

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.773 of 2016

1. Ramya
2. Minor Yamini
3. Minor Dhayanidhibalan
4. Mookkayee
5. Rajendran

...Appellants/Petitioners

[Minors 2 and 3 rep. by their natural guardian and mother Ramya]

vs.

1. M/s.Rasi Seeds (P) Limited,
No.276, Kamarasanar Road,
Athur, Salem District.

2. National Insurance Company Limited,
Rep. by the Divisional Officer,
Divisional Office,
"L.R.N. Complex",
Saradha College Main Road, Salem-7... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decreetal Order in MCOP No.476 of 2014 dated 20.01.2015 on the file of Motor Accidents Claims Tribunal, [Special Judge], Salem.

For Appellants : Mr.P.Dinesh Kumar

For Respondents: Mrs.NB.Surekha (for R2)

J U D G M E N T

[Order of the Court was made by M.GOVINDARAJ, J.]

Not satisfied with the quantum of compensation of Rs.18,68,000/- with interest at the rate of 7.5% per annum, from the date claim till deposit and costs, awarded in MCOP No.476 of 2014 dated 20.01.2015 on the file of Motor Accidents Claims Tribunal, [Special Judge], Salem, the legal representatives of the deceased viz., wife, two minor children and parents, have filed the instant appeal for enhancement of compensation, and restricted it to Rs.25,00,000/-.

2. Brief facts leading to the appeal are that on 31.01.2014 at 06.15pm, the deceased R.Prakash was riding a

motorcycle Bajaj Discover bearing Regn.No.TN-77-D-0020, with his father M.Rajendran as pillion rider, strictly observing the traffic rules on the left side of the road. While he was proceeding very slowly and cautiously, in Attur-Salem National Highway, a light goods vehicle TATA ACE bearing Regn.No.TN-30-T-8651 belonging to the first respondent, came in the same direction ie., from east to west direction, in a rash and negligent manner, and tried to overtake the motorcycle. In that process, the offending vehicle, hit the motorcycle. Due to the sudden impact the motorcycle was toppled and the deceased and pillion rider were thrown off on the road. In result, the deceased sustained serious injuries on the head and all over the body and became unconscious. Immediately, he was taken to Government Hospital, Attur and later referred to Government Mohan Kumaramangalam Medical College Hospital, Salem. Further, he was taken to the Neuro Foundation Hospital, Salem in a private ambulance for speedy treatment and admitted in the intensive Critical Care Unit. As there was no improvement, he was again shifted to Government Mohan Kumaramangalam Medical College Hospital, Salem. But, all efforts ended, in vain and the deceased succumbed to the injuries on 03.02.2014 at Government Mohan Kumaramangalam Medical College Hospital, Salem. In this regard, a case in Crime No.78 of 2014, was registered under Sections 279 and 337 IPC on the file of Attur Police Station Limit and later it was altered into a case under Section 304(A) IPC.

3. Claiming that the deceased was aged 30 years and was working as PWD Contractor and private building contractor, earned Rs.30,000/- per month, legal representatives of the deceased, viz., wife, parents and minor daughter and son, aged 6 and 2 years, respectively, filed claim petition in MCOP No.476 of 2014, on the file of MACT [Special District Judge], Salem, for a sum of Rs.90,00,000/-, towards compensation.

4. Disputing the manner of accident, appellant-Insurance Company, has filed counter affidavit, before the tribunal. Without prejudice to the above, they also disputed the age of the deceased and the quantum of compensation claimed under various heads.

5. Before the Tribunal, wife of the deceased examined herself as PW1, PW2, Mr.Rajendran, the eyewitness to the accident and marked documents viz., Ex.P1 to P21. No oral or documentary evidence was adduced on the side of respondents.

6. On evaluation of pleadings and evidence, the Tribunal found that the driver of the TATA ACE vehicle bearing Regn.No.TN-30-T-8651 was negligent in causing the accident and quantified the compensation as Rs.18,68,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit

and apportioned the same, as under.

Loss of contribution to the family : Rs.17,28,000/-	
[Rs.1,20,000/- x 16] - 10%	
Loss of consortium	: Rs. 40,000/-
Loss of love and affection	
to minor children @ Rs.40,000/- each:	Rs. 80,000/-
to parents @ Rs.10,000/- each	: Rs. 20,000/-
Total	: Rs.18,68,000/-

7. The present appeal is preferred by the claimants. Quantum of compensation alone is under challenge and therefore, we are not inclined to delve into the aspect of negligence and liability.

8. Learned counsel for the appellants/claimants contended that the tribunal erred in ignoring the income found in the Income Tax Returns and fixed the monthly income of the deceased as Rs.10,000/-. He further contended that the award under other heads viz., loss of consortium and loss of love and affection to the parents and minor children, is very less and needs to be enhanced. Except the above, no other submission was made.

9. The deceased was a PWD contractor and to prove his avocation, he has marked documents viz., Ex.P13-Certificate issued by Adidravidar Welfare Officer, Ex.P14, certificate issued by the Executive Engineer, PWD Department and Ex.P15, certificate issued by the Commercial Tax Department. During his life time, the deceased had paid income tax. Exs.P16-Receipt of Income Tax Department, Ex.P17-Certificate of Income Tax Department, Exs.P18 & P19-Certified copies of Form-16A of the Income Tax Department and Ex.P20-certified copy of PAN card, were marked to prove the income of the deceased. The tribunal below did not accept the income tax returns.

10. It is well settled that Income Tax returns is a public document and we could see that the payment was made on the same date i.e., on 12.12.2013, in which case, it is proved that the deceased was paying his income tax from 12.12.2013. Accident had taken place on 31.01.2014. In the light of the judgment of the Hon'ble Supreme Court in Kalpanaraj & Others Vs. Tamil Nadu Transport Corporation, reported in 2014 (5) SCALE 479, we deem it fit that the income should be calculated as per the public document, viz., Income Tax returns. As per the Income Tax returns, the total income shown is as Rs.2,03,740/- and amount of Rs.400/- has been paid as income tax. After deducting the tax paid, we consider that total income of the deceased shall be taken as Rs.2,03,340/-.

11. At the time of accident the deceased was aged 31 years. The tribunal has rightly considered to add 50% towards future prospect, following 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). Accordingly, adding 50% the total income is now modified as Rs.3,05,010/- [Rs.2,03,340/- + 1,01,670/-]. Since the deceased was 31 years of age at the time of accident, multiplier applicable is '16'. After deducting 1/3rd towards personal and living expenses of the deceased, the total loss of contribution to the family works out to Rs.32,53,440/-. (Rs.3,05,010/- x 2/3 x 16). Thus, the award of tribunal under the head loss of income is modified as Rs.32,53,440/-.

12. Further, perusal of the award shows that the tribunal has awarded Rs.40,000/- towards loss of consortium to the wife, aged about 24 years, which is very less and as per the ratio laid down by the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh, reported in 2013 ACJ 1403, a sum of Rs.1,00,000/- is awarded under the said head. Likewise, loss of love and affection awarded to the minor children at Rs.40,000/- each, is also less. Minors are aged 6 and 2 years respectively. Hence, a sum of Rs.1,00,000/- each is awarded under the said head. Sum of Rs.10,000/- each awarded to the parents under the head loss of love and affection, is also a pittance and hence, the same is increased by Rs.50,000/-.

13. Further, it is apparent that except the above heads, tribunal has not awarded any compensation under the heads viz., medical expenses, transportation charges, funeral expenses and conventional damages.

14. Deceased met with an accident on 31.01.2014 and he was taken to Government Hospital, Attur and considering the seriousness of the injury, he was referred to Salem Neuro Foundation multi specialty hospital and thereafter, he was referred to Government Hospital, Attur and since there was no medical facilities available, he was again shifted to Government Medical College Hospital at Salem. In order to save the life of the victim, it is natural to transport him without wasting the precious time. In the hour of need, one has to spend money for transportation, whatever be the cost. Though the legal representatives have claimed Rs.20,000/- towards transportation, tribunal has not awarded any amount. Considering the possible expenditure, we award Rs.10,000/- under the head.

15. As stated above, the deceased was originally taken to Government Hospital and thereafter, considering the seriousness of the injury, shifted to Salem Neuro foundation. It is diagonalised that the injured could have suffered brain death.

Intensive treatment was given to him. Thereafter, he was transported from there to Government Medical College Hospital, Salem for keeping him under ventilator in hi-tech ambulance. In this regard, the claimants have claimed Rs.1,50,000/- towards medical expenses. But when the matter is taken up today, learned counsel for the appellants/claimants, did not have any documents to ascertain the exact money spent on medical expenses. Considering the nature of injury and the treatment given at high specialty hospital, we consider to award Rs.50,000/- towards medial expenses.

16. Following the judgment in Rajesh's case [cited supra], a sum of Rs.25,000/- is awarded under the head funeral expenses. Rs.2,000/- is awarded towards, conventional damages. Accordingly, the total compensation after reworking is as under.

Loss of contribution to the family	: Rs.32,53,440/-
Loss of Consortium	: Rs. 1,00,000/-
Loss of love and affection	
to minor children @ Rs.1,00,000/- each	: Rs. 2,00,000/-
to parents @ Rs.50,000/- each	: Rs. 1,00,000/-
Medical Expenses	: Rs. 50,000/-
Transportation	: Rs. 10,000/-
Funeral expenses	: Rs. 25,000/-
Conventional Damages	: Rs. 2,000/-
Total	: Rs.37,40,440/-
Amount awarded by the Tribunal	: Rs.18,68,000/-
Amount now enhanced	: Rs.18,72,440/-

17. Learned counsel for the insurance company/2nd respondent submitted that they have already deposited the award amount i.e., Rs.18,68,000/- with proportionate interest and costs to the credit of MCOP. We, therefore, now direct the 2nd respondent-Insurance Company to deposit the enhanced compensation an amount of Rs.18,72,440/-, with proportionate interest at the rate of 7.5% per annum from the date of claim till deposit, to the credit of MCOP No.476 of 2014 on the file of Motor Accidents Claims Tribunal, [Special Judge], Salem, within a period of six weeks from the date of receipt of a copy of this order. The total compensation is apportioned as under.

1st appellant/Wife of the deceased	- Rs.11,40,440/-
2nd & 3rd appellant/ Minor children	
each at Rs.10,00,000/-	- Rs.20,00,000/-
4th & 5th appellants/ parents	
each at Rs.3,00,000/-	- Rs. 6,00,000/-
Total	- Rs.37,40,440/-

18. On such deposit, except the minor appellants No.2 & 3, the appellants/claimants are permitted to withdraw their share,

as apportioned above, with proportionate accrued interest and costs, by making necessary applications. The share of the minors/appellant Nos.2 and 3 shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme. The interest accruing on the share of the minors/appellant Nos.2 and 3, shall be paid to the mother of the minors, the 1st appellant herein viz., Mrs.Ramya, once in three months, till they attain majority.

19. The Civil Miscellaneous Appeal is allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Section Officer
ER Section High Court Madras

+1 cc to Mrs.N.B.Surekha Advocate sr 40726

+1 cc to M/s.M.R.Kuyilan Advocate sr 40796

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