

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.1351 of 2017
and C.M.P.No.7130 of 2017

National Insurance Company Ltd.,
Having its Divisional Office
at No.10, Flat No.101-106,
N-1, BMC House, Connaught Place,
New Delhi - 110 001. Appellant / 2nd Respondent

Vs.

1. K.Hammed @ Shaik Ahammed
2. Sakkeenabi ... Respondents 1 & 2 / Petitioners
3. Shahina Kamal G.Karthikeyan ..3rd Respondent / 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree, dated 26.10.2016 made in M.C.O.P.No.414 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Judge, Erode.

For Appellant : Mr.A.Arun Kumar
For Respondents : Mr.R.Nalliyappan for R1 and R2
No Appearance for R3

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award passed by the Motor Accident Claims Tribunal (Special District Court, Erode) in M.C.O.P.No.414 of 2014, dated 26.10.2016 awarding compensation of Rs.76,04,200/- along with interest at the rate of 7.5% from the date of petition to the claimants (parents) for the death of their son K.S.Mohammed Anees in a road accident.

2. It is averred in the petition that on 27.09.2013 at 1 a.m when the deceased Mohammed Anees was travelling in a car bearing Regn. No.KL 60 D 6464 driven by one Sheik Shaaz Abdul Salam on the Mettupalayam to Annur main road, the driver drove the vehicle rashly and negligently and hit against the road side

tamarind tree, resulting the instant death of Mohammed Anees and also the driver. The deceased Mohammed Anees as qualified person was working as ordinary Seaman at V.Ships India Pvt., Ltd., Mumbai and earned monthly salary of 1718.36 USD per month. He was bachelor and gave his entire salary to his parents, the claimants. The claimants claim Rs.1,00,00,000/- as compensation from the owner of the vehicle and the insurance company with whom the vehicle was insured at the time of the accident.

3. The respondent / insurance company who also got permission from the Court in the application under Section 170 of MV Act to take all defences available to the owner of the vehicle. No part of cause of action arose within the territorial jurisdiction of the Motor Accident Claims Tribunal, Erode. Time, date and manner of accident are denied. It is false to aver that the deceased was qualified person to work in a ship and he was working as an ordinary Seaman at V.Ships India Pvt., Ltd., at Mumbai. The alleged salary and contribution to the family are also denied. The insured of the alleged offending vehicle has not paid any extra premium to cover the risk of occupants of the car. Therefore, the claim petition is to be dismissed.

4. On the side of the petitioners / claimants, three witnesses were examined and 72 exhibits marked. On the side of the respondent, two exhibits were marked and no witness was examined. After analysing the evidence both oral and documentary, the Motor Accident Claims Tribunal has awarded compensation to the claimants as aforesaid. Aggrieved by the said award of compensation, this Civil Miscellaneous Appeal has been preferred by the insurance company.

5. In this case while the deceased Mohammed Anees was travelling in the car bearing Regn. No.KL-60-D-6464, the driver hit the vehicle on the road side tamarind tree. In a case like this where the vehicle hit the road side tree, resulting the death of two persons including the driver, the principle of Res ipsa loquitor can be applied. P.W.2 also says in his evidence that the vehicle was driven by the driver rashly and negligently and hit against the road side tree. The FIR, rough sketch, observation mahazar and final report are marked as Ex.P.1 to Ex.P.3 and Ex.P.6. Therefore it is clear that the accident occurred only due to the rash and negligent driving of the driver of the car. The offending vehicle owned by the first respondent in the claim petition was insured with the appellant / second respondent at the time of the accident. Though the Insurance company took a stand that the insured has not paid any extra premium to cover the risk of occupants of the car like the deceased person, there is no attempt on the side of the insurance company to establish the same either by producing the copy of the insurance policy or examining any witness on their side.

6. The main contentions in this appeal are that the Tribunal has taken the monthly salary of the deceased in the absence of any concrete proof and fixing the future prospects in addition to the salary is also not correct. It is also contended that multiplier 8 should have been applied by following the *Rajesh and others v. Rajbir Singh* and another reported in 2013 (2) TNMAC 55 (SC) instead of application of thumb rule expressed in *Sarla Verma and others v. Delhi Transport Corporation* and another reported in [2009 (2) TNMAC (1) SC]. It is also contended that 30% ought to have been deducted towards the income tax from the salary.

7. There is no dispute that the claimants are the parents of the deceased. The deceased died due to the injuries sustained by him in the road accident that occurred on 27.09.2013. The post mortem certificate is marked as Ex.P.4. The age of the deceased was 26 years at the time of the accident as could be seen from the Passport and Service Register, Ex.P.14 and Ex.P.29. P.W.3 is the crew co-ordinator in V.Ships India Private India Ltd. It is evinced from his evidence that the deceased was working in V.Ships India Private Ltd., from 10.10.2009. He entered into agreement with the company under Ex.P.36, Ex.P.44, Ex.P.72 and Ex.P.49. Ex.P.49 is the fourth agreement for the period from 13.10.2012 to 08.08.2013. According to P.W.3, V.Ships India Private Ltd., uses to send the employees to different ships belonging to different nations. As per Ex.P.49, the monthly salary is 1088 USD.

8. P.W.3 says in his evidence that the deceased used to get not less than 1088 USD per month as per the said agreement and in addition to that he would also get over time salary. The Tribunal calculated the monthly salary on the basis of Wages account slip, Ex.P.67, dated 08.08.2013. Ex.P.67 is for the period from 01.08.2013 to 08.08.2013. In this wage slip, USD 36.10 is also added towards additional over time along with regular emoluments. The Tribunal calculated the monthly salary taking the additional overtime also into account. If the wage for additional overtime is deleted, the monthly salary would be only 1088 USD as mentioned in Ex.P.49 agreement. Therefore, the monthly salary at the time of accident is to be taken only at 1088 USD. Since the USD at that time varied from 55 to 65 indian rupees, the Tribunal took Rs.60 as the value of 1 USD on the date of accident. Therefore, the monthly salary of the deceased comes to 1088 USD x 60 = Rs.65,280/-. Therefore, the annual income is arrived at Rs.7,83,360/- (Rs.65,280/- x 12 months).

9. With respect to future prospects the Constitutional Bench of the Hon'ble Supreme Court in *National Insurance Company Ltd., v. Pranay Sethi and Ors.*, by Judgment, dated 31.10.2017 in SLP

(Civil) No.25590 of 2014 etc., batch, set right the controversy over Sarla Verma's case (2009) 6 SCC 121 and held as follows :

"61...

...

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

...

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

10. Following the above dictum of the Constitutional Bench, the deceased, aged 26 years at the time of accident and having been employed on a fixed salary is entitled to 40% addition of the established income. Therefore, the total annual income with future prospects at 40% is calculated below. The established income means the income minus the tax component. Therefore, deducting the tax component the established annual income has to be calculated. The Tribunal is not correct in adding 50% of future prospects. As decided by the Constitutional Bench, the age of the deceased should be the basis for applying the multiplier. Therefore, the contention of the learned counsel for the appellant that the age of the claimant is to be considered for the multiplier has no merits. Considering the age of the deceased, the multiplier applied as per Sarla Verma's case by the Tribunal as 17 is correct. Therefore, towards loss of dependency, the claimant is entitled to Rs.3,99,680/-, which is calculated as follows :

Annual income is arrived at : Rs.7,83,360.00

Add 40% as future prospects

Rs.7,83,360/- x 40/100 : Rs. 3,13,344.00

Total Annual income is

Rs. 7,83,360/- + Rs.3,13,344/- : Rs.10,96,704.00

Taxable income : Rs.10,96,704.00

For the personal expenditure
of the deceased 50% is to be
deducted Rs.10,96,704 x 50/100 : Rs.5,48,352.00

Rounded off into nearest ten : Rs.10,96,710.00

Income Tax General Deduction
Rs.10,96,710-Rs.2,50,000/- : Rs.8,46,710.00

Income tax at the rate of 10% for
Rs.2,50,001/- to Rs.5,00,000/- : Rs. 25,000.00

Income tax at the rate of 20% for
Rs.5,00,001/- to Rs.10,96,710/- : Rs. 1,19,342.00

Total Income tax : Rs. 1,44,342.00

Education CESS at the rate of 3%: Rs. 4,330.26

Rounded off into : Rs. 4,330.00

Total deduction (Rs.5,48,352/- +
Rs.1,44,342/- + Rs.4330/- : Rs.6,97,024.00

Annual contribution to the family
(Rs.10,96,704/- - Rs.6,97,024/-): Rs.3,99,680.00

By applying multiplier 17
Rs.3,99,680/- x 17 : Rs.67,94,560.00

11. As per the latest dictum of the Constitutional Bench (cited supra), compensation towards loss of estate, loss of consortium and funeral expenses is fixed at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. For transportation, Rs.25,000/- is awarded. Towards love and affection, Rs.1,00,000/- is awarded to the claimants. Therefore, the claimants / respondents 1 and 2 are entitled to get compensation under various heads as follows :

For the loss of income :Rs.67,94,560.00

For funeral expenses :Rs. 15,000.00

For Transportation :Rs. 25,000.00

For loss of love and affection :Rs. 1,00,000.00

Total Rs. 69,34,560.00

Hence, the claimants / respondents 1 and 2 are entitled to get compensation to the tune of Rs.69,34,560/- (Rupees Sixty Nine lakhs thirty four thousand five hundred and sixty only) along with interest at 7.5% from the date of petition till the date of realisation and the apportionment is at Rs.9,34,560/- and Rs.60,00,000/- respectively.

12. In the result, the Civil Miscellaneous Appeal is partly

allowed and the compensation awarded by the Motor Accident Claims Tribunal in M.C.O.P.No.414 of 2014 on the file of the Motor Accident Claims Tribunal / Special District Judge, Erode is modified as stated supra. The insurance company is directed to deposit the balance amount if any to the credit of M.C.O.P.No.414 of 2014 on the file of the MACT / Special District Judge, Erode, within a period of two months from the date of receipt of the copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal /
Special District Judge,
Erode.

2. The Section Officer
VR Section, High Court, Madras.

+1 Cc to Mr.S. Arunkumar, advocate sr 78384

+1 Cc to Mr.R. Nalliappan, advocate sr 78500.

C.M.A.No.1351 of 2017

SR(CO)
SP(06/12/2017)

सत्यमेव जयते

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