

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1356 of 2018

1.Pushbha
2.Salini (Minor),
3.Pappa
4.Ganesan
5.Santhoshkumar
(As against the 5th petitioner, petition dismissed)
6.Santhini .. Appellants/Petitioners

Vs.

1.Muruganandham
2.The Manager,
Shriram General Insurance Company Limited,
No.66, Thirumalaipillai Street,
City Centre Complex, IInd Floor,
T.Nagar, Chennai - 600 017.
Presently at
No.4, Lady Desika Road, 2nd Floor,
Mookambikai Complex,
Mylapore, Chennai-600 004. .. Respondents/Appellants

Prayer:- Civil Miscellaneous Appeal filed against the Judgement and Decree dated 25.09.2014 made in M.C.O.P.No.34 of 2012 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Ariyalur.

For Appellants : Mr.A.A.Venkatesan

For Respondents : Mr.S.Dhakshinamoorthy (for R2)

JUDGMENT

The Civil Miscellaneous Appeal is filed by the Appellants against the judgement and decree dated 25.09.2014 in M.C.O.P.No.34 of 2012 by the learned Motor Accidents Claims Tribunal (Principal District Judge), Ariyalur.

2.The brief facts of the case:-

The Appellants are the wife, daughters, parents and brother of the deceased Sundaramurthy. On 17.10.2011 at about 4.30 p.m. the deceased Sundaramurthy was riding his two-wheeler from North to South direction. At that time, the driver of the offending vehicle drove the vehicle in a rash and negligent manner and dashed against the two-wheeler and thereby caused the accident. As a result, the deceased was thrown out and fell down and sustained grievous injuries and later he died at the hospital. The accident occurred only due to the rash and negligent act of the respondent's driver. Hence, both the respondents are liable to pay compensation for a sum of Rs.15,00,000/- to the Appellants who have lost their only bread-winner of the family.

3.The 1st Respondent, the owner of the vehicle appeared by his counsel and filed counter and the 2nd respondent also appeared through their Counsel and filed Counter, and both of them were denied the allegations made in the claim Petition and the Appellants are put to strict proof of each and every one of the same.

4.The Appellants have examined herself as PW1 and examined eyewitness as PW2 and marked documents Exhibits P1 to P6 on their side to prove the claim. On the side of the Respondents no oral or documentary evidence was produced.

5.The Tribunal perused all the available records and found that the 1st Respondent's driver is responsible for the accident. The Tribunal also fixed the award for a sum of Rs.7,95,000/- as compensation payable to the Appellants. Against the order of the Tribunal, the Appellants preferred the Appeal for seeking enhancement of the award amount. The Appellant's counsel contended that the Tribunal failed to fix a reasonable notional income of the deceased and also failed to add the future prospects of the income of the deceased for calculating the compensation.

6.On the other hand, the 2nd Respondent Insurance Company's Counsel contended that the Tribunal has arrived the claim on the basis of the available materials and documents on records. The notional income fixed by the Tribunal is perfectly correct and also adopted correct multiplier. Hence, the award passed by the

Tribunal is reasonable and needs no interference. Thus the 2nd Respondent seeks for dismissal of the Appeal. The Respondent / Insurance Company have not disputed the other findings of the Tribunal.

7. I heard Mr.A.A.Venkatesan, learned counsel for the appellants and Mr.S.Dhaksinamoorthy, learned counsel for the 2nd respondent and carefully perused the materials placed on records including the impugned judgement and decree passed by the Tribunal.

8.The only question that arise for consideration of this Court is:

- 1) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?
- 2) Whether the Appellant is entitled for enhancement of compensation?

9.Admittedly, the deceased died in the road accident at the age of 30 years and he was working as a weaver by profession. This Court find that the Tribunal is not justified in taking the notional income of the deceased at Rs.3,000/- per month. The Tribunal failed to consider the Hon'ble Apex Court judgement in Syed Sadiq Case, the notional income was fixed at Rs.6,500/- per month for vegetable vendor who met with an accident in the year of 2008. So the notional income fixed by the Tribunal as Rs.3,000/- is very low and not reasonable and warrants interference. The Tribunal should have fixed the notional income at Rs.6,500/- per month of the deceased. Since the accident took place on 07.10.2011. Thus, this Court have taken and fixed the notional income of the deceased is Rs.6,500/- per month. Since, the accident took place in the year of 2011.

10.The Tribunal has also fallen in error in deducting 1/3rd towards the personal expenses of the deceased. In the light of the decision in Sarla Varma Vs. Delhi Transport Corporation, the Apex Court allowed the deduction of 1/4th where the number of dependants are 4 to 6. In this case, the dependants are five members of the family. So, the 1/3rd deduction taken by the Tribunal is wrong. Thus, this Court felt and fixed the deduction of 1/4th towards the personal expenses of the deceased is reasonable.

11.This Court find that the Tribunal also failed to add future prospects of the income of the deceased considering the age of the deceased that 40% has to be added/as future prospects for self-employed persons below 40 years. As per the judgement of the Hon'ble Apex Court in Pranay Sethi Case. Accordingly, this Court added 40% towards the future prospects in the income of the deceased. On the above detailed discussion, the loss of dependency of the Appellants is calculated as follows:-

Monthly Income Fixed Rs.6,500/-

Rs.6,500/- (X 40% = Rs.2,600/- + Rs.6,500/- = Rs.9,100/-) /
1/4th = Rs.6,825/-, =Rs.6,825/- X 12 X 17 = Rs.13,92,300/-

12. Following the Hon'ble Apex Court decision reported in National Insurance Co. Ltd., Vs. Pranay Sethi and others 2017 (2) TN MAC Page 609 Supreme Court towards Loss of Estate, Loss of Consortium and Funeral Expenses, this Court is inclined to modify the compensation as under:-

Loss of Consortium	Rs.40,000/-
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-

13. Accordingly the compensation granted by the Tribunal is modified and enhanced and break-up details as given below:-

	Amount granted by the Tribunal	Amount granted by this Court
Loss of earnings	Rs.6,12,000/-	Rs.13,92,300/-
Loss of Consortium	Rs.25,000/-	Rs.40,000/-
Loss of Love and Affection	Rs.50,000/-	NIL
Medical Expenses	Rs.98,000/-	Rs.98,000/-
Funeral Expenses	Rs.10,000/-	Rs.15,000/-
Loss to Estate	NIL	Rs.15,000/-
Total	Rs.7,95,000/-	Rs.15,60,300/-

14. In the light of the foregoing discussion, the Award of the Tribunal is modified and enhanced on the above terms.

15. Having regards to the facts and circumstances of this case as stated above, the Award of the Tribunal is hereby modified and enhanced. The award granted by the Tribunal is Enhanced from Rs.7,95,000/- to Rs.15,60,300/- which shall carry interest at 7.5% per annum from the date of filing of the claim petition to till the date of deposit.

16.Out of the enhanced compensation, the apportionment between the Petitioners as ordered by the Tribunal and the major claimants have withdrawn their respective share after deposit. The 5th Petitioner, the brother of the deceased, is not entitled to any amount. The minor shares will be invested in a bank till she attain majority.

17.In view of the above, this Civil Miscellaneous Appeal is allowed and the award of the tribunal is enhanced from Rs.7,95,000/- to Rs.15,60,300/- and the Respondent/Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. into Court within a period of six weeks from the date of receipt of a copy of this order. The Appellants are directed to pay the Additional Court Fee, if any, for the enhancement amount into Court before receiving this order copy. On such deposit, the major claimants are permitted to withdraw their respective share amount by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Motor Accidents Claims Tribunal
(Principal District Judge), Ariyalur.

2.The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.58918

C.M.A.No.1356 of 2018

rrs 14/11/2018

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