

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1983 of 2018

Dhanalakshmi

.. Appellant

Vs.

1.T.Alamelu

2.The United India Insurance Co. Ltd.,
No.70 NSC Bose Road, 3rd Floor,
Sowcarpet, Chennai-600 079. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 18.2.2015 passed in M.C.O.P.No.822 of 2012 by the Motor Accidents Claims Tribunal (III Additional District Judge), Tiruvallur @ Poonamallee.

For Appellant : Mr.R.Subburaj

For Respondents: Mr.J.Michael Visuvasam (for R2)

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.5,45,000/- awarded by the Tribunal, the appellant has filed the present appeal seeking enhancement. The claimant is the mother of the deceased Ranjithkumar.

2. Briefly stated case of the appellant is that on 23.5.2011 at about 8.30 P.M., the deceased was driving his two wheeler bearing registration No.TN-20 BR 0063 on Arcot-Porur road and while he was proceeding at Sridevi Mineral Water Company, Porur, a tanker lorry bearing registration No.TSE 3549 owned by the first respondent insured with the second respondent came behind in a rash and negligent manner dashed against the two wheeler. Due to the impact, the deceased fell down and the left side wheel of the lorry ran over the deceased and died on the spot. Regarding the accident, a criminal case was registered against the driver of the lorry by the Ponnammallee Traffic Investigation Police in Crime No.987 of 2011. Stating that the accident was

due to rash and negligent driving of the driver of the tanker lorry, the appellant who is the mother of the deceased has filed the claim petition claiming compensation of Rs.15,00,000/-.

3. Denying the manner of accident, the second respondent insurance company filed the counter-affidavit. It is stated that at the time of accident, the deceased who was riding the motorcycle in a rash and negligent manner, without having a valid driving licence, came in wrong side of the road, hit against the first respondent lorry and fall down on the road and therefore, the accident was due to rash and negligent driving of the deceased alone. In the counter, the second respondent also stated that the compensation of Rs.15,00,000/- claimed by the appellant is highly excessive and no basis.

4. Before the Tribunal, the appellant examined herself as P.W.1 and two other witnesses were examined as P.Ws.2 and 3. Exs.P1 to P9 were marked. The first respondent remained ex parte. On the side of the second respondent, no oral and documentary evidence was adduced.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the first respondent. The Tribunal further held that since the first respondent lorry was insured with the second respondent at the time of accident, the second respondent insurance company is liable to pay the compensation. Taking the monthly income of the deceased at Rs.4,500/- and deducting 50% towards personal expenses and adopting multiplier 15, the Tribunal awarded Rs.4,05,000/- towards loss of dependency. Adding conventional damages, the Tribunal awarded total compensation of Rs.5,45,000/-. Being dissatisfied with the quantum of compensation, the appellant has filed the present appeal.

6. The learned counsel for the appellant submitted that deduction of 50% could not have been made and the calculations have to be made as per II Schedule appended to the Motor Vehicles Act and one-third deduction should be made. He would submit that the Tribunal failed to appreciate the settled position of law that the deceased age is the relevant for multiplication of compensation. The Tribunal ought to have applied multiplier 18 and awarded more amount. The learned counsel further submitted that the Tribunal has failed to give any addition towards future prospects. The Tribunal erred in taking the monthly income of the deceased at Rs.4,500/- and it ought to have taken the monthly income of the deceased at Rs.6,000/- and prayed for enhancement of compensation.

7. Per contra, the learned counsel for the second respondent contended that in fact the total compensation of Rs.5,45,000/- awarded by the Tribunal is excessive and prayed for dismissal of the appeal.

8. I have heard Mr.R.Subburaj, learned counsel appearing for the appellant and Mr.J.Michael Visuvasam, learned counsel appearing for the 2nd respondent and also perused the materials available on record.

9. It is not necessary to narrate the entire facts such as, as to how the accident had occurred and who is responsible for the accident and who is liable to pay compensation. It is for the reasons that the Tribunal has recorded findings on these facts in favour of the appellant/claimant. Secondly, the above aspects are not under serious challenge. This appeal has been filed by the appellant seeking enhancement of compensation.

10. The point arises for consideration is whether the compensation of Rs.5,45,000/- awarded by the Tribunal is reasonable.

11. According to the appellant, at the time of accident, the deceased was aged 24 years and was working as Supervisor in Ambika Emporium Hotel, Vadapalani, Chennai. To prove that the deceased was aged 24 years at the time of accident, the appellant has produced Ex.P5 school transfer certificate, wherein the date of birth of the deceased has been mentioned as 17.3.1987. The date of accident is 23.5.2011. Thus, at the time of accident, the deceased was aged 24 years, which the Tribunal has rightly taken.

12. There was no quarrel that the deceased was a bachelor and the appellant is the only legal heir.

13. According to the appellant, at the time of accident, the deceased was earning Rs.4,963/- by working as Hotel Supervisor in Ambika Emporium Hotel, Vadapalani, Chennai. To prove the same, the appellant had produced Ex.P9-salary certificate. Since no attendance register and pay roll were produced, the Tribunal held that the deceased would have earned not less than Rs.4,500/- per month and accordingly, fixed the monthly income of the deceased at Rs.4,500/-.

14. It is to be noted that the Manager of Ambika Emporium Hotel was examined as P.W.3. In his evidence, P.W.3 deposed that the deceased was working as Auditor in Cashier Department and he was drawing Rs.4,963/- per month at the time of accident and he had also produced Ex.P9-salary certificate.

15. When the appellant was able to prove that at the time of accident, the deceased was drawing Rs.4,963/- per month by way of examining P.W.3, the Tribunal ought to have taken the amount mentioned in Ex.P9-salary certificate. Considering the evidence of P.W.3 and Ex.P9-salary certificate, this Court fixed the monthly income of the deceased at Rs.4,963/-, rounded off to Rs.5,000/-.

16. While determining compensation, the Tribunal has not given any addition towards future prospects. It is well settled that while applying multiplier method and calculating multiplicand, future prospects and advancement of life and career should also be taken into account to augment the multiplicand. As stated supra, at the time of accident, the deceased was working as Supervisor and was earning Rs.5,000/- per month. If he alive, he would have earned more. Therefore, considering the age of the deceased, this Court finds that it would be appropriate to give 40% addition towards future prospects. Giving 40% addition, the monthly income of the deceased is calculated at Rs.7,000/-.

17. Since, the deceased was a bachelor, 50% has to be deducted towards personal and living expenses. Deducting 50% towards personal expenses, the monthly contribution to the family would come to Rs.3,500/- and the annual contribution would come to Rs.42,000/-.

18. The learned counsel for the appellant argued that the Tribunal erred in taking the age of the appellant and it ought to have taken the age of the deceased for adopting multiplier.

19. In a catena of decisions, the Hon'ble Supreme Court as well this Court held that choice of multiplier would depend upon age of the deceased or age of the claimant whichever is higher.

20. Coming to the choice of multiplier, at the time of accident, deceased was aged 24 years and appellant was aged 40 years. Taking into consideration the age of the appellant, the Tribunal has adopted multiplier "15" and the same is maintained.

21. Taking the annual income of the deceased at Rs.42,000/- and adopting multiplier "15", the loss of dependency is calculated at Rs.6,30,000/-.

22. In so far as the conventional damages are concerned, the Tribunal awarded Rs.25,000/- for mental agony; Rs.15,000/- for funeral expenses. Since the amounts awarded by the Tribunal under the heads mental agony and funeral expenses are reasonable, the same are maintained.

23. As far as awarding of Rs.1,00,000/- by the Tribunal for pain and suffering is concerned, in fatal cases, question of awarding compensation under the head pain and suffering would not arise. Further, the Tribunal has awarded Rs.25,000/- for mental agony. When Rs.25,000/- was awarded for mental agony, awarding of Rs.1,00,000/- for pain and suffering by the Tribunal is unreasonable and the same is deleted. However, the Tribunal has not awarded any amount for loss of love and affection. Considering the fact that the appellant has lost her son at the age of 24 years, it would be appropriate to award Rs.50,000/- towards loss of love and affection. The Tribunal has not awarded any amount towards transport charges. Considering the facts and circumstances of the case, a sum of Rs.10,000/- is awarded towards transport charges. Thus, the total compensation of Rs.5,45,000/- awarded by the Tribunal is enhanced to Rs.7,30,000/- as under:

Heads	Rs.
Loss of dependency	6,30,000.00
Funeral expenses	15,000.00
Mental agony	25,000.00
Loss of love and affection	50,000.00
Transport charges	10,000.00
Total	7,30,000.00

24. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.5,45,000/- awarded by the Tribunal in M.C.O.P.No.822 of 2012 dated 18.2.2015 on the file of the Motor Accident Claims Tribunal (III Additional District Court) Tiruvallur at Poonamallee is enhanced to Rs.7,30,000/- payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent is directed to deposit the enhanced compensation with interest within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the compensation with accrued interest.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
III Additional District Judge,
Tiruvallur @ Poonamallee.

+1 cc to M/s.R.Subburaj, Advocate, S.R.No.65353

+1 cc to M/s.J.Michael Visuvasam, Advocate, S.R.No.64508

Civil Miscellaneous Appeal No.1983 of 2018

CP(CO)
SSM(26/12/2018)



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