

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

The HON'BLE MR. JUSTICE R.SUBBIAH
and
The HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2456 of 2013

1.Manjula Devi Bokaria

2.Ranjit Singh Bokaria ...Appellants/Petitioners

..vs..

1.G.Venkatesan

2.Bajaj Allianz General Insurance Co. Ltd.

Nos.25 and 26, Prince Towers, 4th Floor

College Road, Nungambakkam,

Chennai.

...Respondents/Respondents

(R1 exparte in Lower court)

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 11.02.2013 passed in MCOP No.3325 of 2008 on the file of Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.S.Gangaram Prasad

For R1 : Exparte before the Tribunal

For R2 : Mr.S.Arun Kumar

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

Being not satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai (hereinafter referred to as 'the Tribunal') in and by an award dated 11.02.2013 made in MCOP.No.3325 of 2008, the present appeal has been directed by the appellants, who are the parents of one Sandeep Kumar Bokaria, who died in a motor accident that had occurred on 25.02.2008, seeking enhancement of compensation.

2.The backdrop of the case may briefly be stated as follows:

On 25.02.2008 at about 14.30 hours, while the deceased Sandeep Kumar Bokaria was riding his motor cycle bearing Regn.No.TN22-AJ-0157 from South to North direction on the East Coast Road, Muttukadu Bridge, Chennai, a Tata Goods Carrier bearing Regn.No.TN02-X-8650 came in a rash and negligent manner from the opposite direction and dashed against the motor cyclist and caused the accident. As a result of the same, the deceased sustained fatal injuries and died on way to the hospital. Hence, the parents of the deceased filed a petition claiming a sum of Rs.70,00,000/- as compensation as against the owner as well as the insurer of the offending vehicle.

3.The second respondent insurance company filed a counter statement denying the various averments made in the claim petition filed by the claimants.

4.On the side of the appellants/claimants, the father of the deceased was examined as P.W.1, besides examining two witnesses as P.W.2 and P.W.3 and 24 documents were marked as Exs.P1 to P24. On the side of the second respondent insurance company, no witness was examined and no document was marked.

5.The Tribunal, on examining the oral and documentary evidence adduced by the parties, came to a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Tata Goods Carrier owned by the first respondent herein and insured with the second respondent insurance company, had awarded a sum of Rs.15,60,914/- as compensation. Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeal came to be filed by the claimants, seeking enhancement of the compensation.

6.Learned counsel for the appellants/claimants contended that the compensation awarded by the Tribunal is inadequate and insufficient looking at the circumstances of the case. According to him, while calculating the compensation under the head "loss of pecuniary benefits", the Tribunal ought to have taken the age of the deceased, for the purpose of selecting the multiplier, whereas, the Tribunal has considered the age of the mother of the deceased, who was 61 years at the time of accident and adopted the multiplier '7' and determined the compensation under this count. Learned counsel further submitted that the compensation awarded by the Tribunal under the heads "loss of love and affection" and "funeral expenses" are on the lower side. Thus, learned counsel prayed that the compensation awarded by the Tribunal has to be enhanced by recomputing the same.

7.Per contra, learned counsel for the second respondent insurance company contended that the Tribunal passed a just and

fair award on the basis of the evidence adduced by the appellants/claimants and therefore, no interference is required in the same.

8.We have carefully considered the submissions made by the learned counsel on either side and perused the records.

9.The appellants claimed that the deceased was a bachelor and was 40 years old at the time of accident. He was a partner in M/s.Lexpo International, Chennai and was also working as a real estate consultant and insurance agent, besides doing modeling and was earning a sum of Rs.1,34,000/- per month. To substantiate the said claim, the appellants marked Ex.P8 series-Income Tax returns for the Assessment Years 2007-08 and 2008-09, Ex.P9 series-TDS certificates, Ex.P10-Statement of Bank Account and Ex.P11-partnership deed of M/s.Lexpo International. They also produced Ex.P12-licence for insurance agent, Ex.P13-TDS of M/s.Bajaj Allianz Life Insurance Co. Limited for the periods 2006-07 and 2007-08 and Ex.P16-Income Tax returns of the deceased for the periods 2006-07 and 2008-09. Further, the appellants examined one M.Ashok Kumar, Auditor as P.W.3, who deposed in his evidence that the deceased was a partner in M/s.Lexpo International having 20% share and was also an insurance agent of M/s.Bajaj Allianz Life Insurance Company. P.W.3 further stated in his evidence that after the death of the deceased, the appellants/parents of the deceased have not received any commission from the said insurance company. Through P.W.3, the Income Tax Returns of the deceased for the years from 2007 to 2009 and a letter issued by him with regard to non-receipt of commission by the appellants, were marked as Exs.P19 series and P20 respectively. The Tribunal, after analyzing those oral and documentary evidence, has taken a sum of Rs.3,00,000/- as the yearly income of the deceased, from which, 10% was deducted towards income tax and 30% was added towards future prospects. Further, the Tribunal has added a sum of Rs.86,404/- towards commission received by the deceased and determined the annual income of the deceased at Rs.4,37,404/-, from which, 50% was deducted towards personal expenses, as the deceased was a bachelor. Thereafter, the Tribunal assessed the annual loss of income at Rs.2,18,702/-, which, in our view, is just and proper and is hereby confirmed. However, the Tribunal, based on the age of the mother of the deceased, who was 61 years, applied the multiplier '7' and arrived at Rs.15,30,914/- towards pecuniary benefits.

10.According to the learned counsel for the appellants, the age of the deceased is to be taken into consideration while selecting the multiplier. In this context, it is worthwhile to refer to the decision of the Hon'ble Supreme Court in the case of Amrit Bhanu Shali and others vs. National Insurance Company Limited and others reported in (2012) 11 SCC 738, wherein, it is

held as follows:

"The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation."

In the light of the aforesaid decision, we are inclined to take into account the age of the deceased for selecting the multiplier. Since the deceased was aged about 40 years at the time of accident, the proper multiplier to be adopted is '15'. Accordingly, the compensation under the head "loss of pecuniary benefits" comes to Rs.2,18,702 x 15 = Rs.32,80,530/- and the same is hereby awarded.

11.As regards the compensation awarded under the other conventional heads, the Tribunal has awarded only a sum of Rs.10,000/- each towards loss of love and affection. Considering the fact that the appellants have lost their son in the accident, from whom, they expected lending of a moral support at their advanced age, the sum of Rs.10,000/- each awarded by the Tribunal is hereby enhanced to Rs.50,000/- each under this count. Similarly, a sum of Rs.10,000/- awarded by the Tribunal under the head "funeral expenses" is hereby enhanced to Rs.25,000/-. However, the award of interest at 7.5% p.a. by the Tribunal seems to be very reasonable and the same is hereby confirmed.

12.For the discussions held above, the total compensation awarded by the Tribunal is hereby enhanced to Rs.34,05,530/-, the details of which, are as follows:

Loss of Pecuniary benefits	-	Rs.32,80,530/-
Funeral expenses	-	Rs. 25,000/-
Loss of love and affection	-	Rs. 1,00,000/-
		
Total	-	Rs.34,05,530/-

13.In view of the above modification, the appellants are entitled to get the same in equal proportion. The second respondent Insurance Company is directed to deposit the entire compensation amount as awarded by this Court, after deducting the amount already deposited, if any, along with interest at 7.5% per annum from the date of claim petition till the date of deposit, and costs to the credit of MCOP.No.3325 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares lying in the deposit.

14. Accordingly, the Civil Miscellaneous Appeal is disposed of. There is no order as to costs.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Chief Judge, Court of Small Causes, Chennai.

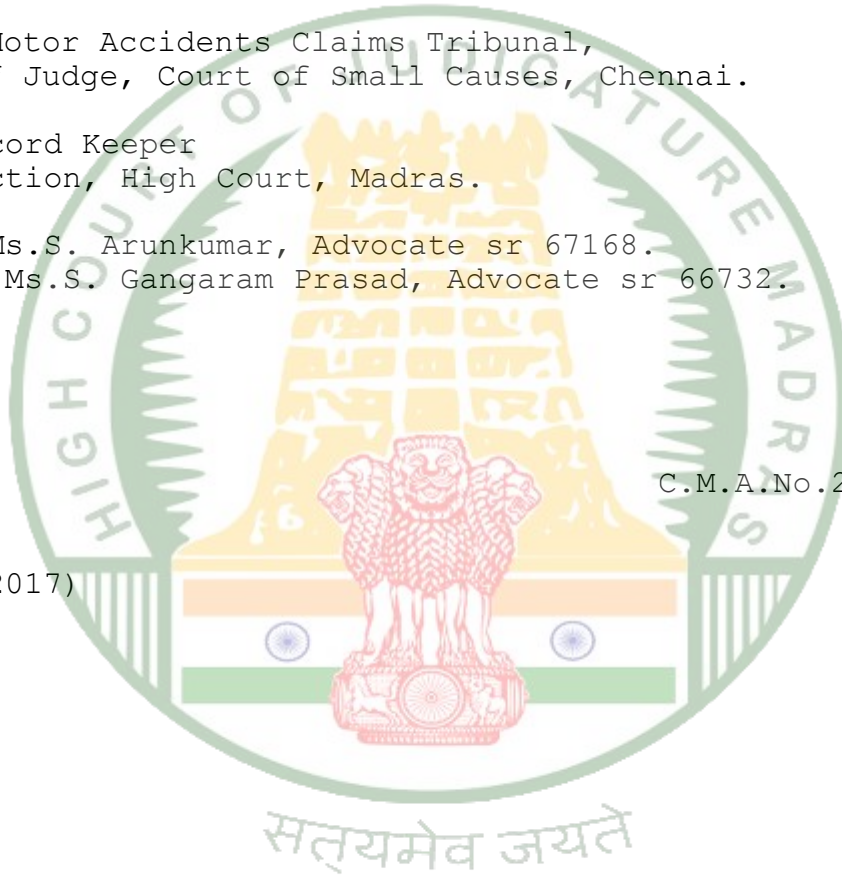
2. The Record Keeper
VR Section, High Court, Madras.

+1 CC to Ms.S. Arunkumar, Advocate sr 67168.

+2 Ccs to Ms.S. Gangaram Prasad, Advocate sr 66732.

C.M.A.No.2456 of 2013

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