

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2017

PRONOUNCED ON : 19.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH

and

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.1295 of 2014

1.G.Kanagavalli

2.M.Gajendran

..Appellants

..vs..

1. Rajarajan Transport Service

2. The Manager,
ICICI Lombard General Insurance Co. Ltd.
Motor Third Party Claim Cell
Arihnani Plaza 1st floor,
No.84, 85 Waltax Road,
Parrys, Chennai - 600 003.

..Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 09.04.2013 passed by the Motor Accidents Claims Tribunal / Principal District Judge, Tiruvellore, in MCOP.No.197 of 2010.

For Appellants : M/s.Haja Nazirudeen, Sr.C
for Mr.P.Haribabu

For R2 : M/s.R.Sree Vidhya

JUDGMENT

R. SUBBIAH, J.

Being not satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Principal District Judge), Tiruvallur ('the Tribunal' for brevity), on account of the death of one G.Dhanasekar, in and by an award dated 09.04.2013 made in MCOP.No.197 of 2010, the claimants have preferred the present appeal for enhancement of compensation.

2.The appellants / claimants are the parents of the deceased G.Dhanasekar.

3.It is the case of the appellants/claimants before the Tribunal that on 27.12.2009, at about 10.10 hours, while the

deceased was riding his two wheeler bearing Regn.No.TN20-BV-5547 on the Avadi to Poonamallee Road, a tanker lorry bearing Regn.No.TN20-AV-2288 belonging to the first respondent herein and insured with the second respondent insurance company, came in rash and negligent manner at a high speed and hit the two wheeler proceeding in front of it, due to which, the two wheeler had fallen on the left side of the road and its rider on the right side of the road and the lorry ran over the rider of the two wheeler, as a result of which, the deceased died on the spot. At the time of accident, the deceased was working as Senior Officer in Wipro BPO(MBA) at Sholinganallur and he was earning salary of Rs.25,496/-per month. The appellants/parents of the deceased made a claim of Rs.40,00,000/- as compensation against the owner of the tanker lorry and its insurer.

4.Denying the averments made in the claim petition, the second respondent /Insurance Company filed a counter stating that the accident had occurred only due to rash and negligent driving of the rider of the two wheeler. Therefore, they are not liable to pay compensation to the claimants.

5.On the side of the appellants/claimants, the first appellant/ mother of the deceased was examined as P.W.1, besides examining one Narasimhan, who was an eyewitness to the occurrence as P.W.2 and H.R. Executives of Wipro (BPO) viz., Yoganand and Hari were examined as P.W.3 and P.W.4 respectively, to speak about the income earned by the deceased. On the side of the second respondent Insurance Company, no witness was examined and no document was marked.

6.The Tribunal, on appreciation of evidence led by the parties, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the tanker lorry bearing Regn.No.TN20 AV 2288 insured with the second respondent Insurance company. Holding so, the Tribunal passed an award granting a sum of Rs.10,16,864/- (wrongly mentioned as Rs.10,11,864/- in the award) as compensation and after deducting a sum of Rs.3,00,000/- which has already been received by the claimants under personal accident policy, directed the respondents 1 and 2 jointly and severally to pay a sum of Rs.7,11,864/- to the first appellant/claimant alone. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants are before this Court with the present appeal seeking enhancement of compensation.

7.Learned senior counsel for the appellants/claimants has made the following submissions:

7.1 According to the appellants/claimants, at the time of accident, the deceased was working as Senior Officer in Wipro BPO at Sholinganallur and as per Ex.P12 salary slip, his salary was Rs.27,420/- per month. However, the Tribunal, while calculating the compensation under the head "loss of income to the family of the deceased", has fixed only a sum of Rs.9,265/- as the monthly income of the deceased by taking into account the Basic pay of Rs.6,618/- and House Rent Allowance of Rs.2,647/- alone and leaving the amounts received under other heads, such as, Conveyance allowance, advance bonus, medical reimbursement, shift allowance (fixed), attendance incentive and process base performance pay. Placing reliance on the decision of the Hon'ble Supreme Court reported in Indian Kanoon-<http://indiankanoon.org/doc/1895620/> (National Insurance Company Ltd. v. Indira Srivastava and others), it is contended that the Tribunal ought to have taken the entire amount paid to the deceased per month by his employer as his monthly salary and accordingly, should have computed the compensation under the head "loss of income". Hence, the compensation awarded by the Tribunal under the head "loss of income" has to be recalculated.

7.2 Except awarding a meagre sum of Rs.5,000/- towards transport and funeral expenses, the Tribunal has not awarded any amount towards conventional heads, such as, loss of love and affection, loss of estate, etc. to the appellants, on account of the death of the deceased.

7.3 The second appellant being the father of the deceased, is entitled to get compensation. However, the Tribunal has not awarded any compensation amount to the second appellant, observing that he is not dependent of the deceased.

7.4 In the absence of any tangible evidence to show that the amount received by the appellants has correlation with the amount receivable under a statute, the Tribunal erred in deducting a sum of Rs.3,00,000/- from the compensation amount, on the ground that the appellants have already received a sum of Rs.3,00,000/- towards personal accident policy, which was taken by the company of the deceased. Thus, the compensation awarded by the Tribunal is neither just nor reasonable and the same has to be enhanced.

8. Per contra, learned counsel for the second respondent Insurance company contended that the Tribunal has rightly fixed the monthly income of the deceased and arrived at the compensation under the head "loss of income". The Tribunal has also rightly deducted a sum of Rs.3,00,000/- already received by the appellants under the Personal Accident Policy, from the compensation amount. Hence, no interference is warranted. Learned counsel further submitted that the compensation awarded by the Tribunal is just and reasonable and no ground is made out

by the appellants/claimants for enhancement of the compensation whatsoever.

9.Keeping the submissions made by the learned counsel on either side, we have carefully perused the materials placed before us.

10.This appeal has been filed by the claimant seeking enhancement of compensation awarded by the Tribunal, on account of the death of their son G.Dhanasekar. It is the case of the appellants/claimants that the deceased studied MBA degree in Anna University and at the time of accident, he was working as Senior Officer in Wipro BPO at Sholinganallur. To prove the occupation and the income earned by the deceased, P.W.3 and P.W.4 who were the H.R Executives of Wipro, have been examined, on the side of the appellants/claimants. It is their evidence that the deceased was working as Senior Accounts Officer and was earning a sum of Rs.27,920/- and that, in another 1½ years, he would have got promotion as Team Leader. Further, a salary slip of the deceased for the month of November, 2009, was marked as Ex.P12 before the Tribunal, the details of which, read as follows:

Basic	6,618.00
House Rent Allowance	2,647.00
Conveyance Allowance	1,324.00
Advance Bonus	700.00
Medical Reimbursement	2,515.00
Shift Allowance (Fixed)	1,793.00
Attendance Incentive	10,823.00
Process Based Performance Pay	1,000.00
Total	27,420.00

Whereas, the Tribunal has assessed the monthly income of the deceased at Rs.9,265/-, by adding the basic pay of Rs.6,618/- and HRA of Rs.2,647/- alone. While doing so, the Tribunal has not taken into account the amounts received by the deceased under other heads, viz., Conveyance allowance, advance bonus, medical reimbursement, shift allowance (fixed), attendance incentive and process base performance pay.

11.In this regard, the learned senior counsel for the appellants placed reliance on the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. v. Indira Srivastava and others (cited supra), wherein, it has been held as follows:

"The amounts, which were required to be paid to the deceased by his employee, should be included for computation of his monthly income, as that would

have been added to his monthly income by way of contribution to the family as contra distinguished to the ones which were for his benefit. However, from the said amount of income, the statutory amount of tax payable thereupon must be deducted".

Applying the said observation herein, we are of the opinion that the Tribunal ought to have taken into account all the amounts, which are permanent in nature, received by the deceased per month from his employer, as mentioned in Ex.P12, except the amounts under the heads 'advance bonus' and 'medical reimbursement', as the monthly income of the deceased. However, from the said amount of income, the statutory amount of Income Tax payable thereupon, has to be deducted, while computing the compensation under the head "loss of income". Accordingly, the monthly income of the deceased works out to Rs.24,205/- and the same is hereby fixed for the purpose of recalculation of compensation under the head "loss of income".

12.The compensation awarded by the Tribunal under the head "loss of income to the family of the deceased" is hereby recalculated as under:

As per Ex.P12, salary of the deceased	= Rs.24,205/-
Deduction at 20% towards Income Tax	= 4,841/-
	
	Rs.19,364/-
Add 50% of Rs.19,364/- towards future prospects	9,682/-
	
	Rs.29,046/-
Deduction at 50% towards personal expenses	14,523/-
	
loss of monthly income	Rs.14,523/-
	

13.Regarding the selection of multiplier, we are of the view that as per the ratio laid down by the Hon'ble Apex Court that the age of the dependents has no nexus with the computation of compensation, it is based on the age of the deceased and not on the basis of the age of the dependent. Therefore, considering the age of the deceased, who, at the time of accident, was aged about 25 years, the proper multiplier to be adopted is 18, as per Second Schedule to the Motor Vehicles Act. If multiplier "18" is applied, then the loss of income to the family of the deceased comes to Rs.31,36,968/- (Rs.14,523/- x 12 x 18). Thus, the sum of Rs.10,11,864/- awarded by the Tribunal is hereby enhanced to Rs.31,36,968/- under the head "loss of income".

14.Further, on a perusal of the award, we find that the Tribunal has awarded the compensation to the first appellant/mother of the deceased alone, holding that the second appellant/father of the deceased is not the dependent of the deceased. We do not agree with the said finding of the Tribunal. The father, who suffers on account of the loss of his son in terms of loss of love and affection, loss of support, loss of money and loss to estate, is also entitled to get compensation along with the mother. Therefore, the finding of the Tribunal in this aspect is liable to be set aside and is set aside.

15.That apart, the Tribunal has awarded only a sum of Rs.5,000/- towards transport and funeral expenses, which, in our view, is not just and reasonable. Further, no amount was awarded towards loss of love and affection to the appellants. In various decisions, the Hon'ble Supreme Court has held that the substantial compensation is to be awarded towards conventional damages, like, loss of consortium, loss of love and affection, loss of estate, transportation and hospital charges, funeral expenses etc. In view of the same, considering the fact that the appellants have lost their son, who was aged about 25 years at the time of accident and was an unmarried, at the prime time, when they were expecting him to add succor to their survival, we deem it appropriate to award a sum of Rs.1,00,000/- to each of the appellants towards loss of love and affection. Accordingly, the same is hereby awarded. Further, taking note of the cost of living, the sum of Rs.5,000/- awarded under both the heads "transport" and "funeral expenses" is hereby enhanced to Rs.65,000/- (Rs.15,000/- + Rs.50,000/- respectively). However, the interest at 7.5%p.a. awarded by the Tribunal is just and reasonable and the same is hereby confirmed.

16.In view of the aforesaid discussion, the total compensation awarded by the Tribunal is hereby enhanced to Rs.34,01,968/-, the details of which, are as follows:

Loss of income to the family	: Rs.31,36,968/-
Loss of love and affection to the parents (Rs.1,00,000/-each)	: Rs. 2,00,000/-
Transport and Funeral expenses	: Rs. 65,000/-
Total	Rs.34,01,968/-
Rounded off at Rs.34,00,000/-	

17. One more aspect to be looked into herein is that based on Ex.P13, the Tribunal has deducted a sum of Rs.3,00,000/- from and out of the compensation awarded, as the appellants have already received the said amount under a personal accident policy. As rightly contended by the learned senior counsel for the appellants, no evidence was adduced on the side of the second respondent Insurance Company to substantiate that the amount received by the appellants has correlation with the amount receivable under a statute occasioned on account of accidental death of the deceased. A cursory glance at Ex.P13, which is a covering letter addressed to the father of the deceased by the company, would reveal that the company has paid a sum of Rs.3,90,000/- by way of cheque, towards final settlement of the deceased. There is no whisper about the payment covered under the personal accident policy, which was said to have been taken by the company for the deceased. Even as per the evidence of P.W.4, the amount stated in Ex.P13 relates to Group Insurance, arrears of salary and compassionate amount. Therefore, we are of the considered view that the amount so received by the appellants have no correlation with the accidental death of the deceased and the same cannot be termed as "Pecuniary Advantage", as such, the same is not liable for deduction from the compensation amount awarded under the Motor Vehicles Act. Accordingly, the appellants 1 and 2 are entitled to get the amount so awarded herein along with proportionate interest and costs, in equal proportion, without any deduction.

18. 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.197 of 2010 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Tiruvallur, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, both the appellants are permitted to withdraw the entire compensation amount along with the proportionate interest and costs, less the amount, if any, already withdrawn.

19. Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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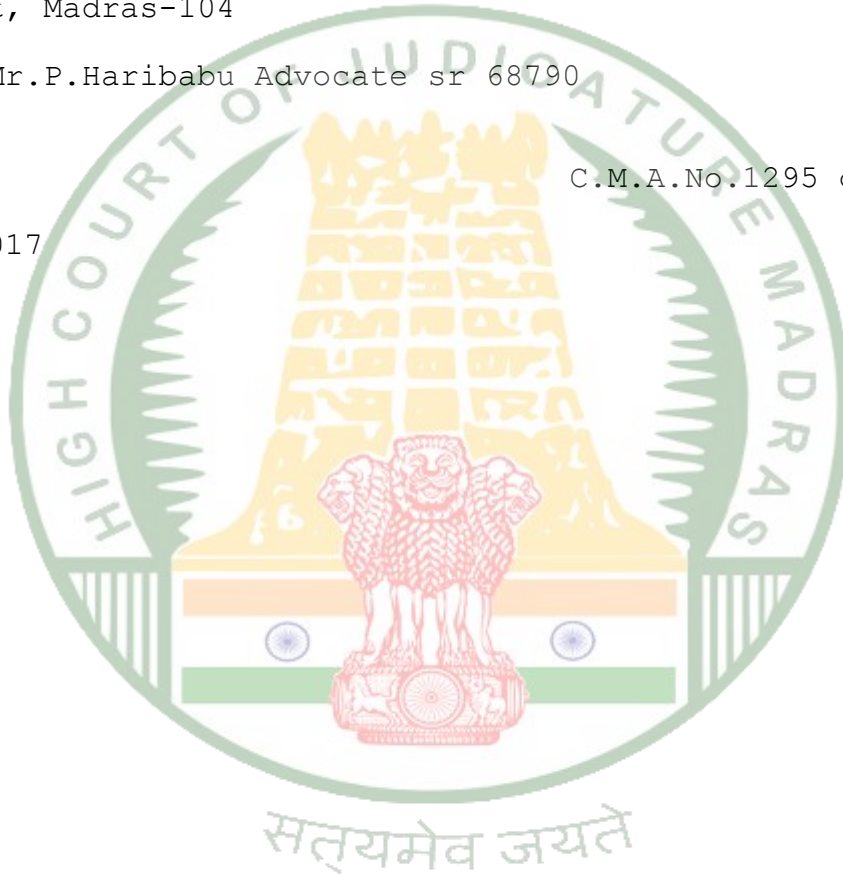
The Motor Accidents Claims Tribunal
Principal District Judge,
Tiruvallur.

copy to
The Section Officer
VR Section
High Court, Madras-104

+1 cc to Mr.P.Haribabu Advocate sr 68790

C.M.A.No.1295 of 2014

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