

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-03-2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.Nos.3239, 3358 & 3497 OF 2012

Minor Ayush Baheti,
Minor, represented by Next friend/
natural guardian Father
Mr.Naresh Baheti Appellant in C.M.A.No.3239/2012

M.Suresh Appellant in C.M.A.No.3358/2012

1.Naresh Baheti
2.Minor Ayush Baheti
3.Minor Anjali Baheti Appellants in C.M.A.No.3497/2012
(Minors, represented by Next friend/
natural guardian Father
Mr.Naresh Baheti)

-vs-

1.Kasi
2.V.Ravichandran
3.Oriental Insurance Company Ltd.,
Divisional Office - VII,
Kolkata. Respondents in all C.M.As.

C.M.A.No.3239 of 2012 is filed against the award, dated 05.07.2012, passed in M.C.O.P.No.971 of 2008, on the file of Motor Accidents Claims Tribunal/Additional District Court, Krishnagiri.

C.M.A.No.3358 of 2012 is filed against the award, dated 05.07.2012, passed in M.C.O.P.No.972 of 2008, on the file of Motor Accidents Claims Tribunal/Additional District Court, Krishnagiri.

C.M.A.No.3497 of 2012 is filed against the award, dated 05.07.2012, passed in M.C.O.P.No.970 of 2008, on the file of Motor Accidents Claims Tribunal/Additional District Court, Krishnagiri.

For appellants in all C.M.As. : Mr.N.S.Sivakumar

For respondent 1 in all C.M.As.: Not ready in Notice

For respondent 2 in all C.M.As.: Mr.Kumar

For respondent 3 in all C.M.As.: Mrs.Sreevidhya

COMMON JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao,J.)

All these three Civil Miscellaneous Appeals are directed against the common award rendered in three M.C.O.P.Nos.971, 972 and 970 of 2008 respectively, on the file of Motor Accidents Claims Tribunal/Additional District Court, Krishnagiri. They are hence heard together and shall stand disposed of by this common judgment.

2. Claimants in the O.Ps. are the appellants before us. They are aggrieved by the quantum of compensation awarded by the Tribunal. They, who were all residents of Ganga Shaher of Bikaner town in the State of Rajasthan, were apparently on a trip to the holy pilgrimage town of Rameshwaram. The motor vehicle, in which they were travelling on 12.05.2007 at about 03.30 a.m., met with an accident. Due to rash and negligent driving, the driver lost control of the vehicle; as a result, the vehicle collided with an electrical pole and also a concrete pillar and, due to the impact, it capsized on the western side of the road. One Smt.Sanju Baheti, wife of the first appellant and mother of two minor appellants in C.M.A.No.3497 of 2012, who were claimants in M.C.O.P.No.970 of 2008, sustained severe injuries. When she was rushed to a local hospital for medical attention, she was declared brought dead. The second appellant also sustained severe injuries, resulting in multiple fractures. In the accident, Sri Suresh, appellant in C.M.A.No.3358 of 2012 and claimant in M.C.O.P.No.972 of 2008, also sustained a grievous injury. The appellant in C.M.A.No.3239, who is the claimant in M.C.O.P.No.971 of 2008, claimed a sum of Rs.11.00 lakhs; the appellant in C.M.A.No.3358 of 2012, who is the claimant in M.C.O.P.No.972 of 2008, claimed a sum of Rs.6.00 lakhs; and the appellants in C.M.A.No.3497 of 2012, who are the claimants in M.C.O.P.No.970 of 2008, claimed a sum of Rs.50.00 lakhs, as compensation.

3. P.Ws.1 to 4 were examined and Exs.P-1 to P-20 were marked. The first claimant in M.C.O.P.No.970 of 2008 has been examined himself as P.W.1. He was also travelling in the same vehicle and hence he had first-hand knowledge as to the manner in which the vehicle has been driven and as to how the driver lost control of the vehicle and, consequently, it hit against an

electrical pole and also a concrete structure near a culvert and fell on one side. Therefore, the occurrence and causative factors of the accident have been rightly held established. The claimant in M.C.O.P.No.972 of 2008 has been examined as P.W.2. Therefore, there is no difficulty for the Tribunal to record a finding of fact that the accident occurred due to the rash and negligent driving of the motor vehicle, by its driver. Ex.P-2 is the Insurance Policy of the offending vehicle. Ex.P-3 is the Registration Certificate of the vehicle. Ex.P-4 is the Driving Licence of the driver. Ex.P-9 is the Income-Tax Return, concerning the deceased, Smt.Sanju Baheti. The Tribunal has erroneously recorded that Ex.P-9 has been filed on 31.03.2008, which was after the accident had occurred, in which, Smt.Sanju Baheti died.

4. Learned counsel for the appellants has strenuously urged before us that it was a grossly erroneous finding of fact and, because of the said error, the Tribunal has failed to arrive at just compensation, payable for the death of Smt.Sanju Baheti.

5. We have examined Ex.P-9. It contained the Income-Tax Returns for the Assessment Years 2006-2007 and 2007-2008. The Income-Tax Return for the Assessment Year 2006-2007, undoubtedly, bears the office seal of the Joint Commissioner of Income-Tax, Ward (II) of Bikaner, Rajasthan State. It also bears the date as 31.03.2007. It shows that Rs.400/- has been tendered as tax payable on the total income of Rs.1,38,560/-, earned by the deceased. Similarly, the Income-Tax Return for the Assessment Year 2007-2008 reflects the date as 31.03.2008. This Return possibly may have been filed after the death of the deceased in the accident that took place in the year 2007. Hence, perhaps, not much credibility can be attached thereto.

6. However, for the Assessment Year 2006-2007, the Return appears to have been filed by Sethia & Company, Chartered Accountants of Bikaner, on 31.03.2007. However, computation of total income makes a very interesting reading. Under the head 'salary', the income of the deceased Sanju Baheti has been shown as Rs.54,000/-, implying that she was earning a monthly income of Rs.4,500/-, working for Shivpapad Bhandar. However, the income from other sources was shown as Rs.84,560/-. Of this, interest income is shown as Rs.560/-, leaving the balance of Rs.84,000/- as income from coaching and hobby classes. There is no material evidence produced to vouch for the credentials of the deceased to indulge in any such coaching or pursuits of hobby, which can fetch her a consistent monthly income of Rs.7,000/-. This apart, the computation of tax on total income for the Assessment Year 2006-2007 discloses that the tax payable has been worked out by Sethia & Company as Rs.550/-, whereas the

return discloses the tax payable as Rs.400/-. Apart from this discrepancy in the quantum of tax payable, the tax payer's counterfoil for the Assessment Year 2006-2007 discloses the receipt stamp of State Bank of Bikaner and Jaipur, by its Branch at Bikaner, dated 07.08.2007. It reflects payment of Rs.400/- only. Because of this discrepancy, the Tribunal appears not to have been inspired to place any reliance thereon. The aforementioned discrepancies continue to be unexplained even to this day. When it came to the computation of income for the Assessment Year 2007-2008, the total income from salary was reflected as Rs.1,10,400/- and income from coaching and hobby classes was brought down to Rs.36,000/-. The computation for this year did not contain any interest income at all. Between 01.04.2007 and 12.05.2007, it will be harsh and hard for anybody to believe that the deceased would have been paid by Shivpapad Bhandar a salary of Rs.1,10,400/-. It is for these reasons, Ex.P-9 does not inspire any confidence in our mind, for relying upon it for computation of the income of the deceased. In the given circumstances, the Tribunal has adopted, no doubt, a conservative formula and worked out the monthly earnings of the deceased, after defraying the personal expenses component at Rs.3,325/- and, on that count, applying the multiplier 15, worked out the compensation payable as Rs.4,18,500/-. (emphasis supplied)

7. Though the learned counsel for the appellants has made a strenuous attempt before us to show that this is a gross miscalculation of income by the Tribunal, in the absence of any acceptable and credible material to vouch for the income of the deceased, we do not think that the learned counsel for the appellants is right in contending that taking the monthly income of the deceased as Rs.3,500/- is a completely erroneous one. Even going by the return of income for the Assessment Year 2006-2007, the salary income of the deceased was reflected only as Rs.54,000/-, which implies that the deceased was getting paid Rs.4,500/- per month. When we view the finding in this backdrop, there does not appear to be a gross error in such determination of the Tribunal, as Ex.P-9 is not inspiring full confidence in our minds, for reliance to be placed thereon unhesitatingly. We are, therefore, of the opinion that the quantum of compensation determined as payable at Rs.4,18,500/-, under the head 'loss of dependency', does not deserve to be enhanced at all.

8. However, the Tribunal has grossly undervalued the component relating to 'loss of consortium'. Admittedly, P.W.1 lost his wife. She was only 32 years of age. At the time of accident, the first claimant/P.W.1 was around 37 years of age. Hence, awarding him a sum of Rs.12,000/- towards 'loss of consortium' is disproportionately low and unjust. Similarly,

for the claimants 2 and 3, who are minor daughters of the deceased, aged about 10 years and 9 years respectively, under the head 'loss of love and affection', a sum of Rs.20,000/- i.e., Rs.10,000/- apiece was granted. On both these counts, the quantum of compensation determined by the Tribunal is grossly disproportionate. We find that towards 'loss of consortium', at least, a sum of Rs.25,000/- ought to have been awarded; and for 'loss of love and affection' of the two young children due to the death of Smt.Sanju Baheti, a sum of Rs.50,000/- payable to both the claimants 2 and 3, put together, ought to have been awarded. Therefore, the award of the Tribunal to the above extent of awarding a sum of Rs.25,000/- on the count of 'loss of consortium'; and a sum of Rs.50,000/- towards 'loss of love and affection' for the minor children/claimants 2 and 3, put altogether, stand substituted for the amounts of Rs.12,000/- and Rs.20,000/-, awarded on the above two counts by the Tribunal. Otherwise, the compensation awarded by the Tribunal does not deserve any further enhancement.

9. So far as the other remaining two O.Ps., namely, M.C.O.P.Nos.971 and 972 are concerned, the award of the Tribunal is the result of a proper and careful analysis of all the evidence that was brought before it. We have not found anything erroneous or improper in the award, so as to interfere with it.

10. Learned counsel for the second respondent has contended that though he has transferred the vehicle, he was unnecessarily made as jointly and severally liable. But, the finding of fact is that the second respondent has neither transferred the insurance policy nor did he intimate the transfer of the vehicle to the insurance company. Hence, the objection raised by the second respondent is equally unsustainable.

11. For the aforementioned reasons, we do not find any merit in C.M.A.Nos.3239 and 3358 of 2012 and the same are, accordingly, dismissed. As far as C.M.A.No.3497 of 2012, which arose out of M.C.O.P.No.970 of 2008 is concerned, except enhancing the quantum of compensation payable under the heads "loss of consortium" and "loss of love and affection" as set out above, rest of the award stands confirmed, and all the other terms of the award remain the same. No costs.

sd/
Assistant Registrar

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Sub Assistant Registrar

dixit

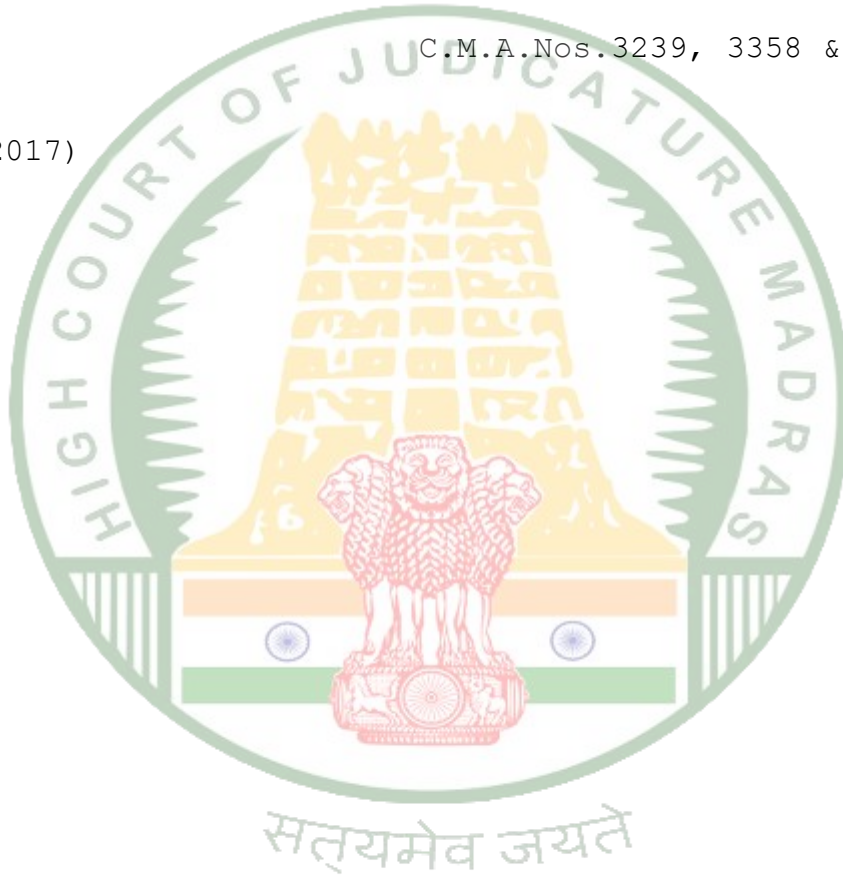
To

The Motor Accidents Claims Tribunal/
Additional District Court,
Krishnagiri.

+3cc to Mr.Kumar & Baskar, Advocate SR.No.14977, 14978, 14979
+1cc to Mrs.R.Sreevidhya, Advocate SR.No.15166
+9cc to Mr.V.S.Dixit, Advocate SR.No.15078, 15079, 15077

C.M.A.Nos.3239, 3358 & 3497/2012

VSN(CO)
GN(28/03/2017)



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