IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 13.04.2017

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.2347 of 2015

1.Govindammal
2.Vinoth
3.Ramya
4.Minor Pavithra
Rep by her mother and natural Guardian
Mrs.Govindammal
5.Poongavanam ... Appellants

Vs.

1.Velayudham

2.Bajaj Allianz
No.3, Vaithyaraman Street
T.Nagar, Chennai - 17

3.Indian Overseas Bank
2/1002 Palace Road,
S.V.Nagaram
Arani Tk, Thiruvannamalai District

4.United India Insurance Company Limited
No.25, Gandhi Road, Arani ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 17.10.2014 made in M.C.O.P. No.88/2013, on the file of Motor Accident Claims Tribunal (I Additional District Court), Tindivanam.

For Appellants : Mr.D.Senthilkumar

For Respondents: Mr.J.Michael Visuvasam
for R2

JUDGMENT
(Made by S.MANIKUMAR, J.)

Not satisfied with the quantum of compensation of Rs.9,63,500/- with interest @ 7.5% and proportionate costs, awarded in M.C.O.P. No.88/2013, on the file of Motor Accident Claims Tribunal (I Additional District Court), Tindivanam, to the legal representatives of the deceased Jayachandran, present civil miscellaneous appeal has been filed for enhancement of compensation.

2. Short facts leading to the filing of the appeal are that, on 28.08.2011 about 11.30 a.m, when Jayachandran, sole breadwinner of the appellants, was driving his motorcycle bearing Registration No.TN-25 S-4218 on the extreme left side of the G.S.T. Road towards Salavathy village, near Nolambur Cross Road, 1st respondent's car bearing Registration No.TN-10 V-0983 which came in the same direction, driven by its driver, in a rash and negligent manner, hit the motorcycle from behind, due to which, he was thrown out from the vehicle, and succumbed to head injuries. A case in Crime No.355/2011, has been registered on the file of Roshanai Police Station, for an offence under Section 304-A of IPC, against the driver of the 1st respondent's car bearing Registration No.TN-10 V-0983, insured with the second respondent herein, namely Bajaj Allianz Insurance Co. Legal representatives, namely wife, children and mother of the deceased, filed MCOP No.88 of 2013 on the file of Motor Accident Claims Tribunal (I Additional District Court), Tindivanam, claiming compensation of Rs.42,25,000/- under various heads.

3. Bajaj Allianz Insurance Co, opposed the claim, denied the manner of accident, negligence attributed to the driver of the car bearing Registration No.TN-10 V-0983. Insurance company further contended that at the time of accident, driver of the car was not having a valid and effective driving licence, to drive the car and further considered that he was not qualified for holding or obtaining driving licence. He has not satisfied the requirements of Rule No.3 of the Central Motor Vehicle Rules, 1989.

4. Insurance company further contended that the 1st respondent has handed over possession of the vehicle to the said driver and therefore, has contravened the proviso of the Motor Vehicles Act, 1988 and the Rules framed thereunder and thus committed breach of the terms and conditions of the policy and therefore, the insurance company is not liable to pay compensation. In addition to the above, the Insurance Company

has taken general defence, of disputing age, avocation, income etc. of the deceased Jayachandran.

5. Based on the evidence of PW2 and Ex.P1-FIR, the Tribunal fixed the negligence on the driver of the car bearing Registration No.TN-10 V-0983. Relying on the entry in Ex.P7 - Driving Licence, the Tribunal determined the age of the deceased as 55 years, for the purpose of adopting multiplier. Following the decisions of this court in R.Leelavathi vs. Sheik Dawood and Another reported in 2013 (2) TNMAC 113 and United India Insurance Co. Ltd vs. K.Dhanalakshmi and others reported in 2013 (1) TNMAC 428, the Tribunal adopted split multiplier method Multiplier 3 has been taken, for his regular income till retirement, and after 58, Multiplier '8' has been applied. The appellants have marked Ex.P13 - income certificate of the deceased, in which salary of the deceased Jayachandran has been shown as Rs.23,430/-. Exs.P14 and P15, copies of Passbooks have been produced, in which, after deduction, he was paid salary of Rs.20,510/- approximately, per month. Hence, the Tribunal took the monthly income of the deceased as Rs.20,500/-.

6. The deceased is survived by his wife, a male child, two female children and mother. There are totally five dependents. Following the decision of the Hon'ble Supreme Court in Sarla Verma's case, 1/4th of the income has been deducted from Rs.20,500/-. After deducting 1/4th, the monthly income of the deceased for the purpose of calculating the compensation has been taken as Rs.15,375/- (Rs.20,500 - 5,125). The annual income has been calculated as Rs.1,84,500/- (Rs.15,375 x 12). Accordingly, the loss of income to the family till retirement of the deceased has been computed as Rs.5,53,500/- (Rs.1,84,500/- x 3). The Tribunal has fixed the notional monthly income of Rs.5,000/-, deducted 1/3rd Rs.1,250/- and applied Multiplier '8', and accordingly computed the loss of contribution after retirement as Rs.3,60,000/- (Rs.45,000/- x 8).

7. In addition to the above, the Tribunal has awarded Rs.15,000/- towards loss of consortium, Rs.20,000/- under the head loss of love and affection, Rs.10,000/- under the head funeral expenses and Rs.5,000/- under the ambulance expenses. Altogether, the Tribunal has awarded a sum of Rs.9,63,500/- as compensation.

8. Not satisfied with the quantum of compensation, legal representatives of the deceased, are on appeal. Mr.D.Senthilkumar, learned counsel for the appellants, submitted that the Tribunal has not appreciated the contentions of the legal representatives of the deceased/appellants, both oral and documentary evidence in proper perspective, the Tribunal has not considered Exs.P1 to P15 and the Tribunal has discarded the

same, even though no contrary evidence was adduced by the respondents; Tribunal has failed to appreciate that in Ex.P14 - salary certificate issued by the employer of the deceased, salary of the deceased was shown as Rs.23,430/- but the Tribunal has taken the same Rs.20,500/- without any reason, the Tribunal has erroneously applied split multiplier. In addition to the above, in the appeal, it is also contended that, the Tribunal has erred in awarding lesser compensation under the heads consortium, love and affection, funeral expenses.

9. Per contra, Mr.J.Michael Visuvasam, learned counsel for the insurance company, submitted that, the Tribunal, after evaluating the oral and documentary evidence, has awarded, just and reasonable compensation to the legal representatives of the deceased, and that the same does not warrant any interference or enhancement.

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

10. The grievance of the appellants/legal representatives of the deceased Jayachandran is that the Tribunal has erred in adopting split multiplier. The Tribunal has arrived at the monthly income of the deceased Jayachandran as Rs.15,375/- till his retirement and Rs.3,750/- after retirement and adopted multipliers '3' and '8' respectively. As per the judgment of the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), the mutliplier to be applied is 11. Following the said judgment, instead of split multiplier, we adopt Multiplier '11' for computing the loss of contribution to the family by fixing the income as Rs.15,375/- i.e. 1/3rd of the income of Rs.20,500/-, after deductions, shown in the certificate. Thus, the loss of contribution to the family is Rs.15,375 x 12 x 11 = Rs.20,29,500/-.

11. The Tribunal has awarded less compensation under the heads loss of consortium, love and affection and funeral expenses. First appellant is the wife of deceased Jayachandran, who has lost her companion and as per the decision of the Hon'ble Apex Court in Rajesh & Others Vs. Rajbir Singh & Others reported in (2013) 9 SCC 54 she is entitled for a sum of Rs.1,00,000/-. The Tribunal has awarded Rs.20,000/- under the head loss of love and affection to the appellants, which is a pittance. Again, following the decision cited supra, we deem it fit to award Rs.50,000/- each to the appellants, under the head love and affection. The Tribunal has awarded Rs.10,000/- under the head funeral expenses. Following the very same judgment, the same is increased to Rs.25,000/-. In view of the above

modification, the appellants are entitled to a compensation of Rs.24,04,500/-. Split up particulars are as follows:

Loss of contribution to family	: Rs.20,29,500/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection @ Rs.50,000/- each to the appellants	: Rs. 2,50,000/-
Funeral Expenses	: Rs. 25,000/-
Total	: Rs.24,04,500/-

12. Compensation already determined by the Tribunal is Rs.9,63,500/-. On appeal, compensation determined by this court is Rs.24,04,500/-. Therefore, compensation is enhanced by Rs.14,41,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit.

13. Learned counsel for the second respondent/insurance company submitted that the insurance company has deposited entire amount awarded by the Tribunal along with interest. Insurance company, is directed to deposit the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment.

14. The enhanced compensation of Rs.14,41,000/- can be apportioned as follows:

Wife of the deceased	: Rs.3,00,000/-
Son of the deceased	: Rs.2,50,000/-
Daughter of the deceased	: Rs.2,50,000/-
Minor daughter of the deceased	: Rs.5,41,000/-
Mother of the deceased	: Rs.1,00,000/-

On such deposit, claimants/legal representatives of the deceased Jayachandran, are permitted to withdraw the share apportioned to them, with proportionate interest and costs. Share of the minor, namely 4th respondent herein/Minor Pavithra, is directed to be deposited in any one of the Nationalised Banks under reinvestment scheme, proximate to the residence of the first appellant/mother of the minor Pavithra and renewable thereafter. Appellant No.1/mother of the minor children is permitted to withdraw interest once in three months, till the minor child attains majority. Tribunal is directed, to disburse the amount only on proper identification and proof.

Civil Miscellaneous Appeal is allowed in the above terms. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

asr

To

The Motor Accident Claims Tribunal
(I Additional District Court), Tindivanam.

+1 CC to Mr.D. Bhaskaran, Advocate sr 22876
+1 CC to Mr.J.Michael Visuvasam, Advocate sr 22703

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