

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1200 of 2016

1. R.Kalamani

2. Minor S.R.Kavinaya

D/o. (Late) S.Ramakrishnan

No.58, Sunder Nagar Extention

S.V.Mill Post, Udumalpet

Tirupur District.

rep. by mother and natural guardian

R.Kalamani (first appellant) Appellants/Petitioners

Vs

1. Minor C.Venkatraman

rep. by his father and natural guardian

Chandrasekhar, Gandhi Nagar

Udumalpet, Tirupur District.

2. R.Murugaboopathy (died)

3. The United India Insurance Company Limited

Kalpana Road, Udumalpet

Tirupur District.

4. M.Krishnaveni

5. M.Ramparamesh

6. M.Yogasiddarth

(Respondents 4 to 6 brought on record as

LR's of the deceased second respondent

vide order dated 24.4.2018 made in

CMP.No.1288 of 2017)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 12.2.2013 passed in M.C.O.P.No.256 of 2009 by the Motor Accidents Claims Tribunal (Sub Court), Udumalpet.

For Appellants : Mr.S.Saravanan

For Respondents: Mr.A.S.Balaji (for R1)

Mr.J.Chandran (for R3)

Mrs.S.Sujatha (for R4 to R6)
Legal Aid Counsel

JUDGMENT

Calling into question the decree and judgment dated 12.2.2013 passed in M.C.O.P.No.256 of 2009 by the Motor Accidents Claims Tribunal (Sub Court), Udumalpet, the present civil miscellaneous appeal is filed.

2. The facts in a nutshell are as under: The claimants are the appellants herein. They are the wife and daughter of the deceased, S.Ramakrishnan. It is the case of the appellants that on 12.6.2009 at about 8.45 AM, when the deceased was driving his two wheeler bearing registration No.TN 38 H 5457 on Palani Udumalpet Road to leave his minor daughter, the second respondent, in RGM School, near G.V.G.College, a two wheeler bearing registration No.TN 41 V 9245, driven by the first respondent came from east to west direction at high speed in a rash and negligent manner and dashed against the vehicle of the deceased and caused the accident.

3. It is alleged that due to the collision, the deceased and the second appellant (minor daughter) were thrown off from the motorcycle and the deceased sustained grievous injuries all over the body, a fracture on the right leg below knee, a severe head injury, abrasions and contusions all over the body and he was lying in a pool of blood unconsciously. It is stated that he was rushed to the Government Hospital, Udumalpet, where he was given first-aid, and was thereafter he was referred to Coimbatore Medical College Hospital, and he succumbed to injuries on the way. It is stated that the minor second appellant was also severely injured and suffered bleeding injuries over forehead, nose and mouth.

4. In the claim petition, it is stated that the deceased was 34 years old and he was the sole breadwinner of the family and he was employed as Production Officer in Vinu Spinning Mills, Pethanaickanur, Pollachi and was earning Rs.10,000/- per month. Thus, the appellants claimed Rs.15,00,000/- as compensation.

5. The first and second respondents filed counter affidavit before the Tribunal denying the mode of accident and alleging that the accident was caused due to the rash and negligent driving of the deceased. It was also averred that the deceased was not having a valid driving license at the time of accident and that the first respondent had valid LLR licence and without

noticing the 'L' Board vehicle, the deceased had caused the accident.

6. The third respondent insurance company filed a counter affidavit before the Tribunal refuting the allegation levelled by the appellants. The third respondent denied the manner of accident. It was also stated that the deceased suddenly crossed the road without giving any signal and hit on the motorcycle driven by the first respondent. They also disputed the age, occupation, monthly income of the deceased. They prayed for dismissal of the claim petition.

7. The learned Tribunal, by decree and judgment dated 12.2.2013 passed in M.C.O.P.No.256 of 2009 awarded compensation of Rs.10,69,000/-.

8. Seeking enhancement of compensation, the unsatisfied claimants have filed this appeal.

9. It is the contention of the learned counsel appearing on behalf of the appellants that the deceased was earning Rs.10,000/- per month, which fact was also substantiated by the evidence of P.W.3, the authorized agent of the Spinning Mill where the deceased was working, but despite such evidence, the Tribunal did not give due credence to the said evidence for fixing the monthly income of the deceased.

10. He further submitted that the Tribunal had failed to consider the future prospects of the deceased and claimed that the Tribunal ought to have considered 50% as future prospects. He also contended that the Tribunal awarded a meagre sum towards loss of love and affection; loss of consortium; funeral expenses, and had not awarded any amount towards loss of estate.

11. Per contra, the learned counsel appearing on behalf of the respondents reiterated the reasons that weighed with the Court below and prayed for dismissal of this appeal.

12. I have heard Mr.S.Saravanan, learned counsel appearing for the petitioners, Mr.A.S.Balaji, learned counsel for the 1st respondent, Mr.J.Chandran, learned counsel for the 2nd respondent and Mrs.S.Sujatha, learned Legal Aid Counsel appearing for the respondents 4 to 6 and also perused the materials available on record.

13. It is not necessary for this Court to narrate entire facts in detail, as based on the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the first respondent. Since at the time of accident, the first respondent was a minor and was permitted to drive 50 CC vehicle, the third respondent insurance company was

directed to pay the compensation first and then recover the same from the respondents 1 and 2. As there was no appeal against the said finding of the Tribunal, this Court does not want to elaborate upon the same.

14. The point to be decided in the present appeal is whether the Tribunal has awarded just and reasonable compensation.

15. In the claim petition, the appellants have stated that at the time of accident the deceased Ramakrishnan was aged 34 years and was earning Rs.10,000/- per month by working as Production Officer in Vinu Spinning Mills, Pethanaickanur, Pollachi Taluk. In her evidence, P.W.1-wife of the deceased deposed that her husband was working in Vinu Spinning Mills and was earning Rs.10,000/- per month before the accident.

16. The appellants have examined one Kanagaraj as P.W.3, who deposed in his evidence that he was working as Officer in Vinu Spinning Mills and the deceased Ramakrishnan was working as Production Officer in Vinu Spinning Mills from 12.1.2009 and was drawing salary of Rs.10,000/- per month. Ex.P11 is the salary slip of the deceased Ramakrishnan.

17. The Tribunal held that since the appellants have failed to produce the attendance register and salary register of the deceased, it would be appropriate to fix the monthly salary of the deceased at Rs.8,000/-. The aforesaid approach adopted by the Tribunal is not acceptable for the reason that when the appellants have proved the monthly income of the deceased by way of oral and documentary evidence, the Tribunal ought to have taken the salary mentioned in Ex.P11-salary slip. Moreover, in his evidence, P.W.3 the authorised Officer working in Vinu Spinning Mills categorically deposed that the deceased was working in their company and was drawing salary of Rs.10,000/- per month. When such being the categorical evidence of P.W.3, the Tribunal ought to have taken the monthly income of the deceased Ramakrishnan at Rs.10,000/-. Considering the oral evidence of P.Ws.1 and 3 and also Ex.P11-salary slip, this Court fixed the monthly income of the deceased at Rs.10,000/-.

18. In their claim petition though the appellants have stated that at the time of accident, the deceased was aged 34 years, Ex.P3-post mortem certificate reveals that the deceased was aged 32 years. Therefore, the age of the deceased was fixed as 32 years.

19. While awarding compensation, the Tribunal has not taken into consideration the future prospects of the deceased. Since the deceased was aged 32 years at the time of accident, if he alive, he would have earned more. Therefore, it would be appropriate to give 40% addition of the salary towards future

prospects. If we add 40% of the salary, the monthly earning of the deceased would come to Rs.14,000/-. Deducting one-third towards personal expenses, the monthly contribution to the family is calculated at Rs.9,333/- and the annual contribution is calculated at Rs.1,11,996/-.

20. As stated supra, at the time of accident, the deceased was aged 32 years. For the age group 31 -35, the proper multiplier to be applied is "16". Adopting multiplier "16", the loss of dependency is calculated at Rs.17,91,936/-, rounded off to Rs.17,92,000/-.

21. As far as conventional damages awarded by the Tribunal is concerned, the Tribunal awarded Rs.20,000/- towards loss of love and affection; Rs.20,000/- towards loss of consortium to the 1st appellant and Rs.5,000/- towards funeral expenses. Since the amounts awarded by the Tribunal under the heads loss of love and affection and funeral expenses are reasonable, the same are maintained. As far as loss of consortium to the 1st appellant awarded by the Tribunal is concerned, the same is enhanced to Rs.40,000/-. Thus, the appellants are entitled to get total compensation of Rs.18,57,000/-.

22. In Nagappa v. Gurudayal Singh and others, reported in 2003 ACJ 12 (SC), the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such an award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable.

23. In view of the above discussion, the total compensation of Rs.10,69,000/- awarded by the Tribunal is enhanced to Rs.18,57,000/- as follows:

Heads	Rs.
Loss of dependency	17,92,000.00
Loss of love and affection	20,000.00
Loss of consortium to 1 st appellant	40,000.00
Funeral expenses	5,000.00
Total	18,57,000.00

24. The 1st appellant is entitled for Rs.10,00,000/- and the minor 2nd appellant is entitled for Rs.8,57,000/- with accrued

interest.

25. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The total compensation of Rs.10,69,000/- awarded by the Tribunal is enhanced to Rs.18,57,000/-. The third respondent is directed to deposit the enhanced compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and then recover the same from the owner of the vehicle. Out of Rs.18,57,000/-, the 1st appellant is entitled for Rs.10,00,000/- with accrued interest and the minor 2nd appellant is entitled for Rs.8,57,000/- with accrued interest. The appellants is directed to pay the deficit court fee and Registry is directed to draft the decree only after payment of deficit court fee by the appellants. In so far direction for withdrawal and deposit of the minor amount into the Bank, the direction of the Tribunal is unaltered. Consequently, connected miscellaneous petition is closed, if any.

26. The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.5,000/- to Smt.S.Sujatha, Legal Aid Advocate.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Sub Court, Udumalpet.

2.The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.S.Saravanan, Advocate sr.no.66416

+lcc to Mr.A.S.Balaji, Advocate sr.no.66193

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nr 19/12/2018