IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1681 of 2015

1. G. Amala
2. D.Gajalakshmi
3. C.Damodharan
4. D.Devarajan ..Appellants

Versus

1. Rajendran

2. IFFCO Tokio General Insurance Co.Ltd.,
Sahas Embassy,
Ground Floor, 145/132,
Nelson Manickam Road,
Mehta Nagar,
Chennai-600 029. ..Respondents

Prayer: Civil Miscellaneous Appeal filed against the judgment and decree dated 25.02.2015 in M.C.O.P.No.3120 of 2011 on the file of Motor Accident Claims Tribunal Court of Chief Small Causes, Chennai.

For Appellants : Mr. Ilanthirajan
For Respondents : Mr. M.B.Gopalan and
Mr. Vijayaraghavan [for R2]

J U D G M E N T

The appellants/claimants have come forward with this appeal against the judgment and decree dated 25.02.2015 in M.C.O.P.No.3120 of 2011 on the file of Motor Accident Claims Tribunal Court of Chief Small Causes, Chennai.

2. Heard the learned counsel for the Appellants and the learned counsel appearing for the 2nd respondent/Insurance Company.

3. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

4. The case of the appellants is that on 20.09.2010, at about 9.20 hours, when the D.Srinivasan/deceased was going to

his office in Hero Honda Passion bearing Registration No.TN-04-T-2768 at Ambattur, towards Padi, a lorry bearing Registration No.TN-27-Z-1437, driven by its driver in a rash and negligent manner came in the same direction and hit the motor cycle from behind. Due to that impact, the deceased fell down and the left side front wheel of the lorry ran over the hip of the deceased. Immediately, he was rushed to Kilpauk Medical Colllege Hospital where the doctors declared him brought dead. Thus the legal heir of the deceased, who are the claimants filed the claim petition in M.C.O.P.No.3120 of 2011 seeking compensation of Rs.33,00,000/-.

5. On the other hand, refuting the contentions of the petitioners, the 2nd respondent/Insurance Company opposed the petitioners claim by filing a detailed counter and pleaded for dismissal of the petition.

6. In support of the claim, the third petitioner examined himself as P.W.1 and two other witnesses as P.W.2, P.W.3 were also examined. Exs.P.1 to P.30 were marked. On behalf of the respondent, neither any witness was examined nor any document was marked before the Tribunal.

7. After considering the available oral and documentary evidence, the Tribunal awarded compensation of Rs.18,90,000/- with interest at 7.5% p.a., from the date of petition till the date of deposit. The Tribunal categorically held that the accident occurred only due to rash and negligent driving of the driver of the 1st respondent vehicle and also held that the 2nd respondent-Insurance Company is liable to pay the compensation. The details of the compensation is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependants of the deceased (Rs.12050 x 1/4 x 12 x 16)	Rs.17,35,000.00
2	Loss of Love and Affection for petitioners 1 to 4 of the deceased	Rs. 1,00,000.00
3	Loss of consortium	Rs. 25,000.00
4	Funeral expenses	Rs. 25,000.00
5	Transport expenses	Rs. 5,000.00
	Total	Rs. 18,90,000.00

8. Aggrieved by the said conclusion arrived at by the Tribunal, the claimants have filed the present appeal contending that the quantum arrived at by the Tribunal is on the lower side

and the Tribunal has failed to consider the future prospects of the deceased properly. It is further stated that the amount awarded under different heads viz., loss of love and affection, loss of consortium, funeral expenses are on the lower side and the same sought to have enhanced.

9. The learned counsel appearing for R2/Insurance Company submits that the award of the Tribunal is just and proper and needs no interference and sought to dismiss the appeal.

10. Taking into account the fact that the deceased was a Civil Engineering Draftsman and was earning Rs.15,000/- per month as evidenced by P29, P30 payslip and the said fact has been proved before the Tribunal, this court is inclined to fix the monthly salary of the deceased as Rs.15,000/-. Further the age of the victim is fixed as 31 years, on the basis of Ex.P15 Birth Certificate and Ex.P19 Transfer Certificate. Thus the correct multiplier to be applied is 16. It is evident that as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], while determining the income of permanently employed person aged about 30 years, addition of 50% of actual salary to the income of the deceased towards future prospects has to be taken into account. Thus, applying the above decision and by applying multiplier of 16, it will be appropriate to calculate the loss of earning of deceased, as under,:-

Actual income	= Rs.15,000/-
50% addition towards future prospects	= Rs. 22,500/-
1/4 deduction (22500x1/4)	= Rs. 5,625/-

= Rs.16,875 x 12 x 16 = Rs.32,40,000/- (Loss of income)

11. In respect of awarding compensation under conventional heads, the Supreme Court, in the decision cited supra [2017 (2) TN MAC 609], at paragraph 54, held as follows:-

> "The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders

passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads. "

Following the above said Apex court Ruling, towards loss of estate, loss of consortium and funeral expenses, this court is inclined to modify the compensation as under:-

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

12. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	For Loss of income	Rs.17,35,200/-	Rs.32,40,000/-
2	Loss of future prospects	---	---
3	Loss of consortium	Rs.25,000/-	Rs.40,000/-
4	Loss of funeral expenses	Rs.25,000/-	Rs.15,000/-
5	Loss of estate	Rs.5,000/-	Rs.15,000/-
	Total	Rs.18,90,000/-	Rs.33,10,000/-

There is no objection with regard to interest granted at 7.5% per annum and the same is confirmed.

13. In the light of the foregoing discussion, the award of the Tribunal is modified on the above terms. In the result, the Civil Miscellaneous Appeal filed by the appellants/Claimants is partly allowed as follows:-

(1) The award granted by the Tribunal is enhanced from Rs.18,90,000/-. to Rs.33,10,000/

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) The 2nd/Insurance Company is directed to deposit the award amount as ordered by this court less any amount already

deposited within a period of four weeks from the date of receipt of a copy of this order with interest at 7.5% p.a. From the date of petition till the date of deposit and cost.

(4) On such deposit being made the Petitioners/Appellants are permitted to withdraw their share amount.

(5) The 1st petitioner is entitled to get 50% of the award amount, 2nd and 3rd petitioners to get 20% each and the 4th petitioner 10% of the awarded amount with proportionate interest.

(6) There will be no order as to costs in this appeal.

s/d-
Assistant Registrar(CS IX)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Chief Small Causes,
Chennai.

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

+1 CC to Mr.M.B. Gopalan, Advocate sr 4017.
+1 CC to Mr.Sai bharath & Ilan, advocate sr 4057.

C.M.A.No.1681 of 2015

MG(CO)
SP(16/02/2018)