

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1514 of 2018
and
C.M.P.No.12071 of 2018

The Divisional Office,
United India Insurance Company Ltd.,
II (HUB), 104-A, Peramanoor Main Road,
Salem - 7. ... Appellant

Vs

1.A.Soorya

2.M/s.M.M.D.Dairy
D.No.104/9, Erode Main Road,
Chithode, Pin- 638 102.

3.J.Vijaya

4.The Divisional Office,
United India Insurance Company Ltd.,
II (HUB), 104-A, Peramanoor Main Road,
Salem - 7.

5.Rosammal

6.P.Subramaniam ... Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree made in M.C.O.P.No.960 of 2015 on 12.10.2017 on the file of the learned II Additional District Judge (Motor Accident Claims Tribunal) at Salem District.

For Appellant :Mr.J.Chandran

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company, against the award of Rs.25,00,000/- for the death of one Visvan @ Visvanathan, 28 years old driver, allegedly earning about Rs.15,000/- per month, in the accident, which occurred on 07.12.2014, when he was travelling as an

additional driver in the lorry, belonging to the 2nd respondent, insured with the appellant/insurance company, which was driven rashly and negligently and hit behind another lorry, belonging to the 3rd respondent and insured with the 4th respondent/insurance company.

2.The learned counsel appearing for the appellant would submit that the Tribunal in the absence of any evidence to show that the deceased was a driver, took a sum of Rs.10,000/- as monthly income and determined the compensation, applying multiplier of "17" erroneously. Therefore, he seeks to reduce the compensation.

3.Though the learned counsel for the appellant would submit that there was no evidence to show that the deceased was a driver, Ex.P.7- copy of the driving license of the deceased was exhibited and therefore, it is proved that the deceased was a driver.

4.A close scrutiny of the records would show that the deceased travelled as an additional driver in the lorry at the time of the accident. It would have been impossible to get a driver in the year 2014 for monthly salary less than Rs.15,000/- that too for a heavy vehicle viz., lorry. Therefore, Rs.10,000/- determined by the Tribunal as monthly income is suo motu enhanced to Rs.15,000/-.

5.The Tribunal as per the law, which was in force at the time of the disposal of the claim petition, added 50% towards future prospects and the same has to be reduced to 40%, in view of the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). After adding 40% towards personal expenses, the monthly income would be at Rs.21,000/- (Rs.15,000/- + 40% of Rs.15,000/-).

6.The Tribunal deducted 1/3rd towards personal expenses, considering the size of the family viz., wife and parents. The same is confirmed. After deducting 1/3rd towards personal expenses, the monthly contribution to the family would be at Rs.14,000/- (Rs.21,000/- (-) 1/3rd of Rs.21,000/-).

7.As per Ex.P.7-Driving licence and Ex.P.5-Postmortem certificate, the Tribunal rightly determined the age of the deceased as "28" years and the appropriate multiplier for the said age is "17" as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC). Therefore, the loss of income would be at Rs.28,56,000/- (Rs.14,000/- x 12 x 17)

8.Loss of consortium:

The Tribunal awarded a sum of Rs.2,00,000/- under this head, considering the very young age of the widow viz., "19"

years, as per the law, which was in force then. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), a sum of Rs.40,000/- is awarded to the 1st respondent/claimant under this head.

9.Loss of love and affection:

The Tribunal awarded a sum of Rs.2,25,000/- under this head to respondents 5 and 6. The same is reduced to Rs.60,000/-.

10.Funeral Expenses:

The Tribunal awarded a sum of Rs.25,000/- under this head. The same is reduced to Rs.15,000/-.

11.Loss of estate:

No amount was awarded under this head by the Tribunal. This Court awards a sum of Rs.15,000/- under this head.

12.Transportation charges:

The Tribunal awarded a sum of Rs.10,000/- under this head. The same is confirmed.

Head	Amount (Rs.)
Total loss of income	2856000
Loss of consortium	40000
Loss of love and affection	60000
Loss of estate	15000
Funeral expenses	15000
Transportation	10000
Total	2996000

13.Hence, the total compensation payable in this case is Rs.29,96,000/-, rounded off to Rs.30,00,000/-

14.The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

15.Out of the amount awarded towards compensation, the 1st respondent/claimant is entitled to Rs.22,00,000/-, the 5th and 6th respondents are entitled to Rs.4,00,000/- each.

16.Though the appeal has been preferred by the appellant/insurance company against the award of Rs.25,00,000/-, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.25,00,000/- is enhanced to Rs.30,00,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is

required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC). Therefore, in an endeavour to do complete justice, this Court has enhanced the compensation.

17.The appellant/Insurance company is directed to deposit the award amount as per the modified award passed by this Court, with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of the 1st, 5th and 6th respondents/claimants along with proportionate interest and costs to their bank accounts through RTGS within a period of one week thereon.

18.Since even without notice to the claimants/respondents 1, 5 and 6, the enhancement has been made in favour of the claimants/respondents 1, 5 and 6 in the appeal filed by the insurance company at the time of admission itself, there is no occasion for the claimants/respondents 1, 5 and 6 to note the enhancement. Therefore, copy of this order is directed to be sent to the claimants/respondents 1, 5 and 6 free of cost. The claimants/respondents 1, 5 and 6 are directed to pay the requisite court-fee, if any, before the Tribunal, within a period of two weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimants and thereafter, transfer the remaining award amount as per the ratio fixed by this Court, to the accounts of the claimants.

19.Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.25,00,000/- to Rs.30,00,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

To
The II Additional District Judge
(Motor Accident Claims Tribunal),
Salem

Copy to:

1 A.Soorya,
12, Govindasamy Pillai Street,
Hasthampatti, Salem-7, Salam Taluk and District.

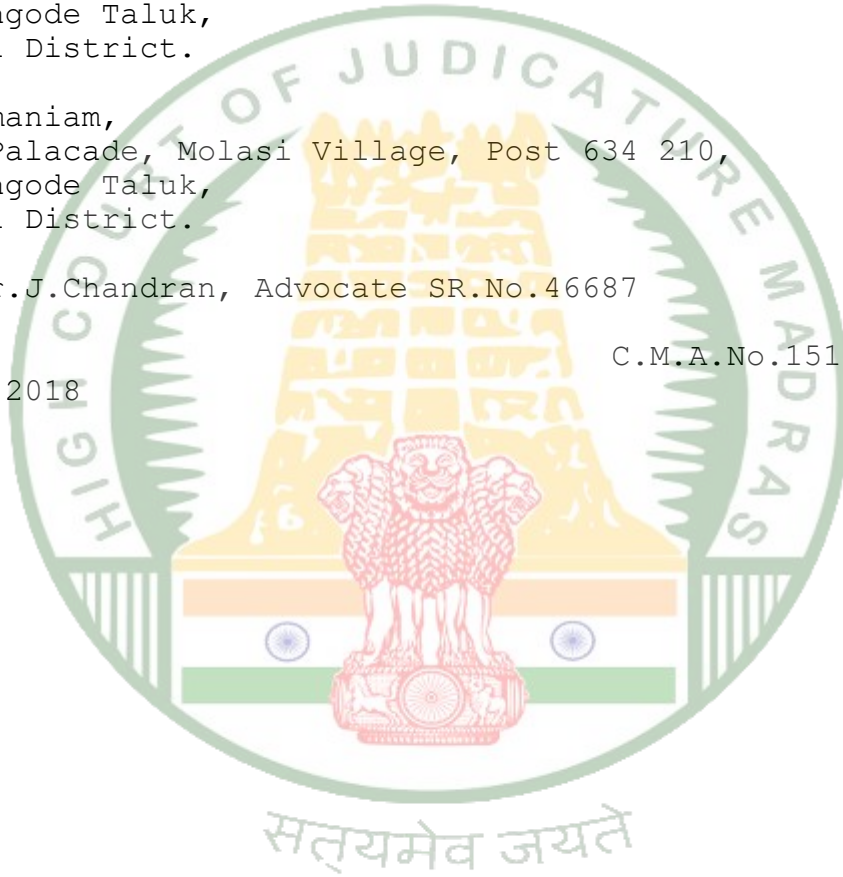
2 Rosammal, W/o,P.Subramaniam,
531/2, Palacade, Molasi Village, Post 634 210,
Tiruchengode Taluk,
Namakkal District.

3 P.Subramaniam,
531/2, Palacade, Molasi Village, Post 634 210,
Tiruchengode Taluk,
Namakkal District.

+1cc to Mr.J.Chandran, Advocate SR.No.46687

C.M.A.No.1514 of 2018

SMI/29.08.2018



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