IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.11.2016

Judgment Pronounced on : 04 .08.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3084 of 2009

1.Tamilselvi
2.Periyasamy
3.Minor Jeevankumar
4.Minor Tamilmani
(Minors 3 & 4 rep. By their next friend &
mother 1st petitioner) ... Appellants/Petitioner

Vs.

1.Subramani

2.Jeppiar
M/s. Jet Associates,
No.12, Ganapathy Street,
Royapettai, Chennai - 600 014.

3.The Divisional Manager,
National Insurance Company Ltd.,
No.19, Officers Line,
Vellore. ... Respondents/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.4.2006 made in MACT.OP.No129 of 2005 on the file of the Motor Accidents Claims Tribunal, Thiruvannamalai.

For Appellants :Mr.T.Ferry Chellaraja
For Respondents :Mr.J.Chandran [for R3]
R1 & R2 - No Appearance

JUDGMENT

The legal heirs of the victim of a fatal road accident have approached this Court challenging the quantum of award awarded by the Tribunal with a prayer for enhancement.

2. On 03.12.2004 at about 4.30 a.m. one Sivalingam, stated to be aged 27, was on the wheels of the lorry bearing No. TN07-AX-0951 belonging to the second respondent. The lorry carried consignment of milk from Kumarapalayam - Coimbatore. While so, another lorry bearing No.TN41-D-6102 belonging to the first respondent came from the opposite side, was driven rashly and negligently, and ran on the lorry which Sivalingam was then

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driving. Both the lorries involved in the accident were insured with the third respondent. Sivalingam died on the spot. Seeking a compensation of Rs.20,00,000/-, his widow along with two minor children and his father approached the tribunal. The Tribunal however assessed the total compensation at Rs.4,39,000/- payable with interest at 7.5% per annum. Before the Tribunal, the claimants contended that Sivalingam was earming Rs.6,000/- a month, but for want of any tangible evidence, the Tribunal fixed the same at Rs.3,000/- per month and after deducting 1/3rd towards his personal expenses, the Tribunal arrived the compensation for loss of dependency at [Rs.2000x12x18] = Rs.4,32,000/-. After including other non-pecuniary heads of compensation, it arrived at a total compensation of Rs.4,39,000/- The break-up is as below :

Heads	Amount awarded by Tribunal (Rs.)
Loss of dependency	4,32,000.00
Loss of consortium	5,000.00
Towards funeral expenses	2,000.00
Total :	4,39,000.00

3.The learned counsel for the appellant submitted that the Tribunal has ignored Ext.P5, salary ceritificate in its entirety, whereas the salary of the vicitm is stated to be Rs.6,000/- a month. He also added that for loss of consortium of a young wife aged only 24 years, the Triabunal has granted a meagre sum of Rs.5,000/- Further as per the dicitim in Sarala Varma & Other Vs. Delhi Transport Corporation & another [2009(2) TNMAC 1]: [2009 ACJ 1298 , there shall be an enhancement by 50% towards future prospects of increase in income.

4. Per contra, the learned counsel for the insurance company would contend that even though the claimants have produced the salary certificate, yet the same remained not proved since they have not examined the second respondent. On other heads, the amount arrived by the Tribunal is in order.

5. In my view, the Tribunal has not been guided by the right principle in awarding compensation, more particularly on the head of non-pecuniary damages. So far as the notional income of the appellant is concerned, I do not find that there is any great decree of error in fixing the notional income of the victim at Rs.3,000 per month. However, guided by the principle in Sarala Varma & Other Vs. Delhi Transport Corporation & another [2009(2) TNMAC 1]: [2009 ACJ 1298], the deduction to be made is 1/4^{th,} this leaves a monthly balance of Rs.2,250/-. To

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this 50% should be added towards loss of future prospects in income. This would leave the multiplicand at [(Rs.2250 + 1125) x 12] Rs.40,500/-. Applying 17 as the appropriate multiplier as per Sarala Varma dictim as is relevant to the age of the decased the sum that represents loss of dependency is Rs.6,88,500/- [Rs.3,375x12x17]. On other heads of non-pecuniary damamges, the award is shockingly low. Hence, I award Rs.1,00,000/- towards loss of consortium. Nothing was awarded by the Tribunal on the head of love and affection for the children and hence Rs..50,000/- each is granted for the two children, and another Rs.50,000/- for his mother. I enhance the amount on the head of funeral expenses to Rs.10,000/-, and for shock and mental agony, a consolidated sum of Rs.20,000/- is awarded.

Heads	Enhanced award amount (Rs.)
Loss of dependency	6,88,500.00
Loss of consortium	1,00,000.00
Loss of love and affection to two children @ Rs.50,000/- each	1,00,000.00
Loss of love and affection to his father	50,000.00
Towards funeral expenses	10,000.00
Towards shock and mental agony	20,000.00
Total :	9,68,500.00

6. In the result, the appeal is allowed and the compensation awarded is enhanced from Rs.4,39,000/- to Rs.9,68,500/-. The third respondent/insurance company is directed to deposit the entire enhanced amount with interest at 7.5% per annum, less any amount already deposited, and the same is directed to be deposited within six weeks from the date of receipt of a copy of this order, whereupon the claimants would be entitled to withdraw the same forthwith. It is also made clear that apportionment of the award amount to the claimants shall be in the ratio as determined by the Tribunal, and if the claimants 3 and 4 have attained majority and declared as major, their portion of award amount shall be paid to them directly in the form of a crossed Account Payee Cheque, favouring them. In case of minor claimants, their share can be deposited in a fixed deposit scheme initially for a period of three years, renewable thereafter and the interest accrued on such deposit shall be withdrawn by his mother and natural guardian i.e. the 1st

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appellant herein, once in three months, till they attains majority. The claimants are directed to pay the necessary court fee for the enhanced portion of the award. No costs.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal
   Thiruvannamalai.

2. The Record Keeper,
   VR Section,
   High Court, Madras.

+1 CC to Ms.M. Malar, Advocate sr 56173.
+1 CC to Mr.J. Chandran, Advocate ssr 56740.

CMA.No.3084 of 2009

KJ(CO)
sp(24/10/2017)

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