

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2017

Coram

The Hon'ble Mr.Justice Nooty Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

C.M.A.No.1534 of 2014

and

C.M.A.No.71 of 2015

and

M.P.No.1 of 2014 in C.M.A.No.1534 of 2014

National Insurance Company Ltd.,
2nd floor, No.110, Jawaharlal Nehru Street,
Pondicherry.

...Appellant in C.M.A.No.1534 of 2014

&

R-2 in C.M.A.No.71 of 2015

Vs

1. Geethalakshmi
2. Minor Iniyavan
3. Bommi
4. V.Elumalai
5. E.Sivagami

...R.1-5 in C.M.A.No.1534 of 2014

&

Appellants 1 to 5 in C.M.A.No.71/2015

6. Ramamurthi

...R.6 in C.M.A.No.1534 of 2014

&

R-1 in C.M.A.No.71 of 2015

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.A.C.T.O.P No.46 of 2011, dated 19.08.2013, on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Court) Tindivanam.

For Appellant in C.M.A.No.1534 of 2014/
R-2 in C.M.A.No.71 of 2015/

Insurance Company

:

M/s.N.B.Surekha
Standing Counsel

For..R.1-5 in C.M.A.No.1534 of 2014/
Appellants 1 to 5 in C.M.A.No.71/2015/
Claimants : Mr.A.Raja Ganapathy

For R.6 in C.M.A.No.1534 of 2014/
R-1 in C.M.A.No.71 of 2015
Owner of the Vehicle : Mr.M.Devaraj

COMMON JUDGEMENT

(Judgment of the Court was delivered by Nooty Ramamohana Rao, J.,)

Both these Civil Miscellaneous Appeals are preferred, one by the Insurance Company, and other by the claimants, aggrieved by the award, dated 19.08.2013, passed by the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Tindivanam, (henceforth, referred to as 'the Tribunal') in M.A.C.T.O.P.No.46 of 2011. They are hence heard together, and they stand decided/disposed of, by this common Judgment.

2. Heard M/s.N.B.Surekha, learned Standing Counsel for the Insurance Company, Mr.A.Raja Ganapathy, the learned counsel for the claimants, and Mr.M.Devaraj, learned counsel for the owner of the offending Vehicle.

3. One E.Sivakumar, working as a B.T. Assistant, in Government Higher Secondary School, Thazhudali, was proceeding on a two wheeler (Motor Bike) bearing Registration No.TN-32-Q-9853, on 22nd December, 2010, in the morning hours to reach his School situate at Thazhudali, Villupuram District, where, the offending Truck, (viz.,Tipper Lorry) bearing Registration No.TN-45-E-8080, came from behind and hit the motor bike. In the accident thus caused, the B.T. Assistant, E.Sivakumar, sustained severe injuries on the spinal cord. He was immediately rushed to the nearby Mundiambakkam Medical College, where, he was diagnosed to have suffered from quadriplegia cervical spine injuries and compound fracture on the right elbow. Thereafter, for further treatment, he was taken to a private Hospital, which is a leading Multi Specialty Hospital at Chennai. He was immediately subjected to a critical surgical procedure. In spite of best medical attention, the teacher succumbed to the injuries and died on 31.12.2010. Hence, his widow, minor son, his parents and his sister have instituted the Claim Petition, in M.A.C.T.O.P.No.46 of 2011, seeking payment of compensation, in a sum of Rs.1,00,00,000/-.

4. On behalf of the claimants, three witnesses were examined, and fifteen documents were got marked. While on behalf

of the Insurance Company, three witnesses were examined and seven documents were marked. P.W.1 is the first claimant, the widow of the deceased E.Sivakumar. For the present purpose, what is relevant to notice from her deposition is that, the deceased Sivakumar was selected and was working as B.T. Assistant, in a Government Higher Secondary School, and that, he possessed a Post Graduate Degree (M.Sc.) and also B.Ed. Degree. It is also the claim of the claimants that the deceased Sivakumar has secured M.phil degree. For the present enquiry, it is appropriate for us to notice Ex.P.7, the Pay Certificate issued by the Head Master, Government Higher Secondary School, Thazhudali Taluk, Villupuram District, on 3rd July, 2012. The Pay Certificate has furnished the monthly salary particulars of the deceased Sivakumar, during the academic year 2010-2011. Ex.P.15 is the photostat of the Pay certificate of the deceased Sivakumar, for the month of December, 2010. On perusal of Exs.P.7 and P.15, it is clear to us that the scale of pay attached to the post of B.T. Assistant was Rs.9,300 - 34,800 with grade pay of Rs.4,400. His duty pay was fixed as Rs.13,070/-, on which, he was paid dearness allowance of Rs.7862/- and also house rent allowance of Rs.1240. Thus, his total earnings, per month, come to Rs.26,672/-. Ex.P.14 is Page No.3 of the Service Register of Shri.E.Sivakumar, that contains the bio-data, and column 5 thereof relates to his date of birth, and it was recorded therein as '26-06-1976'. Thus, by the time, the accident had taken place, the deceased Sivakumar was only 34 years old. The educational qualification entered in column eight revealed that he possessed B.Sc. and B.Ed. degrees. The Service Register is also signed by the Assistant Elementary Educational Officer, Mylam, vouching for the correctness of the entries made therein.

5. It is, thus, clear from the above that, if the deceased Sivakumar has survived, he would have continued to serve the State Government till the age of 58 years, which is the prescribed age for superannuation. In other words, he had prospects of serving the State Government for more than 23 years, during which period, it would be reasonable for us to infer that the scale of pay of the government servants would have been revised at least on two occasions, if not, three times. There is no dispute that the offending Truck was driven rashly and negligently by the Truck driver, that perhaps, caused the accident, because, there were Policemen deployed on that day, owing to the visit of very important person (Mr.Rahul Gandhi) and the traffic was flowing on the road very smoothly. Arrangements were also made by the local Police, clearing the road traffic in such a way, that the VIP convoy of vehicles will not have any difficulty to reach the destination on time. Therefore, the Truck Driver was careless, and thus, caused the

accident. Because of the high speed, at which, he was driving the truck, he could not avoid the collision with the two wheeler. It is all the more tragic that, the deceased Sivakumar though was a helmeted rider, sustained multiple injuries on his spinal cord, all due to the impact of the accident.

6. We, therefore, have no good reason to interfere with finding of fact by the Tribunal that, the accident has been caused solely due to the negligence of the Truck Driver, and there wasn't any contribution on the part of the deceased Sivakumar, who was riding the two wheeler. It is all the more unfortunate that, a Policeman (P.W.2) on duty at that very spot, had arranged for shifting the injured Sivakumar to the nearby Medical College Hospital, and in spite of best medical care and attention and also surgical intervention, the deceased Sivakumar could not be saved.

7. The Tribunal, on evaluation of both pleadings and evidence, has awarded a sum of Rs.34,16,443/- as compensation under various heads (morefully described infra). It has calculated the annual income of the deceased as Rs.1,83,108/- and adopted multiplier '16' and thus worked out the loss of earnings as Rs.29,29,728/- (Rs.1,83,108 x 16 =Rs.29,29,728/-). A sum of Rs.2,71,715/- was awarded towards medical expenses and ambulance charges, towards funeral expenses, a sum of Rs.15,000 was awarded, and towards love and affection, a sum of Rs.1,00,000/- was awarded, and towards loss of consortium and loss of estate, a sum of Rs.1,00,000/-. Thus, making a total compensation amount of Rs.34,16,443/-

8. M/s.N.B.Surekha, learned Standing Counsel for the Insurance Company assailed the correctness of the award passed by the Tribunal by raising three objections. Firstly, she objected that, there was no adequate material on record to rule out any possibility of negligence and contribution to the accident by the deceased, who was riding a two wheeler. Secondly, it is her objection that, only 10% deduction has been made towards income tax payable by E.Sivakumar, whereas, it should have been 30%. Her third objection is that, P.W.3, being only a Junior Assistant, in the Office of the District Educational Officer, not being the custodian of the service record of the deceased, his deposition ought not have been relied upon for the purpose of determining the earnings of the deceased Sivakumar, all the more so, when he is not summoned by the Court, but was cited by the claimants, and hence, he should have been treated as interested witness. The learned counsel finally summed up her arguments by stating that the award passed by the Tribunal calls for our interference.

9. Mr.A.Raja Ganapathy, learned counsel for the claimants submitted that, while computing the compensation amount, the Tribunal has erroneously omitted to take into account two factors, viz., compensation on the component of i) future prospects and ii) loss of guidance to the minor claimant, son of the deceased.

10. We find no merit in the objections raised by the learned Standing Counsel for the Insurance Company, and we answer the same, by assigning following reasons:-

a) As observed by us in the preceding para, there is no dispute that the offending Truck was driven in a reckless manner, that resulted in the accident, because, there were Policemen deployed on that day, owing to the visit of a very important person (Mr.Rahul Gandhi) and the flow of traffic on the road was very smooth. In addition to that, arrangements were made by the local Police, in such a way, that the VIP convoy of vehicles will not have any hindrance or obstacle to reach the destination on time. Therefore, it could be easily inferred that the Truck Driver was careless, and because of high speed, at which, he was driving the truck, he could not apply the break on the spur of the moment so as to avoid collision with the two wheeler. Therefore, the first objection raised by the learned Standing Counsel for the Insurance Company that there was no material on record to rule out any possibility of negligence on the part of the deceased, who was riding a two wheeler, is unacceptable. Material, if any available to demonstrate the contribution of the deceased, ought to have been brought on record. The negative, could not be established, but, can only be inferred.

b) In regard to the second objection of the learned Standing Counsel for the Insurance Company that the Tribunal ought to have deducted 30% towards the income tax payable by the deceased and not 10%, we would like to point that the Tribunal, while determining the gross income of the deceased Sivakumar, has taken into account, duty pay, grade pay, dearness allowance, house rent allowance and even HRA, and, since the annual earnings of the deceased Sivakumar are only in the range of Rs.26,672/-x12 =Rs.3,20,064/-, deduction of 10% has been made towards income tax, and the same is fair and reasonable. At any rate, there is no material available on record for us to take note of the prevailing tax structure for the relevant assessment year. Therefore, second objection of the learned Standing Counsel for the Insurance company is also not tenable.

c) Insofar as the third objection is concerned, we would like to point out that, it is the Junior Assistants working in Schools, who would be maintaining all the records and registers. They may not be the actual custodians of such School records. The entire records of a School would lie in the custody of the Head Master, but, Junior Assistant in the School, is the one, who renders assistance to the Head Masters for attending to the ministerial and administrative works day in and day out. Therefore, examination of P.W.3 (Junior Assistant) by the claimants is not improper, as contended by the learned Standing Counsel. Similarly, what P.W.3 has brought out is a part of the record maintained by the Government for all practical purposes. He does not become an interested witness in that sense of the word. There is no denial of the fact that he is working as a Junior Assistant in the School, where, the deceased Sivakumar was working. Thus, P.W.3 is also a fellow government servant. He is the one, who is rendering ministerial assistance to the Head Master of the School. He mainly maintains the record on behalf of the Government, and hence, marking Ex.P.15 through PW3 is not improper, therefore, the objection raised in this regard, does not hold the field.

11. Then, coming to the contentions put forth by the learned counsel for the claimants that the Tribunal has failed to award compensation on the component of Loss of Future Prospects and Loss of Guidance to the minor claimant, we find the same as sustainable.

12. As rightly pointed out by the learned counsel for the claimants, the Tribunal has not taken note that the deceased Sivakumar was a Government Servant, and apart from awarding compensation towards loss of earnings, compensation towards future prospects also needs to be awarded. Apropos, it would be worthwhile to refer to the judgement rendered by the the Hon'ble Supreme Court, in re (Sarala Verma Vs. Delhi Transport Corporation) reported in (2009) 6 S.C.C. 151, wherein, it was clearly enunciated principle that, in addition to the compensation towards loss of earnings, compensation towards future prospects has also to be provided. In paragraph 24 of the said judgment, the Hon'ble Supreme Court opined that they are in favour of adopting, as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where, the deceased had a permanent job and was below 40 years of age. The Hon'ble Supreme Court also further mentioned that the addition should be only 30%, if the age of the deceased was 40 to 50 years, and that, there should be no addition, where the age of the deceased is more than 50 years.

13. The philosophy behind the principle enunciated by the Hon'ble Supreme Court, in the above referred judgment is that, if the deceased is employed against a permanent job, it is more

likely that, he will be earning much more than what he was earning, at the time of the accident, during the rest of the tenure of his service.

14. In the instant case, the deceased was still having 23 years of service to reach the age of superannuation, but, however, we should also take note of the fact that, whenever, pay revisions are undertaken for the government servants, the increase of the salary structure ranges between 10 to 20%. Thus, for the person occupying the position of a BT Assistant, in a Government Higher Secondary School, we can expect an upward revision of not more than 15%, and during the remainder of 23 years of service, we can reasonably expect couple of revisions of pay to take place. Normally, the State Government will be undertaking Pay Revisions between 10 to 12 years span. Hence, we can reasonably expect that the deceased would have earned a maximum of 30% increased earnings for the remainder of his service, inasmuch as, first revision would have fetched him only 15% hike, while the next revision, which may be undertaken after 10 to 12 years span, would have fetched another 15% hike. Therefore, it would only be safe in the instant case to increase the earnings of the deceased by 25%, while determining the compensation on the component of, 'Future prospects'.

15. The total monthly salary of the deceased was Rs.26,672/-, and 10% thereof, when deducted towards income tax, comes to Rs.24,000/-. Out of the said monthly salary of Rs.24,000/-, it is reasonable for us to expect that he would have contributed to the family, around 70%, and would have spent nearly 30% towards his personal expenses, maintenance, and upkeep, pursuits of pleasure/leisure, considering the fact that, he is working in a High School, and he has to present himself well dressed and in a well mannered fashion. Therefore, we hold that the deceased Sivakumar would have spent nearly 30% of his earnings on his upkeep. Thus, from and out of his monthly salary of Rs.24,000/-, 30% thereof, when deducted towards personal expenses, comes to Rs.16,800/- [i.e., Rs.24,000/- - Rs.7,200/- = Rs.16,800/-] and, if we add 25% increase to the monthly income, it works out to Rs.21,000/- (Rs.16,800 + Rs.4,200/- = Rs.21,000/-), and when multiplied by 12 & 16, it works out to Rs.40,32,000/- (i.e., Rs.21,000 x 12 x 16 = Rs.40,32,000/-).

16. Insofar as award of compensation on the component of loss of guidance for the minor son of the deceased is concerned, we opine that a sum of Rs.50,000/- should have been awarded as compensation towards the loss of guidance for the minor claimant, considering the fact that the deceased was a Science teacher, and he would have meaningfully contributed to guide him in future. Thus, subject to the extent of the modification made by us supra, the award of the Tribunal stands confirmed in all other aspects.

17. Shri.M.Devaraj, learned counsel appearing on behalf of the owner of the vehicle has submitted that the owner of the vehicle has not preferred any Appeal against the judgment rendered by the Tribunal. Hence, the finding of the Tribunal that the Insurance Company shall pay first and recover it from the owner later also becomes final.

18. Accordingly, the Insurance Company is granted liberty to pay first the compensation, and recover it from the owner of the vehicle. Monies deposited, by other claimants, except, second claimant, shall be permitted to be withdrawn, and the monies payable to the second claimant (who is a minor) shall be confined to an interest bearing fixed deposit with Indian Bank, having branch at Madras High Court, till such time, he attains the age of majority. However, the first claimant is only permitted to withdraw the annual interest accruing thereon, for the purpose of spending it for the education, up keep and maintenance of the minor claimant.

19. In the result, the Civil Miscellaneous Appeal preferred by the Insurance Company, viz., C.M.A.No.1534 of 2014 stands dismissed with no costs, and C.M.A.No.71 of 2015, preferred by the claimants is partly allowed, subject to the afore mentioned modification. There shall be no order, as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

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To

Sub Assistant Registrar

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal, Tindivanam.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.B.Surekha, Advocate, S.R.No.20811
+2cc to Mr.M.Kalyani, Advocate, S.R.No.20387
+1cc to Mr.M.Devaraj, Advocate, S.R.No.20652

C.M.A.No.1534 of 2014 and 71 of 2015

SD(CO)
RS(06/06/2017)