IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.04.2017
CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.1404 of 2017

1. Ammu
2. Minor Sedhuraman
represented by Guardian/Next Friend
his mother Ammu
3. Padmavathy
4. Kannu Udayar ... Appellants

Vs

1. Kulandaivel

2. Periya Gounder
(Remained exparte in the Lower Court)

3. ICICI Lombard General Insurance Co.Ltd
ICICI Bank Towers
Bandra Kurla Complex
Bandra (East), Mumbai. ... Respondents

Prayer: Civil Miscellaneous Appeal as against the award and decree dated 29.06.2011 passed in MCOP.No.114 of 2007 by the Motor Accident Claims Tribunal (Sub Court), Arni.

For Appellants : M/s.P.Satheesh Kumar

For Respondents: Mrs.R.Sri Vidhya for R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Claimants aggrieved over the quantum of compensation of Rs.3,00,320/- awarded for the death of one Subramanian, aged about 30 years, alleged to be working as a Car Driver and running a Mineral Water Company and earning about Rs.7,000/- per month, in the accident, which occurred on 18.03.2007, when he was walking on the road and hit down by a lorry bearing Registration No.TN 30 Y 4587, belonging to the 2^{nd} respondent and insured with the 3^{rd} respondent, driven rashly and negligently.

2.The appeal has been filed questioning the quantum alone.

3.Heard, Mr.P.Satheesh Kumar, learned counsel appearing for the appellant and Mrs.R.Srividya, learned counsel appearing for the third respondent.

4.Since the 1st respondent and 2nd respondent/driver and owner of the vehicle respectively remained ex parte before the Lower Court, notice is dispensed with as per the Full Bench Judgment of the Madhya Pradesh High Court rendered in Mrs.Jamuna Bai v. Chotte Singh reported in I (2004) Acc. 190 (FB).

5.Though, the appeal has been preferred by the claimants questioning the quantum and the finding on negligence is not an issue, however, a perusal of records would reveal that based on Ex.P.1/FIR, the evidence of PW2 Eyewitness and in the absence of any contra evidence on the side of the respondents, the Tribunal rightly found that the lorry driver was driven rashly and negligently.

6.Mr.P.Satheesh Kumar, learned counsel appearing for the appellant would submit that the deceased was aged about 30 years and was earning about Rs.7,000/- per month. However, the Tribunal very erroneously fixed Rs.2,000/- as monthly income and deducted 1/3rd deduction towards "Personal Expenses". Moreover, he would find fault with the Tribunal for not having awarded reasonable amount under the other heads as well.

7.On the other hand, Mrs.Srividya, learned counsel appearing for the 3rd respondent would submit that the accident occurred in 2007 and in the absence of any positive proof regarding income, The Tribunal rightly determined Rs.2,000/- as monthly income. Hence, she supports the award.

8.The accident is to be occurred on 18.03.2007. No doubt, there is no positive evidence regarding the income of the deceased. Even in the absence of any material evidence regarding income the Hon'ble Supreme Court in Syed Sadiq and Others V. Divisional Manager, United India Insurance Company Ltd reported in 2014 (1) TN MAC 459 (SC), determined the monthly income of a Vegetable Vendor, who sustained injuries in the accident, which occurred in 2008 at Rs.6,500/- . In this case, the accident occurred in 2007. Therefore, it is appropriate to determine the monthly income of the deceased at Rs.6,000/-.

9.No amount was awarded towards "Future Prospects" as per the Judgement of Smt.Sarala Varma and Others V. Delhi Transport Corporation and another reported in 2009 ACJ 1298 and Rajesh and others V. Rajbir Singh and Others reported in 2013 (2) TNMAC 55 (SC). As per Ex.P.2/Postmortem Certificate, the age of the deceased was shown to be 31 years, therefore, 50% is required to be added towards "Future Prospects" and thus,

Total monthly income= Rs.6,000/- (+) 50% (Rs.6000/-)
= Rs.9,000/-.

The size of the family of the deceased is four and therefore, 1/4th is required to be deducted towards "Personal Expenses" as per the Judgement of the Hon'ble Apex Court in Smt.Sarala Varma and Others V. Delhi Transport Corporation and another reported in 2009 ACJ 1298, whereas, the Tribunal erroneously deducted 1/3rd towards "Personal Expenses". Therefore, deducting 1/4th towards "Personal Expenses", the "Monthly contribution of the deceased to his family" would be Rs.9,000/- (-) ¼ (Rs.9,000/-) = Rs.6,750/-.

The appropriate multiplier, for the age of the deceased, namely, 31 years, as per Sarla Verma's case is 16 and therefore, applying the said multiplier,

Loss of Income = Rs.6,750/- x 12 x 16
= Rs.12,96,000/-

10.The sum of Rs.10,000/- awarded towards "Loss of Consortium" pricks the conscience of this Court. Losing one's husband itself would be very painful and miserable for a woman and that too, at a young age of 23 years, would be even more distressful and no amount of monetary compensation would make up for the untimely loss suffered by her. However, in an endeavour to give some solace to the lady, who lost her husband, at a young age of 23 years, following the judgment of the Hon'ble Apex Court rendered in Rajesh and Others V. Rajbir Singh and Others reported in 2013 (2) TN MAC 55 (SC), a sum of Rs.1,25,000/- is awarded towards "Loss of Consortium".

11.The 2nd appellant/minor child, who was aged about five years, at the time of occurrence, has been deprived of his father's love, affection, care and guidance for the rest of his life and the void created by his father's death would remain as such and it cannot be filled up by anyone else. Though no amount of compensation could be equated to a father's love and care, however, with a view to give some relief and in the interest of justice, a sum of Rs.1,00,000/- is awarded towards "Loss of love and affection" to the 2nd appellant. The parents of the deceased/appellants 3 and 4, who lost their son, are entitled to get Rs.30,000/- each. The Tribunal has awarded only Rs.4,000/- towards "Funeral Expenses" and no amount was awarded towards "Transportation Expenses". Therefore, a sum of Rs. 20,000/- is awarded together under the said heads. In all, a sum of Rs.16,01,000/- rounded off to Rs.16,00,000/- is the compensation payable to the appellants. The rate of interest at 7.5% per annum, fixed by the Tribunal, remains unaltered.

12.Though the value of the claim in the appeal is to the tune of Rs.6,99,980/-, be re-appreciating the evidence on record and applying the correct position of law, as on date and in the light of the Hon'ble Supreme Court in Nagappa V. Gurudayal Singh reported in 2004 (2) TN MAC 398 (SC), in an endeavour to do complete justice, this Court has awarded just and reasonable compensation.

13.The appellants shall pay additional court-fee for the enhanced amount within a period of two weeks from the date of receipt of a copy of this order. The first appellant is entitled to Rs.7,00,000/-, the second appellant is entitled to Rs.6,00,000/-, the father and mother of the deceased/3rd and 4th appellants are entitled to Rs.1,50,000/- each.

14.The 3rd respondent is directed to deposit the entire award amount, as per the modified award passed by this Court, after deducting the amount already deposited, if any, along with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of the major claimants/appellants 1, 3 and 4, as per the apportionment made by this Court, to their respective Bank Accounts, after getting the required details, through RTGS, within a period of two weeks thereafter. The share of the minor/2nd appellant shall be deposited in interest bearing Fixed Deposit, in any one of the Nationalised Banks, till he attains majority. The 1st appellant is permitted to withdraw the interest accruing on such deposit, once in three months.

15.In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.3,00,320/- to Rs.16,00,000/- together with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vv/nv

To
The SubJudge,
Motor Accident Claims Tribunal/Sub Court
Arni

+1 cc to Mr.P.Satheesh Kumar Advocate sr 25574
+1 cc to Mrs.R.Sreevidya Advocate sr 26334

C.M.A.No.1404 of 2017

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