

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM

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

C.M.A. No. 1642 of 2015

1. Kaviarasi
2. Lokesh (Minor)
(Minor rep. by his mother/1st appellant)
Chellammal (deceased)
3. Periasamy ..Appellants/Petitioners

Vs.

1. Ilangovan
2. National Insurance Co. Ltd.,
661, Trunk Road, Poonamallee,
Chennai - 600 056. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the award dated 26.03.2015 passed by the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes), Chennai, in M.C.O.P. No. 4863 of 2011.

For Appellants :: Mrs.Saleem Fathima for
Mr.S. Ravikumar

For Respondents:: Mrs.R. Sreevidhya for R2

J U D G M E N T
सत्यमेव जयते

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

This Civil Miscellaneous Appeal has been preferred by the claimants aggrieved over the quantum of compensation of Rs.10,62,005/- awarded for the death of one Ilayaraja @ Ilayakavi, husband of the 1st appellant/father of the 2nd appellant/son of the 3rd appellant, aged about 25 years, alleged to be working as Film Director and Building Civil Contractor, earning Rs.10,000/- per month, in the accident, which occurred on 11.10.2011, when the deceased, who was riding a motor cycle at Periyapalayam to Tamaraipakkam Road, was hit down by a lorry, belonging to the 1st respondent and insured with the 2nd

respondent Insurance Company, coming in the opposite direction, driven rashly and negligently.

2. The Tribunal found that the accident occurred because of the rash and negligent driving by both the deceased and the driver of the lorry and fixed the contributory negligence in the ratio 5:95 and awarded a sum of Rs.10,62,005/-.

3. Heard Mts. Salim Fathima, learned counsel for the appellants and Mrs.R. Sreevidya, learned counsel for the 2nd respondent Insurance Company.

4. The only question to be decided is with regard to the quantum of compensation as there is no appeal by the Insurance Company. Even otherwise, the Tribunal taking into consideration, the head-on collision of vehicles found that the accident occurred because of rash and negligent driving by both the vehicles and 95% contributory negligence was attributed to the lorry driver and 5% to the deceased. The fixation of 5% contributory negligence on the deceased was due to the fact that there were two more persons travelling in the two-wheeler along with the deceased, ie., totally three persons were travelling and therefore, the Tribunal rightly fixed 5% negligence on the part of the deceased, the rider of the two-wheeler.

5. The Tribunal, in the absence of any evidence except P.W1's oral evidence that the deceased was working as a Film Director and Civil Contractor, earning Rs.10,000/- per month, determined the monthly income at Rs.7000/- per month. The accident had occurred in 2011 and at that point of time, even an ordinary mason or worker would have earned not less than Rs.10,000/- and even the services of a housemaid would not have been available for less than Rs.10,000/- as salary during the said period. Therefore, this Court re-determines the monthly income of the deceased at Rs.10,000/-. As per the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company V. Pranay Sethi and others reported in 2017 ACJ 2700, 40% has to be added towards "future prospects". Therefore, adding 40%, the "total monthly income" comes to Rs. 14,000/-.

6. One-third deduction was rightly made by the Tribunal towards "personal expenses" of the deceased. After one-third deduction, "the monthly contribution of the deceased" comes to Rs.9333.33/- (Rs.14,000/- (-) 1/3(Rs.14,000/-)). For the age of the deceased, namely, 25 years, as evidenced by Ex-P5, Driving Licence, the appropriate multiplier is 18, which was rightly adopted by the Tribunal. Applying the said multiplier, "Loss of Income" is calculated as (Rs.9333.33 x 12 x 18) = Rs.20,15,999/-.

7. As far as the amounts awarded under other heads are concerned, the Tribunal awarded Rs.50,000/- towards " Loss of Consortium" and the same is reduced to Rs.40,000/- following the judgment in Pranay Sethi's case. The sum of Rs.15,000/- awarded towards " Funeral Expenses" is confirmed. No amount was awarded towards " Loss of Estate". Hence, a sum of Rs.15,000/- is awarded. Likewise, a sum of Rs.10,000/- is awarded towards " Transport Expenses". The Tribunal has awarded only a sum of Rs.45,000/- towards " Loss of Love and Affection" . The amount awarded towards " Loss of Love and Affection" is akin to the amount awarded towards " Loss of Consortium" to the spouse. The age of the 2nd appellant was hardly 3 years at the time of the accident and he lost the love and affection, care and guidance of his father, throughout his life and the same cannot be compensated by money. Therefore, a sum of Rs.75,000/- is awarded towards " Loss of Love and Affection" to the 2nd appellant and a sum of Rs.25,000/- to the 3rd appellant. Summing up, the total compensation comes to Rs.21,95,999/-. Since 5% contributory negligence has been fixed on the deceased, deducting 5% from the total compensation, the amount payable to the appellants/claimants is Rs. 20,86,199/- rounded off to Rs.21 lakhs.

8. Out of the said sum, the 1st and the 2nd appellants are each entitled to Rs.10 lakhs/- and the 3rd appellant is entitled to Rs.1 lakh. The rate of interest awarded by the Tribunal @ 7.5% per annum remains intact. The appellants shall pay additional court-fee for the enhanced amount, if any.

9. The 2nd respondent Insurance Company is directed to deposit the entire 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. On such deposit being made, the Tribunal is directed to transfer the respective shares of the major claimants to their respective bank accounts through RTGS within a period of one week thereon. The share of the minor claimant shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit, till he attains majority.

10. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.10,62,005/- to Rs.21 lakhs with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The MACT (III Court of Small Causes),
Chennai.

+1cc to Mrs.R.Sreevidhya, Advocate sr.no.40803

+1cc to Mr.S.Ravikumar, Advocate sr.no.41279

C.M.A. No. 1642 of 2015

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