

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2017

Coram:-

The Hon'ble Mr. Justice T.S.SIVAGNANAM
and
The Hon'ble Mr. Justice P.VELMURUGAN

C.M.A.No.3779 of 2011

1. R.Ranjitham
2. K.Ramu ..Appellants/Petitioners
v.

1.Mario Pereira
No.2/1, Seagull House Race Course Road
Opposite Janatadal Office,
Madhav Nagar, Bangalore 560 001
(remained exparte before the trial Court)
2. National Insurance Co. Ltd.,
No.751, Anna Salai, II Floor,
Chennai 600 002 ..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 03.06.2011 made in M.A.C.T.O.P.No.3048 of 2006 on the file of the learned VI Judge, Court of Small Causes, Motor Accident Claims Tribunal, Chennai.

For Appellants : Mr.N.M.Muthurajan
For Respondents : Mr.S.Arun Kumar (R2)
R1-Exparte

J U D G M E N T

(Judgement of the court was delivered by T.S.SIVAGNANAM, J.,)

This Civil Miscellaneous Appeal by the claimants is for enhancement of the award granted by the VI Court of Small Causes, Motor Accident Claims Tribunal, Chennai, in M.A.C.T.O.P.No.3048 of 2006 dated 03.6.2011. The appellants/claimants are the parents of the deceased Durairaj, who was killed in a road traffic accident.

2.1 The brief case of the claimants is as follows:-

When the deceased was travelling as a passenger in the Bus bearing Registration No.KA-01-AC-7007 from Goa to Bangalore, in

the National Highways No.4, while the bus was proceeding near Byadgi Police Station Limits, Haveri District, Karnataka, the driver of the bus drove the same in a rash and negligent manner and dashed against a stationary lorry, due to which the deceased died on the spot. The 1st petitioner is the mother and the 2nd petitioner is the father of the deceased Durairaj. The amount of compensation claimed by the appellants was Rs.22,00,000/- under various heads, as detailed below:

Sl.No.	Head	Amount of Compensation awarded (Rs.)
1	Loss of companionship to the appellants	60,000/-
2	Loss of expectation of life	2,00,000/-
3	Loss of pecuniary benefits and loss of estate	19,12,000/-
4	Funeral Expenses	25,000/-
5	Damage to dress material	3,000/-
	Total	22,00,000/-

2.2 The Tribunal, after taking into consideration the oral and documentary evidences placed before it, awarded a total compensation of Rs.6,50,000/- together with interest @ 7.5 % p.a. as detailed below:-

Sl.No.	Head	Amount of Compensation awarded (Rs.)
1	Loss of annual income	6,30,000/-
3	Loss of Love and Affection	10,000/-
4	Funeral Expenses	10,000/-
	Total	6,50,000/-

Aggrieved over the said award, the claimants are before this Court.

3.1 The learned counsel for the appellants would submit that the challenge to the impugned award is on three grounds, firstly by contending that the Tribunal ought to have adopted the multiplier, by taking into consideration the age of the deceased and without doing so, it adopted the multiplier, taking into consideration the age of the mother of the deceased at 43 years and applied 15 multiplier and calculated the annual income.

3.2 The second contention is that the compensation awarded under the heads "loss of love and affection" and "funeral expenses" are ridiculously low and they require to be revised.

3.3 The third contention raised by the learned counsel for the appellants is with regard to non grant of any amount under the head "future prospects". According to him, future prospects have to be taken into consideration, especially when the deceased had marked the salary certificate Ex.B.7.

4. We have heard the learned counsel appearing for the 2nd respondent/Insurance Company on the above submissions.

5. Firstly, as far as the contention with regard to the multiplier which has to be adopted, since the deceased was a Bachelor, the Tribunal ought to have adopted the multiplier applicable to the age of the deceased and in such a case, there can be 50% deduction, however, the Tribunal, in the instant case, adopted the age of the mother of the deceased for ascertaining the multiplier and effected deduction at 50%, which should not have been done by the Tribunal. In terms of the decision in the case of Sarla Verma vs. Delhi Transport Corporation reported in (2009) 6 SCC 121, the proper multiplier would be 17. Therefore, we hold that the correct multiplier which shall be adopted is 17, by taking into consideration the age of the deceased at 26 years and the deduction shall be 50% towards the expenses of the deceased and thus the loss of income is determined at Rs.7,14,000 [7000 x 12 = 84000 (-) 42000 = 42000 x 17 = 7,14,000/-].

6. Coming to the compensation awarded under the head "loss of love and affection" and "funeral expenses, we find the same to be ridiculously low. Taking note of the recent decision of the Hon'ble Supreme Court, we are of the view that grant of a sum of Rs.1,00,000/- towards "loss of love and affection" and Rs.25,000/- towards "funeral expenses" will be just and equitable.

7. The third aspect is with regard to future prospects. This claim is made by the parents based upon the salary certificate Ex.B.7. Admittedly, the salary certificate was marked not through the Employer and the claimants did not examine the employer, but merely produced the salary certificate stating that the deceased was a BBA Graduate and therefore, there are future prospects. The Tribunal, while taking into consideration the said certificate, rightly observed that no official belonging to the Employer's Company has been examined and that the certificate has not been marked through the said Management. Apart from that, no evidence was produced before the Tribunal to show that the deceased had completed any degree course. Thus,

taking note of all the aspects, the Tribunal was fully justified in fixing the monthly income at Rs.7,000/-. With regard to future prospects, admittedly, the deceased was 26 years old at the time of accident and therefore, he would have got married within a year or two and obviously, the parents would not be entitled to claim 50% towards future prospects for their maintenance. This aspect also has to be considered when the deceased is a Bachelor and the claimants are the parents. Therefore, we find no error in the order passed by the Tribunal, fixing the income of the deceased at Rs.7,000/-. For the reasons assigned above, we find that there is no justification to add future prospects when the income of the deceased was not sufficiently established before the Tribunal.

8. Thus, taking Rs.7,000/- as monthly income and deducting 50% towards expenses and by adopting the multiplier adopted 17, the loss of income would be Rs.7,14,000/- ($7000 \times 12 = 84000 - 42000 (50\%) = 42000 \times 17 = 7,14,000$). The compensation towards loss of love and affection is increased to Rs.1,00,000/- from Rs.10,000/- and funeral expenses is increased to Rs.25,000/- from Rs.10,000/-.

9. There is no serious objection in respect of the interest granted at 7.5% per annum.

10. Accordingly, the award of the Tribunal is modified as under:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Loss of Income [$7000 \times 12 = 84000$ $- 42000 = 42000$ $17 = 7,14,000$]	6,30,000/-	7,10,000/-
3	Loss of love and affection	10,000/-	1,00,000/-
4	Funeral expenses	10,000/-	25,000/-
	Total	6,50,000/-	8,35,000/-

11. Since, there is no serious objection with respect to the interest granted at 7.5% per annum, the same is confirmed.

12. In the result, the Civil Miscellaneous Appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is enhanced from Rs.6,50,000/- to Rs.8,35,000/--

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) The Insurance Company is directed to deposit the entire award amount as modified above by this Court to the credit of M.A.C.T.O.P.No.3048 of 2006 on the file of the VI Court of Small Causes, Motor Accidents Claims Tribunal, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgement and on such deposit being made, the claimants are permitted to withdraw the entire award amount now modified by this Court as apportioned by the Tribunal, along with proportionate interest by filing necessary applications before the Tribunal.

There will be no order as to costs in this appeal.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Judge, Court of Small Causes,
Motor Accident Claims Tribunal, Chennai.

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

+ 1 cc to M/s. s. Arunkumar, Advocate Sr.6402

+ 2 ccs to M/s. N.M. Muthurajan, Advocate SR.6393

C.M.A.No.3779 of 2011

RSK(CO)

EU 7.03.2017