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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2125 of 2016

1. Lakshmi
2. Mohankumar
3. Sangavi

... Appellants

-vs-

1. M.R.Ganesan
2. National Insurance Company Limited,
II Floor, No.81 D Chetti Street,
Opp. Old Bus Stand,
Thiruchengode.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 04.10.2013 made in MCOP No.6 of 2012, on the file of the Motor Vehicle Accident Claims Tribunal, (Sub Court) Thiruchengode.

For Appellant : Mr.N.Valliamma

For Respondents : Mr.S.Vadivel for R2
No appearance for R1

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The claimants who were favoured with an award for a sum of Rs.19,46,861.32 as compensation for the death of one Rajendran, who was the husband of the 1st claimant and father of the claimants 2 and 3, in the motor accident that occurred on 25.01.2012 are the appellants.



2. According to the claimants, when the deceased who was working as a Telecom Technical Assistant in BSNL, Tiruchengode Town, was riding a two wheeler bearing Registration No.TN.34.3930 on the extreme left side of the road near Sengoda Gounder Complex, the bus bearing Registration TN 34 K 5895, belonging to the 1st respondent and insured with the 2nd respondent Insurance Company, which was driven in a rash and negligent manner by its driver dashed against him, resulting in grievous injuries to the said Rajendran. Despite treatment the said Rajendran died on the next day at about 6 a.m. Terming the negligence on the part of the driver of the bus as the cause for the accident, the claimants sought for a compensation of Rs.70,00,000/-. The 1st respondent owner of the bus remained ex-parte before the Tribunal.

3. The 2nd respondent, the insurer resisted the Claim Petition contending that the accident occurred due to the rash and negligent driving of the deceased and hence the Insurance Company is not liable to pay the compensation. The age, educational qualification and the monthly income of the deceased were also disputed by the Insurance Company, apart from contending that the overall compensation claimed is excessive.

4. The Tribunal on a consideration of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the bus and fastened the entire liability to pay compensation on the Insurance Company, namely the insurer of the bus. In coming to the said conclusion, the Tribunal relied upon the evidence of P.W.2, the eye witness and the FIR which was marked as Ex.P1. The Tribunal also faulted the Insurance Company for not examining the driver of the bus or the owner to prove absence of negligence.

5. On the quantum, the Tribunal took the income of the deceased at Rs.30,104/- as evidenced by Ex.P6 salary slip. The Tribunal, however, reduced the family pension received by the wife and arrived at the monthly loss of dependency at Rs.14,104/-, the Tribunal adopted 30% towards future prospects and arrived at the monthly income for the purposes of calculation of loss of dependency at Rs.18,335.20. Applying the multiplier of 13, as per the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, reported in 2009 INSC 756, and deducting one third towards personal expenses, the Tribunal arrived at the total monetary loss at Rs.19,06,861.32. The Tribunal awarded a sum of Rs.10,000/- towards funeral expenses Rs.25,000/- towards loss of love and affection and consortium and Rs.5,000/- towards transportation



charges, totaling to a sum of Rs.19,46,861.32/-

6. Aggrieved, the claimants are on appeal seeking enhancement.

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7. We have heard Ms.N.Valliamma, learned counsel appearing for M/s.K.C.Karl Marx, for the appellants and Mr.S.Vadivel, learned counsel appearing for the 2nd respondent Insurance Company. The 1st respondent owner of the bus, though served does not appear either in person or through counsel duly instructed.

8. Ms.N.Valliamma, learned counsel appearing for the appellants would vehemently contend that the Tribunal was error in deducting the family pension, while calculating the loss of dependency. She would submit that family pension is payable to the wife, even if the husband had died a natural death. Therefore, according to her, the Tribunal was not right in deducting the family pension while calculating the loss of dependency. We are in entire agreement with the contention of the learned counsel for the appellant. We find that the Tribunal was not justified in deducting the family pension paid to the wife, while computing the loss of dependency.

9. We, therefore, find that the award of the Tribunal requires modification on the quantum of loss of dependency. The monthly income of the deceased as per Ex.P6 salary certificate is Rs.30,104/-. The annual income will be about Rs.3,61,248/- which is over and above the taxable limits, therefore, we deduct 10% towards income tax. The net amount would be Rs.3,25,124/-.

Considering the fact that the deceased was an employee of BSNL having a permanent fixed income, we add 30% towards future prospects, thus worked out the annual income for the purposes of monetising the loss of dependency would be Rs.4,22,661/- [Rs.3,25,124/- + Rs.97,537/-]

10. The deceased had left behind three dependants, therefore, 1/3 deducted his personal expenses. Thus worked the total loss of dependency would be Rs.4,22,661/- x 2/3 x 13 = Rs.36,63,062/-

11. The award of the Tribunal on the conventional heads is also very low. As rightly pointed out by the learned counsel appearing for the appellant, the Tribunal has awarded only Rs.25,000/- towards loss of consortium and love and affection for the husband and the two children, Rs.10,000/- towards



funeral expenses, Rs.5,000/- towards transportation charges, no amount has been awarded towards loss of estate. We are, therefore, of the view that the award of the Tribunal on these conventional heads also requires modification. And the same is modified as follows:

S.No.	Particulars	Amount
1.	Towards Loss of Dependency	Rs.36,63,062/-
2.	Towards Funeral Expenses	Rs. 15,000/-
3.	Towards Loss of Consortium	Rs. 40,000/-
4.	Towards Loss of love and affection for two children (40,000 x 2)	Rs. 80,000/-
5.	Towards Transportation Charges	Rs. 5,000/-
6.	Towards Loss of estate	Rs. 15,000/-
	Total	Rs.38,18,062/-

and the same is rounded off to Rs.38,18,000/-.

12. In fine the appeal is partly allowed. The compensation awarded by the Tribunal is enhanced to Rs. Rs.38,18, 000/-. The award will carry interest at 7.5% per annum. No costs.

13. Out of the enhanced award amount of Rs.18,71,139/-,

The claimants 2 and 3, namely appellants 2 and 3 would take Rs.6,00,000/- each with proportionate interest. The 1st claimant wife will take Rs.6,71,139/- with proportionate interest and entire costs.

14. It is stated that the Insurance Company has satisfied the original award passed by the Tribunal. The Insurance Company is directed to deposit the balance compensation as per the modified award within a period 6 weeks from the date of receipt of a copy of the judgment. On such deposit, the claimants will be entitled to withdraw the same.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jv



To

1. The Motor Vehicle Accident Claims Tribunal,
(Sub Court), Thiruchengode.

2. The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.N.Valliamma, Advocate, S.R.No.69359

+1cc to Mr.S.Vadivel, Advocate, S.R.No.68905

CMA.No.2125 of 2016

RJI (Co)
CS/12/12/2018