

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/6/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and

The Honourable Mr.JUSTICE M. GOVINDARAJ

Civil Miscellaneous Appeal No.2219 of 2016

Reliance General Insurance Company Ltd
Rai Rowers, II Floor
Plot No.2504
2nd Avenue, Anna Nagar
Chennai.
... Appellant /2nd Respondent

Vs

1. Sulochana
2. K. Cheran
3. K. Vetri
4. Minor K.Lenin
rep. by his mother and next friend
Sulochana
5. J. Williams. ...Respondents/Petitioners 1 to 4
and 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the Judgment and Decree dated 19/2/2016, made in
M.C.O.P.No.5865 of 2013, on the file of the Motor Accident
Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr.S.Arun Kumar

For respondents : Mr.K.Suriyanarayanan
for R.R.1 to 4.

J U D G M E N T
(Judgment of the Court was made by S.Manikumar,J)

Quantum of compensation of Rs.42,18,000/-, with interest, at the rate of 7.5% p.a., awarded to the legal representatives of the deceased M. Kuppan, in M.C.O.P.No.5865 of 2013, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, is challenged, on the grounds inter alia that a sum of Rs.1,00,000/-, awarded as loss of estate, is on the higher side. Further contention has been made that a sum of Rs.4,00,000/-, awarded under the head loss of love and affection, is also excessive. Except the above, no other challenge is made.

2. Brief facts leading to the appeal are as follows:-

On 3/8/2013, at 15.00 hours, when the deceased Kuppan, was going in his cycle, at Jawaharlal Nehru Salai, 100 feet road, a Mahindra van, bearing Registration No.TN22AX-4056, driven by its driver, in a rash and negligent manner, dashed him. He sustained multiple injuries. He was rushed to New Hope Hospital, Arumbakkam and then, treated in SRMC Hospital, Porur and in Government General Hospital, Chennai. He succumbed to the injuries. In this regard, a case in Crime No.377 of 2013, under Sections 279 and 304(A) of the Indian Penal Code, has been registered, against the driver of Mahindra van, bearing Registration No.TN22AX-4056, on the file of K4 Anna Nagar Traffic Investigation.

3. Claiming that the deceased was a wireman in Tamil Nadu Electricity Board, Koyambedu and earned Rs.22,000/- p.m., legal representatives of the deceased, viz., wife and three sons, aged 23, 20 and 17 years, respectively, filed claim petition, in M.C.O.P.No.5865 of 2013, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, for a sum of Rs.65,00,000/-.

4. Disputing the manner of accident, appellant-Insurance Company, has filed a counter affidavit, before the Tribunal. Without prejudice to the above, they also disputed the age, occupation and monthly income of the deceased and the compensation claimed under various heads.

5. On evaluation of pleadings and evidence, the Tribunal found that the driver of Mahindra Van, bearing Registration No.TN22X-4056 was negligent, in causing the accident and quantified the compensation as Rs.42,18,460/-, with interest, at the rate of 7.5% pa., from the date of claim till deposit and apportioned the same, as hereunder:-

Loss of pecuniary benefits	...	Rs.35,93,460/-
Loss of consortium	...	Rs. 1,00,000/-
Loss of love and affection	...	Rs. 4,00,000/-
Loss of estate	...	Rs. 1,00,000/-
Funeral expenses	...	Rs. 25,000/-

		Rs.42,18,460/-

Heard the learned counsel for the parties and perused the materials available on record.

6. According to the respondents/claimants, the deceased was aged about 45 years, a Wireman under the Tamil Nadu Electricity Board, Chennai and earned Rs.22,000/- per month. He was the only earning member and they were depended on him. The date of birth of the deceased as per Ex.P8 - Service Records under TANGEDCO, is 01.07.1965 and hence, the Tribunal determined the age of the deceased as 48 years.

7. Though it was contended that the deceased earned Rs.22,000/- per month, upon considering the evidence of PW.3, Mr.E.Santhana Mariappan, Assistant Engineer/O&M/Koyambedu, TNEB, Chennai and other documents, the Tribunal determined the income at Rs.23,626/- per month and added 30% (Rs.7,088/-) towards future prospects, which works out to Rs.30,714/-. After deducting one-fourth for the personal and living expenses, fixed Rs.23,035/- as the monthly family contribution. As per Sarala Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC 1, the multiplier that may be adopted for the age group of persons, for 45 years to 50 years is "13". The Tribunal has rightly applied '13' multiplier and arrived at the loss of contribution, as Rs.35,93,460/-.

8. That apart, the Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.4,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of estate and Rs.25,000/- for Funeral Expenses. There is no award for transportation and damages to clothes and articles. Altogether, the Claims Tribunal has awarded Rs.42,18,460/- with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

9. Mr.S.Arun Kumar, learned counsel appearing for the appellant-Insurance Company mainly contended that when the Tribunal has awarded Rs.1,00,000/- towards loss of consortium, another sum of Rs.1,00,000/- awarded under the head, loss of love and affection, is double compensation. He further submitted that compensation of Rs.1,00,000/- under the head, loss of estate, is also excessive.

10. Legal representatives are the wife and three children. The Tribunal has awarded Rs.1,00,000/- under the head, loss of consortium. As rightly contended by the learned counsel for the appellant-Insurance Company, compensation of Rs.4,00,000/- awarded for loss of love and affection, is excessive, taking note of the fact that 1st respondent, wife of the deceased has already been compensated for loss of consortium.

11. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the

loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

12. Love and affection is one of the components of consortium. Therefore, compensation of Rs.1,00,000/- each, is awarded to respondents 2 to 4, children of the deceased and hence, a sum of Rs.3,00,000/- is awarded under the head, loss of love and affection. Rs.1,00,000/- is deducted under the said head.

13. As regards compensation of Rs.1,00,000/- awarded towards loss of estate, this Court is inclined to consider a decision of the Kerala High Court in Omana P.K. and others v. Francis Edwin and others reported in 2011 (4) KLT 952, wherein, a learned Judge of this Court had the occasion to consider a question whether the amount awarded by the Claims Tribunal by way of 'compensation for loss of dependency and estate' forms part of 'loss of estate' or 'loss to the estate' of the deceased. Taking note of the judgment of a Hon'ble Division Bench of the High Court of Andhra Pradesh in Chairman, APSRTC, Hyderabad v. Shafiya Khatoon reported in AIR 1985 AP 83, wherein, it was observed that, "the loss of benefit to the estate of the deceased is the loss arising to the estate under the heads of mental and physical pain, loss of expectation of life and loss of amenities, and that the said amounts are payable to the legal heirs under the provisions of the Legal Representatives Suits Act, 1855 r/w. Section 306 of the Indian Succession Act, 1925", the learned Judge of the Kerala High Court in Omana P.K.'s case, held that,

"The capitalized value of the income spent on the dependents, subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalized value of his income, subject to relevant deductions, would be the loss caused to the

estate by his death. In other words, what amount the dependents would have got less deductions if any that could be made under law is the loss to the estate of the deceased. That goes to the legal heirs of the deceased. On the other hand, loss of estate includes compensation for pain and suffering, loss of enjoyment of amenities, etc. of the deceased. That amount goes to the legal heirs by virtue of Section 1A of the Fatal Accidents Act."

14. In *Kalpanaraj v. Tamil Nadu State Transport Corporation* reported in 2015 (2) SCC 764, the Hon'ble Supreme Court awarded Rs.1,00,000/- for loss of estate. In *Rajesh v. Rajbir Singh* reported in 2013 (2) TNMAC 55 (SC), the Apex Court awarded Rs.25,000/- towards loss of estate. Legal representatives have been awarded compensation of Rs.3,00,000/- for loss of love and affection and therefore, this Court is inclined to reduce the compensation of Rs.25,000/-, under the head, loss of estate. Insofar as the compensation under other heads, we are of the view that the same is just and reasonable. After re-working, compensation now determined by this Court is Rs.40,43,460/-.

Loss of pecuniary benefits	...	Rs. 35,93,460.00
Loss of consortium	...	Rs. 1,00,000.00
Loss of love and affection	...	Rs. 3,00,000.00
Loss of estate	...	Rs. 25,000.00
Funeral expenses	...	Rs. 25,000.00

		Rs.40,43,460.00

Compensation awarded by the Tribunal	...	Rs.42,18,460.00
Amount now determined by this Court	...	Rs.40,43,460.00
Reduced amount		-----
		Rs. 1,75,000.00

Amount apportioned to the wife of the deceased	...	Rs.19,43,460.00
children of the deceased (Rs.7,00,000/- each)	...	Rs.21,00,000.00

		Rs.40,43,460.00

15. Mr.S.Arun Kumar, learned counsel for the Insurance Company submitted that Insurance Company has already deposited the entire award amount and that claimants have withdrawn 50% of the amount deposited. Reduction of amount will be from the share of the wife of the deceased. Share of the minor/fourth respondent shall be deposited in any one of the Nationalised Banks in fixed deposit, under the reinvestment scheme, initially for a period of three years. The interest accruing on the share of the minor/fourth respondent, shall be paid to the first respondent/mother of the minor, once in three months, till he attain majority. On such deposit being made, except the minor, the respondents 1 to 3/claimants are permitted to withdraw the award amount, by making necessary applications.

16. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

skm

To
The IInd Judge, Small Causes Court,
Chennai.

+1cc to M/s.K.Suryanarayanan, Advocate, S.R.No.42303/17
+1cc to M/s.S.Arunkumar, Advocate, S.R.No.42237/17

C.M.A. No.2219 of 2016

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SJ(CO)
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