



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.(MD)No.82 of 2017

WEB COPY

1.Kulnar Fathima

2.Minor Eirsath Sulthana

... Appellants/Claimants

(Minor second appellant is represented by her mother and natural guardian, Kulnar Fathima, the first appellant.)

Vs.

1.Ganesan

2.The Branch Manager,

New India Assurance Company Limited,

Thanjavur.

... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 05.12.2013 in M.C.O.P.No.854 of 2011 on the file of the Special District Court/Motor Accident Claims Tribunal, Thanjavur.

For Appellants : Mr.A.Sankara Ramasubramanian for
Mr.N.Manoharan

For Respondents : Mr.D.Malaichamy for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimants against the award of Rs.3,90,000/- (Rupees Three Lakhs Ninety Thousand only) as compensation for the death of one Mohamed Idrish, 19 years old Graduate in B.Sc (Vishual Communication) earning about Rs.20,000/- (Rupees Twenty Thousand only) by doing Videographer avocation.

2. However, the Tribunal took a sum of Rs.3,000/- (Rupees Three Thousand only) per month as monthly income in the absence of any proof regarding the income and deducted 1/3rd amount towards his personal expenses and adopted the multiplier '15' and determined the loss of income at Rs.3,60,000/- (Rupees Three Lakhs Sixty Thousand only) [Rs.2,000/- X 12 X 15] and including the other amounts, awarded the total compensation of Rs.3,90,000/- (Rupees Three Lakhs Ninety Thousand only).

3. Aggrieved against the quantum, the appellants/claimants preferred this Civil Miscellaneous Appeal.



4. Heard Mr.A.Sankara Ramasubramanian, learned Counsel appearing for the appellants and Mr.D.Malaichamy, learned Counsel appearing for the second respondent.

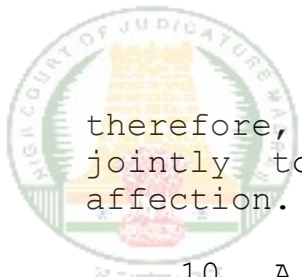
5. Notice to the first respondent/owner is dispensed with as the first respondent remained ex-parte before the Tribunal. Moreover, the Full Bench of the Madhya Pradesh High Court in Mrs. Jamunabai and others -vs- Chhote Singh and others reported in (2004) I ACC 190 held that there is no necessity to order notice to the parties who remained ex-parte before the trial Court.

6. Though the learned Counsel for the appellants sought for fixing the monthly income at Rs.20,000/-, in the absence of any proof the Tribunal determined the monthly income of Rs.3,000/- (Rupees Three Thousand only). However, this Court in Iffco-Tokio General Insurance Co.Ltd., Chennai, -Vs- K.Elammal and three others reported in 2015(2) TN MAC 42 determined the monthly income of a B.Com Second Year student, a non-earning member, at Rs.6,500/- as notional income as per the judgment of the Honourable Apex Court in Syed Sadiq etc -Vs- Divisional Manager, United India Insurance Company Ltd., reported in 2014(1) TN MAC 459 (SC) and added 50% towards future prospects and fixed the monthly income at Rs.9,750/- and in the case on hand, the deceased was a Graduate in B.Sc., who has also qualified in typewriting in Tamil and English as proved by Exs.P13 and P14, and definitely, he would have earned Rs.6,500/- (Rupees Six Thousand Five Hundred only) as monthly income. Since the deceased is aged about 19 years, 50% is required to be added towards future prospects as per the judgment of Rajesh and others -Vs-. Rajbir Singh and others reported in 2013 (2) TN MAC 55 and the monthly income of the deceased is determined at Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty only).

7. The deceased was a bachelor and therefore 50% has to be deducted towards his personal expenses. However, the Tribunal erroneously deducted 1/3rd towards his personal expenses. After deducting 50% towards his personal expenses, the monthly contribution of the deceased would be Rs.4,875/-.

8. The Tribunal determined the multiplier as per the age of the mother. Whereas in the judgment of the Honourable Supreme Court in Amith Bhanu Shali and others -Vs- National Insurance Company Ltd., and others reported in 2012 ACJ 2002, the multiplier was applied according to the age of the deceased and not on the basis of age of the father and mother. Therefore, this Court determines the multiplier as '18' as the deceased age was 19 years. Accordingly, the loss of income would be Rs.10,53,000/- (Rupees Ten Lakhs and Fifty Three Thousand only) [Rs.4,875/- X 12 X 18].

9. The Tribunal awarded a sum of Rs.15,000/- (Rupees Fifteen Thousand only) to the first appellant and a sum of Rs.10,000/- (Rupees Ten Thousand only) to the second appellant towards loss of love and affection and the said amounts are on the lower side and



therefore, a sum of Rs.1,00,000/- (Rupees One Lakh only) is awarded jointly to the appellants 1 and 2 towards loss of love and affection.

10. A sum of Rs.5,000/- (Rupees Five Thousand only) awarded by the Tribunal towards funeral expenses is on the lower side and hence the same is enhanced to Rs.25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses including the transportation charges.

11. No amount was awarded under the head loss of estate and hence, a sum of Rs.20,000/- (Rupees Twenty Thousand only) is awarded by this Court under the head "Loss of Estate".

12. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

13. Accordingly, the appellants/claimants are entitled to a sum of Rs.11,98,000/- (Rupees Eleven Lakhs Ninety Eight Thousand only) rounder off to Rs.12,00,000/- (Rupees Twelve Lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

14. The first appellant/claimant is entitled to Rs.8,00,000/- (Rupees Eight Lakhs only) and the second appellant/claimant is entitled to Rs.4,00,000/- (Rupees Four Lakhs only). The share of the minor second respondent/claimant shall be deposited in an interest bearing deposit and the first appellant/mother of the minor second appellant is permitted to withdraw the accrued interest thereon once in three months for the welfare of the minor second respondent.

15. The second respondent/Insurance Company is directed to deposit the enhanced compensation amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.854 of 2011 on the file of the Special District Court/Motor Accident Claims Tribunal, Thanjavur, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the respective share of the first appellant/first claimant to her personal Savings Bank Account Number, as per the appointment made by this Court through RTGS/NEFT within a period of four weeks thereafter.

16. In the result the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.

+1cc to Mr.G.Karnan, Advocate, sr no.5225

+1cc to Mr.D.Malaichamy, Advocate, sr no.5359

gsr

ms/pn/9.2.2017/4p.4c

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