

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1716 of 2015

1. Kaveri
 2. Selvaraj
- ... Appellants / Petitioners

versus

1. Manikandan
 2. The Divisional Manager,
Cholamandalam General Insurance
Company Ltd.,
Having Office at II Floor,
Dare House,
No.2, NSC Bose Road,
Chennai - 600 001.
- ... Respondents / Respondents
- (R1 remained ex parte before
the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.11.2014 made in M.C.O.P.No.679 of 2012 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Pondicherry.

For Appellants : M/s.T.Ananthasekar
For R2 : Mr.N.Vijayaraghavan
R1-EXPARTE

JUDGMENT

The deceased, Jayabalaji, aged about 25 years, working as a Supervisor in Vijaya Builders, earning a sum of Rs.10,000/- p.m. met with an accident on 09.09.2011 and succumbed to the injuries. Hence, the parents of the deceased, filed a claim petition in M.A.C.T.O.P.No.679 of 2012 before the Motor Accident Claims Tribunal (II Additional District Judge), Pondicherry, claiming a sum of Rs.19,00,000/- as compensation.

2. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.4,77,900/- as compensation, the break-up details of which read as under:

Pecuniary Loss	-	Rs.4,86,000/-
Funeral Expenses	-	Rs. 10,000/-
Loss of estate	-	Rs. 10,000/-
Loss of love and affection	-	Rs. 25,000/-

Total	-	Rs.5,31,000/-
Less : Contributory negligence at 10%	-	Rs. 53,100/-

Total compensation	-	Rs.4,77,900/-

3. The learned counsel appearing for the appellants/claimants submitted that though the claimants have produced the salary certificate (Ex.P10) to prove the income of the deceased at Rs.10,000/- p.m., the Tribunal has rejected the same and fixed the income of the deceased at Rs.4,500/- p.m., which is per se illegal as per the decision of the Supreme Court in the case of Syed Sadiq vs. Divisional Manager, United India Insurance Co. Ltd., (2014 (1) TN MAC 459), wherein, in the said case, even for a vegetable vendor the income has been fixed at Rs.6,500/- p.m. The learned counsel appearing for the appellants further submitted that the deceased was aged 25 years at the time of accident, therefore, 50% towards future prospective increase in income should have been considered when the deceased was aged below 40 years, as per the decision of the Supreme Court in Santhosh Devi vs. National Insurance Co. Ltd., (2012(2) TN MAC 1) and Rajesh vs. Rajbir Singh (2013 (2) TN MAC 55). But, the same has not been considered in this case. Furthermore, the compensation awarded under the heads 'loss of estate', 'loss of love and affection' and 'funeral expenses' are also very low, for which reliance was placed on the decisions of the Supreme Court in 2015 (1) TN MAC 465 (Asha Verman and others vs. Maharaj Singh and others) and 2013 (2) TN MAC 55 (Rajesh vs. Rajbir Singh). Therefore, the compensation awarded by the Tribunal requires enhancement.

4. The learned counsel appearing for the Insurance Company submitted that the Tribunal has passed the award after considering the oral and documentary evidence adduced on the side of the claimants. Hence, the award passed by the Tribunal is justifiable and it need not be interfered with.

5. A perusal of the award passed by the Tribunal reveals that the deceased was aged 25 years and he was working as a Supervisor in a Private Company in Pondicherry and was earning a sum of Rs.20,000/- p.m. In order to prove the same, the claimants produced Ex.P10, Salary Certificate of the deceased

issued by S.Paranthaaman of Vijay Builders, which shows the income of the deceased at Rs.10,000/-. As the deceased was not an income tax assessee, the Tribunal has fixed the income of the deceased at Rs.4,500/- and as per the decision reported in 2010 ACJ 1364, the Tribunal has adopted multiplier of 18, based on the concept that the multiplier should be either with reference to the age of the deceased or surviving beneficiary whichever is higher and quantified pecuniary loss at Rs.4,86,000/-. The Tribunal has also awarded Rs.10,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.25,000/- towards loss of love and affection.

6. Though the salary certificate of the deceased was produced on the side of the claimants, the Tribunal has fixed only Rs.4,500/- as the monthly income of the deceased on the ground that the deceased was not an Income Tax Assessee. Though reliance has been placed on the decision in Syed Sadiq's case (supra) for fixing the income, however, the said decision has been rendered by the Supreme Court in the year 2014. However, keeping the ratio laid down by the Supreme Court in mind, this Court fixes the income of the deceased at Rs.5,500/= per month and adding 50% towards the future prospective increase in income and deducting 50% towards the personal expenses of the deceased, fixes the monthly contribution of the deceased to the family at Rs.4,125/-.

7. Based on the ratio laid down in the case of Sarla Verma vs. Delhi Transport Co. Ltd., this Court adopts the multiplier of 18 and quantifies the loss of income to the family at Rs.8,91,000/= (Rs.4125 X 12 X 18).

8. Insofar as the compensation under other heads are concerned, as rightly contended by the learned counsel appearing for the claimants/appellants, the quantification under the various heads are on the very lower side. Keeping in mind the age of the deceased and the plight of the claimants, who have lost their son at a very young age, compensation under the non-pecuniary heads needs to be assessed. Taking the overall circumstances of the case and the fact that the parents have lost their son, the breadwinner of the family based at a very young age, this Court is of the considered view that the compensation needs to be enhanced and, accordingly, the compensation is enhanced and compensation under the pecuniary and non-pecuniary heads is awarded as hereunder :-

Pecuniary Loss	-	Rs.8,91,000/-
Funeral Expenses	-	Rs. 25,000/-
Loss of estate	-	Rs. 50,000/-
Loss of love and affection	-	Rs.1,00,000/-
Transport expenses	-	Rs. 12,000/-

Total	-	Rs.10,78,000/-

9. Insofar as negligence is concerned, the Tribunal, after considering the oral and documentary evidence, has given a finding that the accident had occurred due to the contributory negligence on the part of the deceased as well and, accordingly, the contributory negligence on the part of the deceased has been fixed at 10%. Learned counsel appearing on either side have not raised much grievance with regard to the contributory negligence fixed by the Tribunal. Accordingly, contributory negligence fixed at 10% on the deceased is hereby confirmed and, a sum of Rs.1,07,800/= is deducted from the total compensation awarded above.

10. For the reasons aforesaid, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.5,31,000/- to Rs.9,70,200/= with interest at 7.5% p.a.. No costs.

11. The 2nd respondent insurance company is directed to deposit the compensation of Rs.9,70,200/=, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. The claimants are entitled to the enhanced compensation as per the ratio of apportionment made by the Tribunal. On such deposit being made, the Tribunal shall transfer the respective share of the claimants to their Bank Accounts directly through RTGS, within a period of two weeks thereafter.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

WEB COPY

Sub Assistant Registrar

ogy/GLN

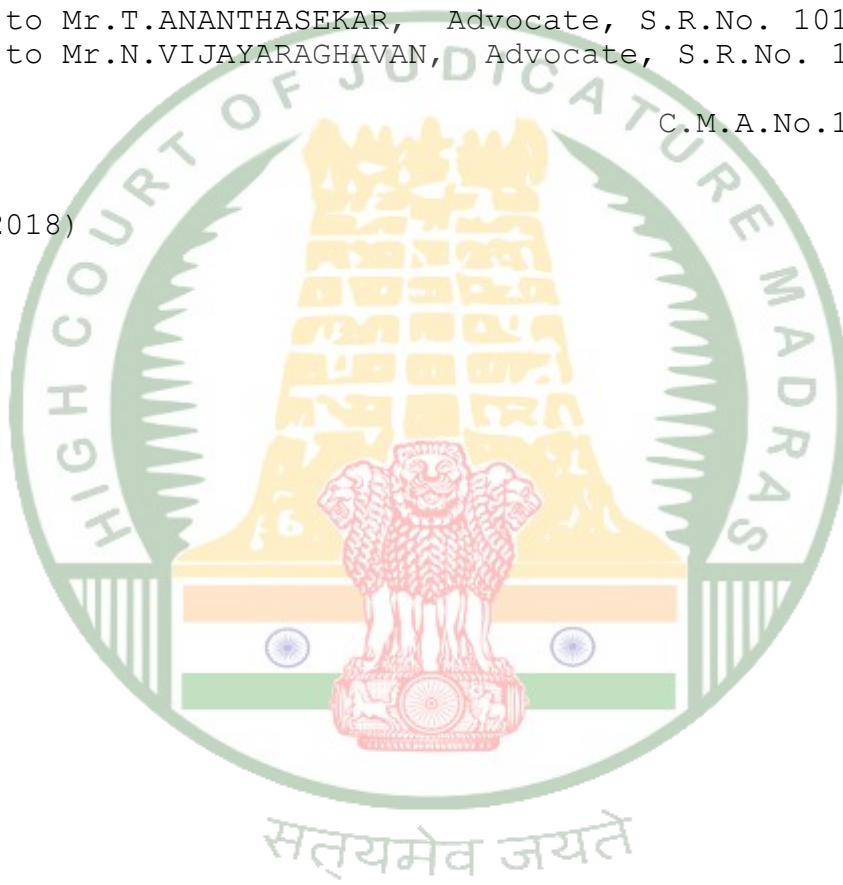
To

1. The II Additional District Judge,
Motor Accident Claims Tribunal, Pondicherry.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1cc to Mr.T.ANANTHASEKAR, Advocate, S.R.No. 10164
+1cc to Mr.N.VIJAYARAGHAVAN, Advocate, S.R.No. 10125

C.M.A.No.1716 of 2015

KJI (CO)
TR(16/03/2018)



WEB COPY