BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.03.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**
AND
THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.M.A.[MD].No.1272 of 2015

1.Senthil Kavitha
2.Aakash [minor]
3.Rakesh [minor]
4.Alagumuthu : Appellants / Petitioners
[Minor Appellants 2 & 3 are represented by their Mother First Appellant]

Vs.

1.M/s.Indian Transport,
No.53/1, Kambam Road,
Thenkarai, Periyakulam,
Theni District.

2.M/s.The New India Assurance Co., Ltd.,
Goodshed Street, West Masi Street,
Madurai 625 001. : Respondents / Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 06.03.2015 made in M.C.O.P.No.294 of 2013, on the file of the Motor Accident Claims Tribunal, [Special District Judge], Madurai.

For Appellants : Mr.S.Alagarsamy

For R1 : No Appearance

For Respondent No.2 : Mr.J.S.Murali

Reserved On : 15.02.2017
Pronounced On : 01.03.2017

JUDGMENT

R.SUBBIAH, J.

Not being satisfied with the quantum of compensation awarded by the Tribunal, dated 06.03.2015, made in M.C.O.P.No.294 of 2013, on the file of the Motor Accident Claims Tribunal, [Special

District Judge], Madurai, the present Civil Miscellaneous Appeal has been filed by the claimants/appellants.

2. The case of the appellants 1 to 4/claimants 1 to 4 before the Tribunal is that the appellants 1 to 4/claimants 1 to 4 are the mother, the sons and the father respectively of the deceased - Pugalendran, who died in a motor accident, that had occurred on 29.05.2013, involving a vehicle bearing Registration No.TN-60-E-1771, owned by the first respondent and insured with the second respondent herein. Since the present Civil Miscellaneous Appeal has been filed seeking enhancement of compensation alone, in our considered view, it is not necessary for this Court to traverse into the other aspects of the matter.

3. Insofar as the quantum of compensation is concerned, it is the case of the claimants that the deceased, at the time of accident, was working as Office Superintendent, Training Institute, Southern Railway at Madurai and earning a sum of Rs.38,510/-. The Tribunal, after deducting a sum of Rs.1,440/- towards transport allowance and a sum of Rs.1,684/- towards professional tax, calculated the compensation amount and awarded a sum of Rs.36,826/- towards loss of monthly income. Thereafter, by deducting 10% towards income tax, viz., Rs.3,682/-, has arrived at a sum of Rs.33,144/-. After 1/4 deduction, the Tribunal has arrived at a sum of Rs.24,860/-. Thereafter, by applying multiplier 11, the Tribunal has awarded a sum of Rs.32,81,520/- towards loss of income.

4. It is the submission of the learned counsel appearing for the claimants that the Tribunal, while calculating the compensation under the head of loss of income, has not awarded any amount towards future prospects. In this regard, the learned counsel for the appellants/claimants made reliance on the Judgment of the Hon'ble Supreme Court in **Rajesh and others Vs. Rajbir Singh and others**, reported in **2013 (2) TNMAC 55 (SC)** and contended that in the case of death of employee, considering the age group of 50 to 60, 15% should be added towards future prospects. For the very same proposition, the learned counsel also relied upon the Judgment of the Hon'ble Supreme Court in **Puttamma and others Vs. K.L.Narayana Reddy and another** reported in **2014 (1) MLJ 739 (SC).** Thus, the learned counsel contended that by adding 15% towards future prospects, the amount awarded by the Tribunal needs to be enhanced.

5. Countering the said submission made by the learned counsel appearing for the appellants/claimants, the learned counsel for the second respondent submitted that since the deceased employee was aged 51 years, at the time of accident, question of adding future prospects of 15% does not arise. In this regard, the learned counsel for the second respondent made reliance upon the Judgment of the Hon'ble Supreme Court in **Sarla Verma v. Delhi**

Transport Corporation reported in **III (2009) ACC 708 (SC)** and submitted that in the light of the law laid down by the Hon'ble Supreme Court, future prospects of 15% cannot be awarded and it depends upon the facts and circumstances of each case. Insofar as the present case is concerned, the Tribunal has rightly awarded a sum of Rs.32,81,520/- towards loss of income, which does not require any enhancement at the hands of this Court.

6. Keeping the above submissions made on either side, we have gone through the materials available on record. As rightly contended by the learned counsel for the second respondent, since the deceased had already crossed 50 years of age, question of adding 15% towards future prospects does not arise, [vide **Sarla Verma v. Delhi Transport Corporation** reported in **III (2009) ACC 708 (SC)]**. However, we find that the Tribunal has not awarded adequate amount under the conventional heads. The Tribunal has awarded a sum of Rs.5,000/- towards loss of estate, a sum of Rs.25,000/- towards funeral expenses, a sum of Rs.25,000/- towards loss of consortium and a sum of Rs.60,000/- towards loss of love and affection.

7. The amount awarded by the Tribunal towards loss of love and affection is on the lower side and it needs to be enhanced, as the minor claimants 2 and 3, at their young age, had lost their father. Thus, awarding a sum of Rs.2,50,000/- each towards loss of love and affection would meet the ends of justice. Likewise, a sum of Rs.25,000/- awarded by the Tribunal under the head of loss of consortium is on the lower side, which, in our considered view, has to be enhanced to a sum of Rs.1,50,000/-. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which, in our considered view also, needs to be enhanced to a sum of Rs.65,000/-. Thus, the break up details are as follows:-

Sl.No.	***Head***	***Amount granted by this Court***
1	For loss of income	Rs.32,81,520/-
2	For loss of love and affection	Rs.5,00,000/-
3	For funeral expenses	Rs.65,000/-
4	For loss of consortium	Rs.1,50,000/-
5	For loss of estate	Rs.5,000/-
	Total	Rs.40,01,520/-

which is rounded off to Rs.40,00,000/- [Rupees Forty Lakhs only].

8. In the result, the Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal is enhanced to

Rs.40,00,000/- and there shall be an award for a sum of Rs.40,00,000/- [Rupees Forty Lakhs only]. The second respondent - Insurance Company is directed to deposit the above award amount with interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants 1 to 3 are entitled to a sum of Rs.13,00,000/- each with proportionate interest and the fourth claimant is entitled to a sum of Rs.1,00,000/- with proportionate interest and the share of the minor claimants 2 and 3 herein, shall be deposited in any one of the nationalized banks, till the minor claimants attain majority and the guardian of the minor claimants, the first appellant/the first claimant herein, is permitted to withdraw the interest once in three months directly from the bank. No costs.

Sd/-
Assistant Registrar(CSIII)

/True Copy/

Sub Assistant Registrar

NB

To

The Motor Accident Claims Tribunal,
[Special District Judge], Madurai.

+1cc to Mr.S.Alagarsamy, Advocate Sr.No. 11876

+1cc to Mr.J.S.Murali, Advocate Sr.No. 12181

COPY TO:

THE SECTION OFFICER, V.R SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

JAM/(TE)17.03.17 / PM-PN/ 4p-5c

PRE-DELIVERY JUDGMENT MADE IN
C.M.A.[MD].No.1272 of 2015
01.03.2017