

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2641 of 2017

1.Sugamathi
2.Minor Balakrishnan
3.Minor Ajithkumar
4.Thangammal Appellants/Petitioners

Vs.

1. The Chairman
Vivekanantha College of Technology for Woman
Elayampalayam, Tiruchengode Taluk,
Namakkal District.
2. United India Insurance Company Limited
146 N, Kumar Complex, Tiruchengode,
Namakkal District. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 as amended by Act 54 of 1994 to set aside the order passed in M.C.O.P.No.385 of 2010, dated 12.09.2014, on the file of Motor Accident Claims Tribunal Cum Sub Court, Sankari.

For Appellants : Mr.C.Kulanthaivel

For Respondents : Mr.T.Ravichandran for R-2

J U D G M E N T

The deceased, Senthilkumar, aged 36, a lorry driver, earning a sum of Rs.10,000/- per month, died in an accident on 05.04.2010. The claimants, wife, minor children and mother of the deceased have filed a claim petition claiming a sum of Rs.15,00,000/- for compensation, in respect of death of one Senthilkumar.

2. As against the claim made, the Tribunal, on appreciation of oral and documentary evidence, while quantifying the compensation at Rs.7,27,500/-, however, deducted 20% towards contributory negligence on the part of the deceased and passed an award for a sum of Rs.5,82,000/-. Challenging the finding on contributory negligence, the claimants have filed this appeal.

3. The main contention raised by the learned counsel for the appellants/claimants is that the Tribunal committed mistake in fixing contributory negligence to the extent of 20% on the part of the deceased in the absence of any specific charge made against the deceased in the criminal case and there being no acceptable evidence or proof to establish the contributory negligence against the deceased.

4. Per contra, learned counsel appearing for the 2nd respondent submitted that the Tribunal, on proper appreciation of the evidence available on record has recorded a finding on negligence to the extent of 20% on the part of the deceased and, therefore, no interference is called for with the finding recorded by the Tribunal.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel on either side and also perused the materials available on record and also the order passed by the Tribunal.

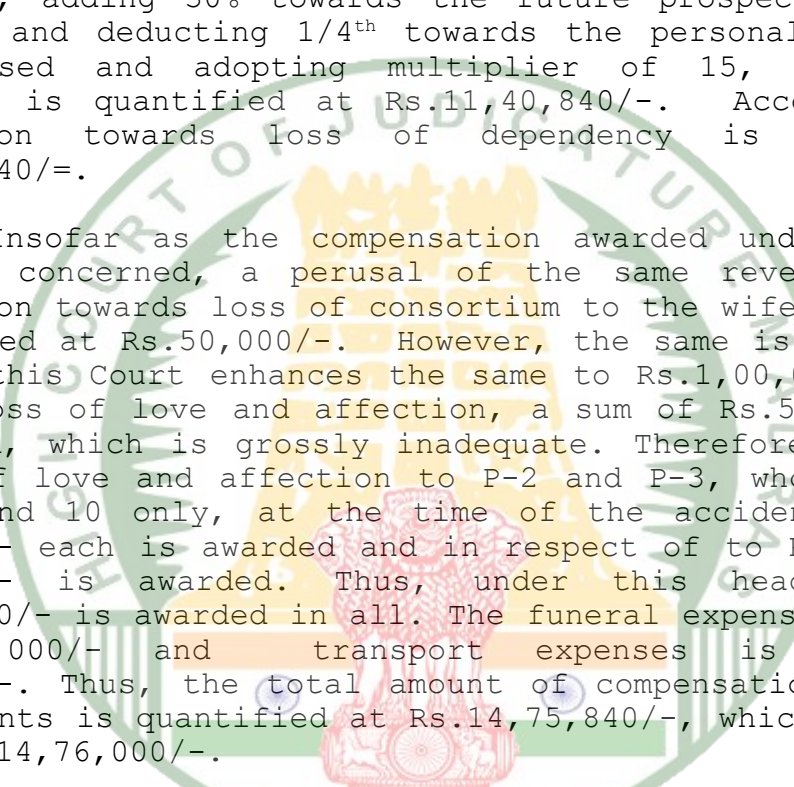
6. A perusal of the award reveals that the contributory negligence has been fixed on the part of the deceased only on the ground that no independent witness has been examined apart from PW-1. In case of motor accident claims, it is not necessary that independent witnesses required to be examined to prove the aspect of negligence. If at all there is a dispute with regard to negligence, proper evidence has to be adduced before a finding on that aspect could be given.

7. In the present case, while the 1st claimant, the wife of the deceased, has examined herself as P.W.1 and has spoken about the way in which the accident had happened, however, no witness has been examined on the side of the Insurance Company to refute the said evidence. The best evidence with regard to the aspect of negligence would be that of the driver of the offending vehicle, who could have spoken about the manner of the accident. However, the driver of the offending vehicle has not been examined before the tribunal. Such being the case, there being no other evidence available on record, the finding of the Tribunal with regard to contributory negligence is totally uncalled for. This Court is of the considered view that the finding of the Tribunal in respect of contributory negligence is liable to be set aside and, accordingly, the same is set aside.

8. So far as the quantum of compensation is concerned, the loss of dependency has quantified fixing the monthly income at Rs.4,500/- and deducting 1/4th towards personal expenses of the deceased.

9. The learned counsel for the appellants relied on the decision of the Apex Court in Syed Sadiq & Ors. - Vs - Divisional Manager, United India Insurance Co., Ltd., reported in 2014 (1) TNMAC 459 (SC), wherein the Supreme Court has fixed

the monthly income of an unskilled labour at Rs.6,500/-. It is further submitted that future prospective increase in income ought to have been considered at least at 30%, considering the age of the deceased as 36.

10. The said contention of the learned counsel for the appellants merit acceptance. In Syed Sadiq's case (supra), the Supreme Court, even in case of unskilled labour, has fixed the monthly income at Rs.6,500/=. Following the said ratio, while this Court fixes the monthly income of the deceased at Rs.6,500/=. adding 30% towards the future prospective increase in income and deducting 1/4th towards the personal expenses of the deceased and adopting multiplier of 15, the loss of dependency is quantified at Rs.11,40,840/-. Accordingly, the compensation towards loss of dependency is enhanced to Rs.11,40,840/=. 

11. Insofar as the compensation awarded under the other heads are concerned, a perusal of the same reveals that the compensation towards loss of consortium to the wife, has already been awarded at Rs.50,000/-. However, the same is on the lower side and this Court enhances the same to Rs.1,00,000/-. On the head of loss of love and affection, a sum of Rs.50,000/- alone is awarded, which is grossly inadequate. Therefore, in respect of loss of love and affection to P-2 and P-3, who are minors, aged 11 and 10 only, at the time of the accident, a sum of Rs.75,000/- each is awarded and in respect of P-4, a sum of Rs.50,000/- is awarded. Thus, under this head a sum of Rs.2,00,000/- is awarded in all. The funeral expenses is awarded at Rs.25,000/- and transport expenses is awarded at Rs.10,000/-. Thus, the total amount of compensation payable to the claimants is quantified at Rs.14,75,840/-, which is rounded off to Rs.14,76,000/-.

12. In the result, the civil miscellaneous appeal is allowed and the overall compensation is enhanced from Rs.5,82,000/- to Rs.14,76,000/- which is payable with interest at 7.5% per annum from the date of petition till the date of deposit. No costs. Connected Miscellaneous petition is closed.

13. Out of the awarded amount of Rs.14,76,000/-, each of the appellants /claimants 2 & 3 would be entitled to a sum of Rs.5,00,000/- and wife/first appellant would be entitled to a sum of Rs.2,82,000/- and the mother of the deceased would be entitled to a sum of Rs.1,94,000/-.

14. It is represented that the first appellant/wife of the deceased has already withdrawn her share the compensation.

15. The second respondent / Insurance Company is directed to deposit the entire award amount as enhanced by this Court above, along with 7.5% interest, less the amount, if any, already deposited, to the credit of the claim petition, within a period

of four weeks from the date of receipt of a copy of this judgement. On such deposit being made, the Tribunal is directed to transfer the share of the compensation directly to the bank account of 4th appellant/mother of the deceased through RTGS within a period of two weeks thereafter. Insofar as the share of the minor claimants are concerned, the same shall be kept in fixed deposit, in any one of the Nationalised banks till they attain majority. The interest accrued thereon shall be withdrawn by the mother of the minor claimants, viz., the 1st appellant herein, directly from the bank and the same shall be utilized for the welfare of the minors. The Court fee due shall be paid by the claimants before obtaining copy of the judgement.

Sd/-

Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

kv/GLN

To

- 1.The Presiding Officer,
Motor Accident Claims Tribunal Cum Sub Court, Sankari.
2. The Section Officer, V.R. Section, High Court, Madras.
- + 1 cc to M/s. T. Ravichandran, Advocate SR.63730

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SJ(CO)
EU(12/04/2018)

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