

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2897 of 2017

1.Eswari
2.Minor Govindasamy
3.Minor Latha
4.Minor Kalaiselvi
(Minors 2 to 4 rep by N/F, Mother 1st appellant)
5.Mayilsamy
6.Krishnammal
7.Periyasamy Appellants/Petitioner

Vs.

1.Gangadharan
2.United India Insurance Company Limited,
Branch Office-II, Oriental Theatre Complex,
A.A.Street, Near Old Bus Stand, Salem-1.
3.Elamvazhuthi.
(Notice to R-1 & R-3 dispensed with
..... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the order passed in M.C.O.P.No.1344 of 2013, dated 20.12.2016, on the file of the Motor Accident Claims Tribunal cum Special District Judge, Salem.

For Appellants : Mr.C.Kulanthaivel

For R-2 : Mr.T.Ravichandran

J U D G M E N T

The appeal has been filed by the claimants, challenging the quantum of compensation awarded as insufficient and inadequate.

2. The deceased, Thangaraj, aged 44 years, self employed and earning a sum of Rs.15,000/- per month met with an accident on 28.03.2013 and succumbed to the injuries at Vinayaka Mission Hospital, Seeragapady, Salem. The wife, sons, daughters and parents of the deceased filed the claim petition claiming a sum of Rs.20,00,000/- as compensation.

3. The Tribunal, on consideration of oral and documentary evidence placed before it, quantified the compensation at Rs.8,50,400/-, the break up of which is as hereunder :-

Loss of Income	-	Rs.6,80,400/-
Cremation expenses	-	Rs. 25,000/-
Loss of consortium to wife	-	Rs. 25,000/-
loss of love and affection to 3 minor claimants each Rs.30,000/-	-	Rs. 90,000/-
Loss of love and affection to petitioners 5 to 7 each Rs.10,000/-	-	Rs. 30,000/-

Total	-	Rs.8,50,400/-

Challenging the award as inadequate the claimants have filed this appeal.

4. The learned counsel appearing for the appellant submits that the deceased was aged 45 years and maintaining a family consisting of 7 members. It is contended by the learned counsel for the claimants that the fixation of Rs.6,000/- as monthly income is not correct as even as per the ratio laid down by the Supreme Court in Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Co., Ltd., (2014 (1) TNMAC 459 (SC)), the monthly income should have been fixed at Rs.6,500/-. It is further submitted that applying the ratio laid down in Rajesh - VS - Rajbir Singh (2013 (9) SCC 54), future prospective increase in income at 30% ought to have been added to the income of the deceased and, the compensation has to be quantified accordingly. It is further contended by the learned counsel for the claimants that the compensation awarded under the head loss of love and affection to the children and parents is on the lower side and the same needs to be enhanced.

5. Per contra, learned counsel for the insurance company submits that though the Tribunal has held that the deceased had also contributed to the accident and, therefore, towards contributory negligence, some percentage of the compensation needs to be deducted, which has not been done by the Tribunal. It is further submitted that the Tribunal has considered the evidence and awarded adequate compensation under all the heads.

6. This Court gave its anxious consideration to the contentions advanced by the learned counsel for the parties and perused the materials available on record as also the findings rendered by the Tribunal.

7. A perusal of the findings rendered by the Tribunal clearly reveals that the Tribunal has held that the deceased has also contributed to the accident. In such circumstances, the

Tribunal ought to have deducted a percentage from the compensation towards the contributory negligence of the deceased. Considering the materials available on record and the findings of the Tribunal relating to contributory negligence, this Court is of the considered view that the contributory negligence can safely be fixed at 10%, which should be deducted from the compensation to be awarded, which would be fair and reasonable.

8. Insofar as the contention relating to enhancement of compensation on various heads is concerned, this Court has perused the materials on record as also the decisions relied on by the learned counsel for the appellant. This Court is of the considered opinion that on the basis of the ratio laid down by the Supreme Court in Syed Sadiq's case (supra), the Tribunal ought to have fixed the income of the deceased at Rs.6,500/-, in the absence of any documentary evidence and 30% towards future prospective increase in income should have been added while arriving at the income of the deceased. Accordingly, fixing the monthly income of the deceased at Rs.6,500/- and adding 30% towards the future prospective increase in income of the deceased, and deducting 1/4th towards the personal expenses of the deceased, the contribution of the deceased to the family is fixed at Rs.6,337/=. Adopting the multiplier of 14, the total compensation under the head loss of income is quantified at Rs.10,64,616/=. (Rs.6337 X 12 X 14).

9. Insofar as the compensation under the head loss of love and affection is concerned, the Tribunal has awarded very meagre sum, both to the children as well as to the parents. The children have lost the able guidance of their father and the love that would have been showered on them had he been alive. Similarly, the parents have also lost their son, who would have showered his care on them at their old age. This Court, keeping in mind the above, is of the considered view that a sum of Rs.1,00,000/- to claimants 2, 3 and 4 and a sum of Rs.50,000/- to claimants 5, 6 and 7 would be just and reasonable compensation towards loss of love and affection.

10. The Tribunal has awarded a sum of Rs.25,000/- towards loss of consortium to the 1st claimant. This Court is of the opinion that Rs.1,00,000/= would be a just and reasonable compensation to the 1st claimant towards loss of consortium. The Cremation expenses awarded in a sum of Rs.25,000/- is confirmed. This Court finds that no compensation has been awarded towards transport expenses. Accordingly, this Court awards an amount of Rs.10,000/= towards Transport expenses.

11. In all, the award passed by the Tribunal is enhanced to Rs.15,49,616/- and deducting 10% towards contributory negligence, the total compensation payable to the claimants is quantified at Rs.13,94,655/=.

12. In the result, the Civil Miscellaneous Appeal is allowed in part enhancing the compensation from Rs.8,50,400/- to Rs.13,94,650/- which is payable with interest at 7.5% per annum from the date of petition till the date of deposit. The claimant is not entitled to any interest for the default period, if any. No costs.

13. It is represented that the amount as ordered by the Tribunal has already been deposited along with proportionate interest. The 2nd respondent/insurance company is directed to deposit the balance portion of the compensation in view of the enhancement made along with interest at 7.5% p.a. from the date of petition till the date of deposit to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the major claimants, as per the ratio of apportionment ordered by the Tribunal, through RTGS within a period of two weeks thereafter. Insofar as the compensation awarded to the minor claimants are concerned, the same shall be kept in an interest bearing 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 directly from the bank and shall be utilized for the welfare of the minors. The Court fee for the enhanced compensation shall be paid by the claimant before obtaining the copy of the judgement.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kv/GLN

WEB COPY

To

1.The Motor Accident Claims Tribunal cum Special
District Judge, Salem.

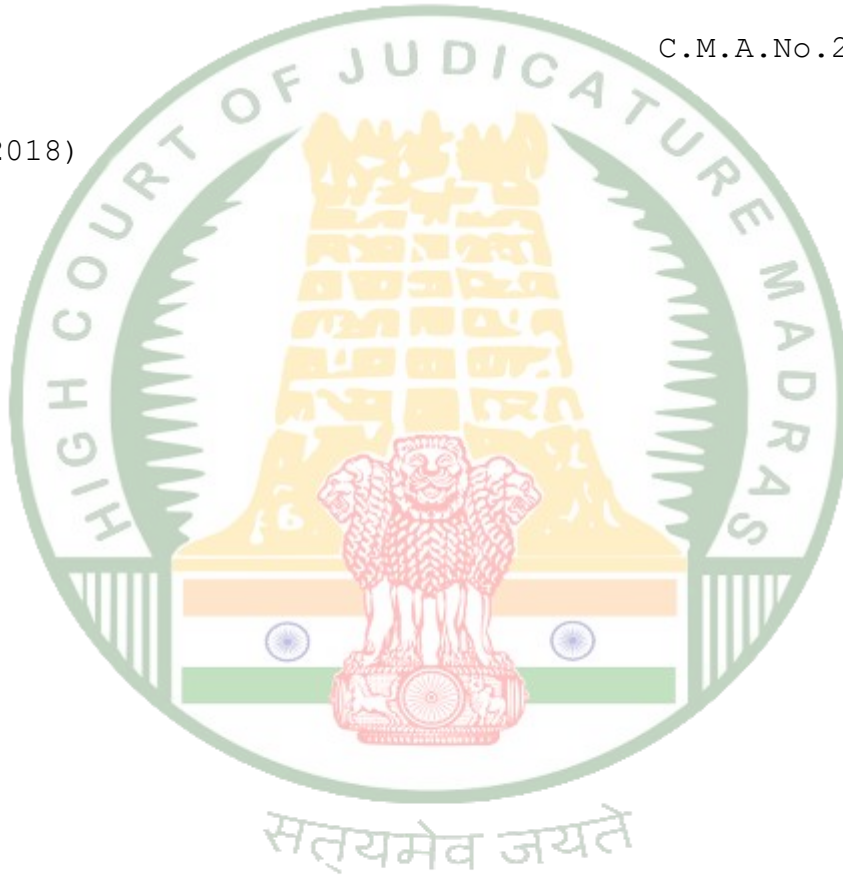
2. The Section Officer,
V.R. Section, High Court, Madras.(2 COPIES)

+1cc to Mr.C.KUALNTHAIVEL, Advocate, S.R.No.7721

+1cc to Mr.T.RAVICHANDRAN, Advocate, S.R.No. 76695

C.M.A.No.2897 of 2017

RJ(CO)
TR(18/04/2018)



WEB COPY