

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1722 of 2017

1. Nainakumari
2. Sivasuthan

... Appellants

versus

The Managing Director,
Tamilnadu State Transport Corporation Limited,
No.12, Ramakrishna Road,
Salem-7

... Respondent

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.932 of 2010, dated 19.02.2015, on the file of the Motor Accident Claims Tribunal, [Special District Court], Salem.

For Appellants : Mr.C.Prabakaran
For Respondent : Mr.D.Venkatachalam

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR ,J.)

Not satisfied with the quantum of compensation of Rs.9,79,800/-,
with interest at the rate of 7.5% per annum, from the date of claim till
deposit, parents have filed the instant appeal for enhancement.

2. Accident has occurred on 13.10.2009. Deceased was stated to be aged 25 years and as House Surgeon in Vinayaga Missions Sankarachariyar Dental College, Salem, earned Rs.20,000/- per month. Supporting the profession, claimants/parents have marked Ex.P5, certificate of completion of BDS Course and Ex.P6 to Ex.P9, Mark Sheets. Upon perusal of the same, by observing that at the time of accident, the deceased Sabari was doing Compulsory Rotatory Internship Programme, the tribunal fixed the monthly income as Rs.6,000/-. Following the judgment of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation Ltd.**, reported in **2009 (2) TNMAC 1**, added 50% under the head, future prospects and arrived at Rs.9,000/- for the purpose of computing the loss of contribution to the family. Deceased being a bachelor, the tribunal deducted 50% of the same, towards his personal and living expenses. Applying multiplier '18', computed the loss of contribution as Rs.9,72,000/-. Thereafter, deducted 10% towards Income Tax and awarded Rs.8,74,800/- as loss of earning. That apart, awarded Rs.25,000/- for funeral expenses, Rs.40,000/- each, under the head, loss of love and affection and altogether, the tribunal has awarded Rs.9,79,800/- with interest.

3. Seeking enhancement of the quantum of compensation,

Mr.C.Prabakaran, learned counsel for the appellants submitted that the

tribunal has failed to consider the entries in Exs.P5 to P9, Mark statements of the deceased and also the fact that deceased had completed BDS.

4. According to him, the tribunal has fixed a lesser income of just Rs.6,000/- per month, for the purpose of computing the loss of contribution ignoring the professional qualification. In this context, he also relied on the decision of the Hon'ble Supreme Court in ***Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma & another*** reported in 2015 (1) TN MAC 52 (SC). Inviting the attention of this Court to the age of the deceased, loss of love and affection to the parents, he sought for suitable enhancement.

5. Per contra, Mr.D.Venkatachalam, learned counsel for the Tamilnadu State Transport Corporation, the respondent submitted that the quantum of compensation is just and reasonable and that there is no need for enhancement.

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

7. After considering a decision of the Hon'ble Supreme Court in ***Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and another***, reported in 2010 (2) TN MAC 383 SC: 2010 (10) SCC 254, the Hon'ble Apex

Court in *Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma & another* reported in 2015 (1) TN MAC 52 (SC) at paragraph No.8, held as follows:

"8. The Tribunal and the High Court have not taken into proper consideration that the deceased was a student of medicine at the time of the accident while determining his future income. The courts below have wrongly ascertained the future income of the deceased at only Rs.18,000/- per month, which in our view is too less for a medical graduate these days. Therefore, the courts below have failed in following the principles laid down by this Court in this aspect in the above case. The deceased was a diligent and outstanding student of medicine who could have pursued his M.D. after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs.25,000/- p.m. i.e. Rs.3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per *Oriental Insurance Co. Ltd. v. Deo Patodi and Ors* [(2009)13 SCC 123], and applying the appropriate multiplier of 13, keeping in mind the age of the parent of the deceased, as per the guidelines laid down in *Sarla Verma case* (supra), we arrive at a total loss of dependency at Rs.26,00,000/- [(Rs.3,00,000/- minus 1/3 X Rs.3,00,000/-)X 13]."

8. Perusal of *Ashvinbhai's* case shows that the accident occurred on 02.07.2002. Deceased therein was a 19 years old student, pursuing medical degree with good marks. By observing that medical practice is one of the most sought after and rewarding profession, Hon'ble Supreme Court fixed the loss of future income as Rs.25,000/- per month.

9. Insofar as future prospects of students pursuing professional course, it is useful to extract paragraph No.14 of the judgment of the Hon'ble Apex Court in *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and another*, reported in 2010 (2) TN MAC 383 SC: 2010 (10) SCC 254, referred to, in *Ashvinbhai's case*, stated supra.

“14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs. 3,50,000/- per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is

fair and reasonable to assess his future earnings at Rs. 60,000/- per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis....”

10. In the light of the decisions, we deem it fit to fix the monthly income of the deceased as Rs.18,000/- per month. The deceased was aged 25 years. 50% of the income now fixed is added under the head future prospects. '18' is the proper multiplier. After deducting 50% towards personal and living expenses and also deducting the income tax, loss of contribution to the family is computed as hereunder.

Monthly Income fixed at	: Rs.18,000/-
ADD : 50% future prospects	: Rs. 9,000/-
Total	: Rs.27,000/-
Annual Income (Rs.27,000/- x 12)	: Rs.3,24,000/-

Income Tax Calculation:

Annual Income	: Rs.3,24,000/-
Less Income Tax deduction u/s 80C, 80CCC, 80CCD	: Rs.1,00,000/-
Taxable Income	: Rs.2,24,000/-

Income Tax Slab :

Upto Rs.1,60,000/-	: Nil
Rs.1,60,001/- to Rs.3,00,000/- @ 10%	: Rs.6,400/-
Edu. Cess @ 3%	: Rs. 192/-
Total Tax	: Rs.6,592/-

Total Annual Income LESS Tax [Rs.3,24,000/- (-) Rs.6,592/]	: Rs.3,17,408/-
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Less 50% towards Personal and living expenses	: Rs.1,58,704/-
Total loss of Income	: Rs.1,58,704/-

Loss of contribution to the family by applying multiplier '18'	: Rs.28,56,672/-
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11. Parents have lost their only son. Though loss of love and affection cannot be estimated precisely in terms of money, yet having regard to the age of the deceased and parents, we deem it fit to award Rs.1,00,000/- each. Thus, compensation under the head Loss of love and affection is Rs.2,00,000/-. In terms of judgment in **Rajesh and others Vs. Rajbir Singh and others**, reported in 2013(3) CTC 883, funeral expenses of Rs.25,000/-, appears to be reasonable. However, tribunal has not awarded any compensation under the heads transportation and conventional damages. Rs.10,000/- for transportation and Rs.2,000/- for damages to clothes and articles, would be reasonable. In the result, parents/claimants would be entitled to Rs.30,93,672/- with interest at the rate of 7.5% per annum, as hereunder.

Loss of contribution to the family	: Rs.28,56,672/-
Loss of love and affection	: Rs. 2,00,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Damages to Clothes	: Rs. 2,000/-

12. Compensation awarded by the tribunal is Rs.9,79,800/-. On appeal, compensation determined by this Court is Rs.30,93,672/- Enhancement of compensation is Rs.21,13,872/-. The award amount is apportioned as hereunder.

Mother/1st appellant	: Rs.20,00,000/-
Father/2nd appellant	: <u>Rs.10,93,672/-</u>
Total	: <u>Rs.30,93,672/-</u>

13. The Managing Director, Tamilnadu State Transport Corporation Limited, Salem, the respondent herein is directed to deposit the entire award amount, now determined by this Court, along with interest, at the rate of 7.5% per annum with costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.932 of 2010, on the file of the Motor Accident Claims Tribunal, [Special District Court], Salem, within a period of four weeks from the date of receipt of a copy of this order.

14. On such deposit, appellants/claimants are permitted to withdraw their share in the award amount, as apportioned now, with proportionate interest and costs, by making necessary applications.

15. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

(S.M.K., J) (M.G.R., J.)
27.06.2017

Index: Yes/No.

Internet: Yes/No.

Note:

The tribunal is directed to put up a copy of the order made in this appeal, in the notice board, mentioning the names of the parties to MCOP No.932 of 2010 and further directed to disburse the amount after due verification and identity.

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S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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To

1. The Motor Accident Claims Tribunal,
[Special District Court], Salem,

2. The Section Officer,
VR Section, High Court, Madras



C.M.A.No.1722 of 2017

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