IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.2124 of 2003

1.Mahalakshmi
2.R.Mahendran
3.R.Vijaya Bhaskaran
4.R.Shankar ... Appellants

Versus

1.R.Sakunthala

2.National Insurance Company Limited,
Trichy Branch - I,
33, Promenade Road,
Contonment, Trichy - 1.

3.N.S.Rengaraj

4.Oriental Insurance Company Limited,
Ganesh Complex,
6A, Lawsons Road,
Cantonment,
Trichy - 1. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 18.11.2002 and made in M.C.O.P.No.731 of 2000 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur.

For Appellants : Mr.T.Gobinath

For Respondents: No Appearance



J U D G M E N T

This Civil Miscellaneous Appeal is directed against the Award and Decree dated 18.11.2002 made in M.C.O.P.No.731 of 2000 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur.

2. The brief facts of the case are as follows:

On 29.05.2000 at about 19.30 hours, the deceased Raghavan was travelling in a Tata Sumo, which belonged to the third respondent and insured with the fourth respondent and when the said vehicle was proceeding from Thanjavur to Trichy, the passenger bus belonging to the first respondent bearing Registration No.TN-45-K-7237 came in the opposite direction driven by its driver in a rash and negligent manner and came on the wrong side and dashed against the Tata Sumo, due to which, the deceased Raghavan sustained severe injuries including fatal injuries and he died on the spot. The claimants, who are the legal heirs of the deceased, have claimed a sum of Rs.15,00,000/- as compensation.

3. The second respondent/National Insurance Company filed a counter by denying the fact that it is the first respondent's bus driver who drove the vehicle in a rash and negligent manner and dashed against the third respondent's Tata Sumo and caused the death to the deceased and the real manner of the accident was not placed by the claimants. It is the driver of the Tata Sumo, who came in a heavy speed, lost his control and came on the right side of the road and applied sudden brake.

4. The fourth respondent/Oriental Insurance Company has stated that only the first respondent's bus instead of keeping on the left side of the road, came on the wrong side and dashed against the third respondent's Tata Sumo. Hence the driver of the third respondent was not responsible for the said accident.

5. The Tribunal, after analysing the evidence and documents placed before it, has given a finding that both the vehicles were driven by its drivers in a rash and negligent manner and the accident occurred because of their negligence. Accordingly, the Tribunal, based on the evidence and documents, has awarded compensation of Rs.8,99,400/- on the following heads:

| Heads | Amount awarded by the Tribunal (Rs.) |
|---|---|
| Loss of income | 8,84,400.00 |
| Funeral expenses | 5,000.00 |
| Loss of love and affection | 10,000.00 |
| Total compensation | 8,99,400.00 |

6.The Tribunal has taken the monthly income of the deceased at Rs.10,000/- and after deducting one third towards the contribution to the family, his income has been determined at Rs.6,700/- and the annual income was calculated as Rs.80,400/-

and by applying the multiplier 11, the annual loss of income was arrived at Rs.8,84,400/-. The sum awarded for "funeral expenses" is at Rs.5,000/- and under the head "loss of love and affection", a sum of Rs.10,000/- was awarded and thus the total amount awarded is Rs.8,99,400/-.

7.The Tribunal has also given a finding that the first claimant has received a sum of Rs.3,00,000/- towards DCRG. The Tribunal has observed that out of the DCRG of the deceased, the first claimant has received a sum of Rs.2,24,000/-. Hence the Tribunal has deducted the said amount and awarded a sum of Rs.6,00,000/-. Aggrieved by the said Award, the Appellants have preferred this appeal.

8.In the grounds of appeal, the Appellants have stated that as per the service register, the age of the deceased was only 50 years at the time of accident and by applying multiplier 11, the Tribunal has not calculated the loss of income in a proper manner. The normal expectancy of life of an Indian is 65 years and the multiplier ought to have been adopted is "16". The further grievance raised by the Appellants is that, the future prospects for the deceased was not calculated and the sum awarded under the head "love and affection" is on the meagre side. Hence, the Appellants have preferred this appeal for enhancement of compensation.

9. On a perusal of the Award, it is observed that the deceased was an employee under the Government and based on the pay slip-Ex.P3, his income was taken by the Tribunal at Rs.10,000/- and for the personal expenses, one third amount was deducted by the Tribunal and hence the deduction of one third has to be properly considered and it has to be "one fourth". Further, the arguments advanced by the Appellants is that the sum calculated as loss of income by applying the multiplier is not proper.

10. Coming to the arguments advanced by the appellants as to the deduction of DCRG, received by the claimants, the award of the Tribunal is not justified. In this case, especially relating to a person who died in the accident who is an employee in Government service till the date of accident, the sum received by the claimants is the amount, which the deceased as Government employee was entitled to and that sum was given to the claimants, which is part of service benefits for the service rendered by him. Now, the sum awarded by the Tribunal is one for the loss to the family because of the death occurred in the said accident. But for the accident, the deceased would have lived for another 15 years. Hence, the loss assessed by the Tribunal is the loss regarding future income that the deceased would earn if he were alive and the sums awarded under various

heads are also for the loss suffered by the family members and the future loss of income is supported to care and attendance and comfort which will be provided by the deceased. Hence, the sum was awarded by the Tribunal for the accident, depriving the claimants the company of the deceased for care, support and the future loss of income. Hence, the sum awarded towards DCRG for the service rendered by him, cannot at all be deducted by the Tribunal, while awarding the amount towards compensation. The compensation has to be paid in full, since, the deceased is a government employee. In this context, it is worthwhile to refer a Judgment of the Supreme Court reported in AIR 2018 SC 5034 (Sebastiani Lakra & others vs. National Insurance Company Ltd & another), whereas the Apex Court held as follows :

> "14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employees works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death.........."

11. The claimants have rightly produced the salary slip, which shows the monthly income of the deceased is Rs.10,000/-. The Tribunal has deducted one third towards the personal expenses and arrived at a sum of Rs.6,700/- as the monthly income of the deceased and applied "11" as multiplier. The Tribunal arrived at a sum of Rs.8,84,400/- towards the loss of income. Considering the facts and circumstances of the case, this Court is inclined to deduct "one fourth" of the salary of the deceased towards personal expenses. Thus, for calculating the monthly income of the deceased, after deducting one fourth it would come to Rs.7,500/- and by applying 11 as multiplier, loss of income would be arrived at a sum of Rs.9,90,000/-. The Tribunal has granted only a sum of Rs.5,000/- towards the funeral expenses and Rs.10,000/- towards the loss of love and affection. The funeral expenses is enhanced to a sum of Rs.15,000/-. The claimants are three children of the deceased. Therefore, the sum awarded towards loss of love and affection is also increased to a sum of Rs.15,000/-. The Tribunal has not awarded any amount towards loss of consortium. The deceased is aged 51 years and wife is aged around 50 years. Therefore, a sum of Rs.30,000/- is awarded towards loss of consortium to her. Thus, the enhanced compensation would be as follows :

| Heads | Amount awarded by the Tribunal (Rs.) | Amount Modified by this Court (Rs.) |
|---|---|---|
| For Loss of Income | 8,84,400.00 | 9,90,000.00 |
| For funeral expenses | 5,000.00 | 15,000.00 |
| For loss of love and affection | 10,000.00 | 15,000.00 |
| For Consortium | - | 30,000.00 |
| TOTAL | 8,99,400.00 | 10,50,000.00 |

12. In view of the above enhancement, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscelleneous Petition is closed.

13. Accordingly, the respondents are directed to deposit the enhanced award amount in respect of the above appeal as per the modified award passed by this Court, with interest and costs, as apportioned by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of respective claimants to their bank accounts through RTGS within one week thereon. The enhanced amount shall carry the same rate of interest as awarded by the Tribunal. The claimants are directed to pay the necessary Court Fee, if any, on the enhanced compensation.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pp/arb
To

1.The Principal District Judge,
The Motor Accident Claims Tribunal, Perambalur.

2.The Section Officer,
V.R. Section, Madras High Court.
+1 cc to Mr.T.Gobinath, Advocate Sr.No.70431

C.M.A.No.2124 of 2003

KJI(CO)
CSL/27.03.2019