

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.03.2017

CORAM:

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

C.M.A. No.650 of 2015

1.Sumithra
2.Minor Sakthi Ganapathi
3.Minor Mahalakshmi
2nd and 3rd appellant rep. by their
mother, the first appellant
4.Shanmugam
5.Shanthi ... Appellants

Vs.

1.Bijoy KR Saha
2.Bharathi Axis General Insurance
Company Ltd.
No.162, Anna Salai
Chennai - 600 002 ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 25.03.2014 made in M.C.O.P. No.3480/2012, on the file of Motor Accidents Claims Tribunal (III Judge, Small Causes Court), Chennai.

For Appellants : Mr.T.Terry Chella Raja
For Respondents: Mr.S.Arunkumar for R2

JUDGMENT

(Made by S.MANIKUMAR, J.)

Not satisfied with the quantum of compensation of Rs.17,23,000/- with interest, at the rate of 7.5% per annum from the date of claim till deposit and costs, awarded in M.C.O.P.No.3480/2012 dated 25.03.2014 on the file of the Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai, legal representatives of the deceased, have filed the instant appeal.

2. According to the wife, aged about 21 years and other appellants herein, at the time of accident, their breadwinner, was a skilled worker in H.R.D. Consulting Group and earned Rs.15,000/- per month. To support the same, they have marked Ex.P5-ITI Certificate, Exs.P6 and P7 - Wage slips, Ex.P10 - Attendance Register and Ex.P11 - Wage Register extract. PW3,

co-employee has also been examined. Though Ex.P6 - wage slip indicated that the deceased was earning gross wage of Rs.12,465/- for the month of February 2012, for the purpose of computing the loss of contribution to the family, the Tribunal, has fixed the same, as Rs.8,000/- per month. By applying the principles laid down in Santhosh Devi v. National Insurance Co. Ltd. reported in 2012(6) SCC 421, the Tribunal considered 30% of the income under the head future prospects.

3. As the deceased was aged 24 years at the time of accident, the Tribunal applied '18' multiplier. Though there were five dependents, the Tribunal deducted only 1/3rd towards personal and living expenses of the deceased. By the above said method, the Tribunal computed loss of contribution to the family as Rs.14,97,744/-, which is rounded off to Rs.14,98,000/-. In addition to the above, the Tribunal awarded Rs.1,00,000/- as loss of consortium, Rs.25,000/- for funeral expenses, Rs.25,000/- each, to wife/1st appellant, minor appellants 2 and 3 and mother/5th appellant, totalling Rs.1,00,000/- for loss of love and affection. Thus, the Tribunal awarded compensation of Rs.17,23,000/- with interest, at the rate of 7.5% per annum from the date of claim till deposit and costs, as here under:

Loss of Contribution to the family :	Rs.14,98,000/-
Loss of Consortium :	Rs. 1,00,000/-
Funeral Expenses :	Rs. 25,000/-
Loss of love and affection (Rs.25,000/- each to the appellants 1 to 3 and 5) :	Rs. 1,00,000/-
Total :	Rs.17,23,000/-

4. Supporting the prayer for enhancement and inviting the attention of this court to the gross wage of Rs.12,465/- mentioned in Ex.P6 - wage slip, educational qualification supported by Ex.P5-ITI Certificate, period of training from 08.09.2008 to 11.11.2008, Mr.T.Terry Chellaraja, learned counsel for the appellants, submitted that, when oral testimony of PW3, co-employee is duly corroborated by the abovesaid exhibits, and not disputed by the respondent/insurance company, the Tribunal erred in fixing the monthly income of the deceased as Rs.8,000/- contrary to evidence. He further contended that when the deceased was aged 24 years, the Tribunal ought to have taken 50% of the income under the head future prospects, for computing the loss of contribution to the family. Based on the decision of the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1

(SC), contention has also been made that when the number of dependents is five, deduction should have been 1/4th instead of 1/3rd towards the personal and living expenses of the deceased. Lastly, he submitted that the quantum of compensation awarded under the head love and affection, is less.

5. Responding to the above, Mr.S.Arunkumar, learned counsel for the insurance company submitted that the overall quantum of compensation awarded by the Tribunal is not excessive. However, he submitted that there could be some enhancement towards loss of contribution to the family.

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

6. As rightly contended by the learned counsel for the appellants that when the claimants have adduced evidence to prove that at the time of accident, the deceased was a skilled worker in H.R.D. Consulting Group company and to substantiate the same, examined PW3, a co-employee, whose testimony is duly corroborated by Ex.P5 - ITI Certificate, Exs.P6 and P12 - Wage slips, Ex.P10 - Attendance Register Extract, Ex.P11-Wage Register Extract, there is no reason as to why the Tribunal should fix the monthly income as Rs.8,000/- instead of Rs.12,465/- mentioned in Ex.P6. From the reading of the impugned judgment, it could be seen that the deceased joined duty on 16.04.2007 and he was given training from 08.09.2008 to 11.11.2008. Ex.P6-wage slip is referable to the month of February 2012. Accident has occurred on 27.03.2012. Ex.P6 is proximate to the date of accident. Considering the cumulative effect of oral and documentary evidence, the Tribunal ought to have fixed the monthly income of the deceased as Rs.12,465/- instead of Rs.8,000/-.

7. For the purpose of adding up further income under the head of future prospects, the Tribunal has relied on Santhosh Devi v. National Insurance Co. Ltd. reported in 2012(6) SCC 421. The deceased was employed as a skilled labour in H.R.D. Consulting Group. Ex.P9 is the service tax demand notice indicating that the deceased was working in an organised sector, in which event, decision of the Honourable Supreme Court in Santhosh Devi's case can be made applicable for suitable addition of income, under the head future prospects. As the deceased was aged 24 years, following the above said judgment, this court deems it fit to add 50% of the income under the head future prospects, for the purpose of computing the loss of contribution to the family. If that is done, the same works out to Rs.18,697.50. Multiplier '18' has been correctly applied. Loss of contribution to the family works out to

Rs.18,697.50 x 12 x 18 x 3/4 = Rs.30,29,995

Rounded off to Rs.30,29,000/-

8. At the time of accident, appellant No.1/widow, was aged 21 years. Compensation of Rs.1,00,000/- under the head loss of consortium is justifiable in the light of Reshma Kumari's case. Funeral expenses of Rs.25,000/- is reasonable. However compensation of Rs.1,00,000/- awarded under the head loss of love and affection to the minor children, aged about 3 years and 1 year and parents aged about 67 years and 47 years, respectively is less. Considering the age of the minors, who have lost the love and affection of their father, guidance, we are inclined to award Rs.1,00,000/- each, to the minor children under the head loss of love and affection and Rs.50,000/- each, to the parents, as compensation. Under the head love and affection, compensation is enhanced by Rs.2,00,000/-. There is no award under the head transportation and conventional damages. To remove the corpse from the hospital to the residence or from the residence to the burial ground, one may require reasonable expenses, which we quantify as Rs.10,000/-. Rs.1,000/- is awarded under the head conventional damages.

9. In view of the re-working, as stated supra, compensation due and payable to the legal representatives of the deceased/appellants works out to Rs.34,65,000 with interest at the rate of 7.5% per annum from the date of claim till realisation, and costs, as here under:

Loss of contribution to the family:	Rs.30,29,000/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection (Rs.1.00 Lakh each to the minor children and Rs.50,000/- each to the parents)	: Rs. 3,00,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Damages to clothes	: Rs. 1,000/-

	Rs.34,65,000/-

Compensation already determined by the Tribunal is Rs.17,23,000/- On appeal, compensation determined by this court is Rs.34,65,000/- Therefore, compensation of Rs.17,23,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit and costs, awarded by the Tribunal is enhanced to Rs.34,65,000/- with interest at the

rate of 7.5% per annum from the date of claim till deposit and costs.

10. It is represented by the learned counsel for both parties that the entire award amount with proportionate cost has already been deposited to the credit of of MCOP No.3480 of 2012. Therefore, the 2nd respondent/insurance company is directed to deposit the balance amount of Rs.17,42,000/- with interest, at the rate of 7.5% per annum to the credit of the above said MCOP, within a period of four weeks from the date of receipt of this judgment.

11. Mr.T.Terry Chella Raja, learned counsel for the appellants, fairly conceded that the enhanced compensation of Rs.17,42,000/- can be apportioned at the rate of Rs.5,00,000/- each to the minor child, Rs.2,50,000/- each, to the parents and the remaining amount, namely Rs.2,42,000/- to the first appellant/wife, with proportionate interest. Submission of the learned counsel for the appellants is placed on record. On such deposit, appellant No.1/widow and parents, appellants 4 and 5 respectively, are permitted to withdraw the share apportioned to them with proportionate interest and costs. Share of the minors, namely appellants 2 and 3 herein, directed to be deposited in any one of the Nationalised Banks under reinvestment scheme, proximate to the residence of the appellants 2 and 3/claimants 2 and 3 and renewable thereafter. Appellant No.1/mother of the minor children is permitted to withdraw interest once in three months, till the minor children attain majority.

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

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

asr

To

1. The Motor Accident Claims Tribunal
(III Judge, Small Causes Court), Chennai.
2. The Section Officer, Vr Section, High Court, Madras.

+ 1 cc to M/s. M. Malar, Advocate SR.15239

+ 1 cc to M/s. s. Arunkumar, Advocate SR.15206

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GMI (CO)

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