deceased. From the documents cited above, we could infer that the deceased was running a proprietorship business, in the name of Accin Management Services and was an income tax assessee. Exs.P13 and P14 are the income tax returns furnished by the Income Tax

Department. Having regard to the nature of documents, reflecting the income of an individual or company, as rightly contended by the appellants, the Tribunal has turned a blind eye to the said documents and also to the evidence of PWs.1 and 3 and thus erred in fixing a sum of Rs.6,000/- as the monthly income of the deceased. Income can be determined on the basis of Income Tax Returns. Reference can be made to paragraph 7 of the judgment in Kalpanaraj Vs. Tamil Nadu State Transport Corporation reported in 2015 (2) SCC 764, which reads as under:

> " 7. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return."

10. In this case, accident has occurred on 12.12.2012. Even during the said period, one may require not less than 300 to 400 rupees per day, to run a family, consisting of parents and wife. Hence, considering the facts and circumstances of the case, we are inclined to fix the monthly income of the deceased as Rs.12,000/- per month, for the purpose of computing loss of dependency. At the time of accident, the deceased was aged 30 years. As per the decision of Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Anr. reported in (2009) 6 SCC 121, the Tribunal should have added 50% of the income under the head future prospects, for the purpose of computing loss of contribution to the family. Hence following the said judgment, we are inclined to add 50% of the income under the head future prospects. There is no error in applying '17' multiplier. Taking note of the number of dependents, the Tribunal has deducted 1/3rd towards the personal and living expenses of the deceased. Thus, after reworking, the loss of contribution to the family works out to Rs.24,48,000/- (Rs.12,000 + 50% x 12 x 17 -1/3) 2/3).

11. The Tribunal has awarded Rs.1,00,000/- for loss of consortium to the wife; Rs.1,00,000/- under the head loss of love and affection to the parents, Rs.25,000/- for funeral expenses and Rs.5,000/- under the head loss of estate. Compensation, awarded under the above said heads is just and reasonable and the same are confirmed. Direction of the Tribunal to the insurance company to pay compensation to the claimants and recover the same from the owner of the lorry, is confirmed.

12. Compensation due and payable to the legal representatives of the deceased/appellants works out to Rs.26,78,000/- with interest at the rate of 7.5% per annum from the date of claim till realisation, and costs, as here under:

Loss of contribution to the family	:	Rs.24,48,000/-
Loss of consortium	:	Rs. 1,00,000/-
Loss of love and affection	:	Rs. 1,00,000/-
Funeral Expenses	:	Rs. 25,000/-
Loss of estate	:	Rs. 5,000/-
		Rs.26,78,000/-

13. Compensation already determined by the Tribunal is Rs.10,46,000/- On appeal, compensation determined by this court is Rs.26,78,000/-. Therefore, compensation is enhanced by Rs.16,32,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit. As insurer of the 2nd respondent's vehicle, the third respondent/insurance company, is directed to deposit the enhanced amount within a period of six weeks from the date of receipt of a copy of this judgment and recover the same from the owner of the vehicle, namely, the second respondent.

14. The enhanced compensation of Rs.16,32,000/- can be apportioned as follows:

Mother of the deceased	:	Rs.6,00,000/-
Father of the deceased	:	Rs.6,00,000/-
Wife of the deceased	:	Rs.4,32,000/-

with proportionate interest. On such deposit, claimants/legal representatives of the deceased Rangadurai, are permitted to withdraw the share apportioned to them, with proportionate interest and costs.

Civil Miscellaneous Appeal is allowed in the above terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Special Subordinate Judge), Coimbatore.

+1 CC to Mr.C. Veeraraghavan, Advocate sr 26224
+1 CC to Mr.S. Arunkumar, Advocate sr 36430

C.M.A.No.1025 of 2017

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