In the High Court of Judicature at Madras

Dated : 18.08.2017

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The Honourable Mr.Justice R.SUBBIAH
and
The Hon'ble Mr.Justice A.D.JAGADISH CHANDIRA

C.M.A.No.1211 of 2017

1. K. Madesan
2. Minor M.Thanga Adhithyan
3. Minor M.Vivin
   Minors are represented by their Guardian & Father Madesan
4. Chinnu .. Appellants

..vs..

1. T. Swami
2. The New India Insurance Company Ltd,
   Regional Office,
   133/31-1, 2nd Floor,
   Senthurkrishna Trade Centre,
   Gugai, Salem. .. Respondents

Civil Miscellaneous Appeal has been filed under Section 173 (1) of the Motor Vehicles Act, against the fair and decreetal order dated 23.12.2016 passed in MCOP No.1748 of 2015 by the Motor Accidents Claims Tribunal (First Additional District Judge), Salem.

For Appellants : Mr.I.C. Vasudevan

For R2 : Mrs.A.Salomi for Mr.C.Ramesh Babu

JUDGMENT

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

Being not satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (First Additional District Judge), Salem, in and by award dated 23.12.2016 in MCOP No.1748 of 2015, the present appeal has been filed by the claimants for enhancement of the compensation amount.

2. The appellants 1 to 4 herein are the claimants before the Tribunal, who are the husband, sons and mother of the deceased K.Maheswari.

3. It is the case of the claimants before the Tribunal that the deceased was working as a Head Nurse in Narayana Hrudalaya Hospital, Bangalore. On 15.06.2015, at about 17.30 hours, after completing her duty, the deceased was coming to Narayana Hrudalaya Hospital Bus Stop in order to return to her home. While she was waiting in the bus stop, a car, bearing Registration No.TN-38-AC-8899, owned by the first respondent and insured with the second respondent, came in a rash and negligent manner at a hectic speed and dashed against the deceased and thus caused the accident,

in which, the deceased sustained fatal injuries and died on the way to the hospital. Hence, the claimants, who are the legal representatives of the deceased, made a claim of Rs.75,00,000/- as compensation, against the owner of the car as well as its insurer, who are the respondents herein.

4. The claim petition was resisted by the second respondent Insurance Company, by filing a counter, wherein, it is stated that on the date of accident, the deceased and two other persons, without noticing the oncoming vehicle, have crossed the road and thus they have voluntarily invited the accident and hence, there was contributory negligence on the part of the deceased. It is further stated therein that the compensation of Rs.75,00,000/- claimed by the claimants is highly excessive.

5. In order to prove the claim of the appellants/claimants, the first appellant examined himself as P.W.1, besides examining one Manjunathan as P.W.2 and marked Exs.P.1 and P.18 documents. On the side of the second respondent Insurance Company, no oral and documentary evidence were adduced.

6. The Tribunal, after considering the evidence adduced before it, came to the conclusion that the accident was caused due to the rash and

negligent driving of the driver of the car, owned by the first respondent and insured with the second respondent Insurance Company. Accordingly, the Tribunal fixed the entire liability on the Insurance Company and calculated the compensation amount under different heads and awarded a sum of Rs.31,55,672/- as compensation payable with interest at 7.5% p.a. The break up details of the compensation amount awarded by the Tribunal are as follows:

Loss of income to the family	: Rs.30,60,672/-
Loss of Consortium to the husband	: Rs. 25,000/-
Loss of love and affection to the minor children (Rs.20,000/-each)	: Rs. 40,000/-
Loss of love and affection to the Mother	: Rs. 20,000/-
Funeral expenses	: Rs. 10,000/-
Total	Rs.31,55,672/-

Aggrieved by the same, the claimants are before this Court with the present appeal seeking enhancement of compensation.

7. Learned counsel for the appellants/claimants submitted that the Tribunal, while calculating the compensation under the head "loss of income", ought to have made an addition of 50% of the income of the

deceased towards future prospects. Therefore, learned counsel submitted that the compensation awarded under the head "loss of income" has to be recalculated by adding 50% towards future prospects and the total compensation amount has to be enhanced.

8. Per contra, learned counsel for the second respondent Insurance Company submitted that while calculating the compensation under the head "loss of income", the Tribunal failed to make any deduction in the salary of the deceased towards Income Tax. That apart, the compensation awarded by the Tribunal is just and reasonable and no grounds have been made out by the appellants / claimants for enhancement of the compensation whatsoever.

9. Heard both sides and perused the materials available on record.

10. It is the case of the appellants / claimants that at the time of accident, the deceased was working as a Nurse in a private hospital and was earning a sum of Rs.22,714/- per month. In order to prove the same, the appellants have marked a pay slip of the deceased as Ex.P.10. As per Ex.P10, the Tribunal, after deducting a sum of Rs.1,459/- towards Provident Fund and Professional Tax, fixed a sum of Rs.21,255/- as monthly income of the deceased. The Tribunal deducted ¼th amount towards personal expenses, arrived at Rs.15,941/- towards loss of monthly

income to the family of the deceased. Thereafter, taking the age of the deceased at 32 years, the Tribunal applied the multiplier '16' and calculated the compensation at Rs.30,60,672/- (Rs.15,941 x 12 x 16) and accordingly, awarded the same under the head "loss of income". We are of the opinion that the Tribunal, while calculating the compensation towards loss of income, failed to add 50% of the salary of the deceased, towards future prospects, as contended by the learned counsel for the appellants. Similarly, the Tribunal failed to make any deduction to the salary of the deceased towards Income Tax, as pointed out by the learned counsel for the second respondent Insurance company. Therefore, we consider it appropriate to recalculate the compensation awarded by the Tribunal under the head "loss of income" by adding 50% towards future prospects and by deducting 20% towards Income Tax. Accordingly, the compensation under the head "loss of income to the family of the deceased" is recalculated as under:

As per Ex.P10, salary of the deceased	= Rs.22,714/-
Deduction towards Provident fund and Professional Tax	= 1,459/-
	....
	Rs.21,255/-
Deduction at 20% towards Income Tax	= 4,251/-
	....
	Rs.17,004/-
Add 50% of Rs.17,004/- towards future prospects	8,502/-
	....
	Rs.25,506/-
Deduction at ¼th amount towards personal expenses	6,377/-

loss of monthly income	.... Rs.19,129/- ....

If multiplier "16" is applied, then the loss of income to the family of the deceased works out to Rs.36,72,768/- (Rs.19,129/- x 12 x 16). Thus, the sum of Rs.30,60,672/- awarded by the Tribunal is hereby enhanced to Rs.36,72,768/- under the head "loss of income".

11. Apart from that, the compensation awarded by the Tribunal under other heads viz., Rs.25,000/- towards loss of consortium to the first appellant/husband, Rs.10,000/- towards funeral expenses and Rs.20,000/- each to the appellants 2 to 4/two children and mother of the deceased, towards loss of love and affection, are fair, just and reasonable and the same do not call for any interference by this Court. Similarly, the interest at 7.5%p.a. awarded by the Tribunal is just and reasonable and the same is hereby confirmed.

12. In view of the aforesaid discussion, the total compensation of Rs.31,55,672/- awarded by the Tribunal is hereby enhanced to Rs.37,67,768/-, the details of which, are as follows:

Loss of income to the family	: Rs.36,72,768/-
Loss of Consortium	: Rs. 25,000/-
Loss of love and affection to the minor children (Rs.20,000/-each)	: Rs. 40,000/-

Loss of love and affection to the Mother	: Rs.	20,000/-
Funeral expenses	: Rs.	10,000/-
Total		Rs.37,67,768/-

13. The second respondent Insurance Company is directed to deposit the entire amount as awarded by this Court, after deducting the amount already deposited, if any, along with interest at 7.5% per annum from the date of claim petition till the date of deposit and costs, to the credit of MCOP.No.1748 of 2015 on the file of the Motor Accidents Claims Tribunal (First Additional District Judge), Salem, within a period of six weeks from the date of receipt of a copy of this judgment. In view of the above modification of the compensation amount awarded by the Tribunal, the first appellant/husband is entitled to get Rs.9,74,886/-; the appellants 2 and 3/minor children are entitled to get Rs.12,18,605/- each and the fourth appellant/mother of the deceased is entitled to get compensation of Rs.3,55,672/-. On such deposit by the second respondent/ insurance company, the appellants 1 and 4 are permitted to withdraw their respective shares. Regarding the shares of the minor appellants 2 and 3, the Tribunal is directed to invest the same in any one of the nationalized banks in a fixed deposit, till they attain majority. The first appellant /father is permitted to withdraw the interest accrued on the deposit of the minors' shares once in three months directly from the bank concerned.

14. Accordingly, the Civil Miscellaneous Appeal is disposed of. No

costs.

(R.P.S., J.) (A.D.J.C., J.)

sr/rk **18-08-2017**

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The Motor Accidents Claims Tribunal
(First Additional District Judge), Salem.

R.SUBBIAH, J.
and
A.D.JAGADISH CHANDIRA, J.

C.M.A.No.1211 of 2017

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