

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM :

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

C.M.A.Nos.473 of 2016 and 1017 of 2017
and
M.P.No.3720 of 2016

C.M.A.No.473 of 2016

National Insurance Company Limited,
Branch Office BMC House NI,
Cannaught Place,
New Delhi 110 001.

...Appellant/2nd Respondent

Vs

1. Kavitha
 2. Samiyathal
 3. Sundaraswamy
 4. S.Jayakumar
- ...Respondents 1-3/Petitioners 1 to 3
...4th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 17.12.2014 made in MACT.O.P.No.895 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram.

For Appellant :Mr. N.B.Surekha

For Respondents:Mr. Ma.P.Thangavel for R1 to R3
R4 set exparte before tribunal

C.M.A.No.1017 of 2017

1. Kavitha
 2. Samiathal
 3. Sundharasamy
- ... Appellants/Petitioners

Vs

1. S.Jayakumar(Exparte)
 2. The National Insurance Company Ltd.,
Branch Office, BMC House NI, Cannaught Place,
New Delhi - 110 001.
- ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 17.12.2014 made in MACT.O.P.No.895 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram.

For Appellants : Mr.Ma.P.Thangavel

For Respondents: Mrs.N.B.Surekha for R2

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

These appeals have been preferred against the award passed by the Tribunal, awarding a sum of Rs.25,66,000/-. Both the Insurance Company as well as claimants are before this Court. The Insurance Company has filed CMA.No.473 of 2016 and the claimants have filed CMA.No.1017 of 2017.

2.For the sake of convenience hereinafter, the appellant in C.M.A. No.473 of 2016 would be referred as Insurance Company and the appellants in C.M.A.No.1017 of 2017 would be referred as claimants.

3. Heard the learned counsel for the claimants and the learned counsel for the Insurance Company.

4. The brief facts of the case are as follows:-

On 12.05.2011 at about 9:00 a.m. the deceased (S.Selvakumar) was travelling in his motor cycle bearing Reg.No.TN47 T 3173 on the Kovai to Sathi north to south main road towards north on the left side of the road near textool over bridge. At the time the motor cycle bearing registration No.TN 38 BF 9936 driven by its driver in a rash and negligent manner from north to south and dashed against the deceased with great force. Due to the said accident the deceased was thrown off and he sustained head injuries and greivous injuries all over the body. Due to the injuries the deceased died on the spot. The deceased was 32 years old at the time of accident. He was a lecturer and head of the Department in Arulmurugan Polytechnic Institution at Tehnnilai and he was also an agriculturist, from that he used to earn Rs.15,000/- per month. Therefore the claimants filed the claim statement for a compensation of Rs.28,00,000/-. Subsequently, the traffic police also filed a criminal case in Crime No.127 of 2011 against the first respondent owner cum driver of Motor cycle bearing registration No.TN 38 BF 9936. Per contra the Insurance Company filed counter statement stating that the accident occurred due to the rash and negligent driving of the deceased. Therefore, the contention of Insurance Company is that the negligence to be fixed on the part of the deceased. After considering the evidences and pleadings, the Tribunal fixed the negligence on the part of the first respondent Motor

cycle owner cum driver bearing registration No. TN 38 BF 9936 and awarded compensation of Rs.25,66,000/-

5. Now the claimants have preferred appeal in CMA.No.1017/2017 challenging the Quantum of award passed by the Tribunal. On the other hand the Insurance Company also preferred appeal in CMA.No.473 of 2016 challenging both negligence and quantum.

The main issue for consideration in these appeals are as follows:-

1. Whether the Tribunal correctly fixed the negligence on the part of the driver cum owner of the motor cycle bearing registration No.TN 38 BF 9936 and who has to pay the compensation?

2. Whether the compensation awarded by the Tribunal is just and fair?

1.1. On behalf of the claimants, FIR was marked as Ex.P1 and charge sheet was filed against the first respondent driver cum owner of the motor cycle bearing Registration No.TN 38 BF 9936 which was marked as Ex.P7, eye witness PW2 deposed that he saw the accident and he further deposed that due to the negligence on the part of the first respondent driver cum owner of the motor cycle, the accident occurred and he is responsible for the accident. On behalf of the respondent no eye witness was enquired regarding the scene of accident. Therefore the Tribunal came to the conclusion that due to the negligence on the part of the first respondent owner cum driver the accident occurred and fixed the negligence on the part of the driver of the first respondent owner cum driver of the motor cycle bearing Registration No.TN 38 BF 9936. We also concur the same.

2.1. Further on behalf of the respondent/Insurance Company, RW1 deposed that the first respondent driver did not have license. Therefore to confirm the same they have sent a letter to produce the original license of the first respondent owner cum driver of the motor cycle. However, the first respondent refused to accept the said letter and the same was returned which was marked before the Tribunal as Ex.R3. Further on behalf of the claimants also no proof that the first respondent had driving license. The first respondent vehicle was insured with the second respondent, therefore it was the contention of the second respondent that the compensation if any awarded it should be borne by the first respondent. The Tribunal after considering the pleadings and evidences came to the conclusion that since the first respondent driver cum owner of the motor cycle did not have any license to drive the motor cycle directed the second respondent/Insurance Company to pay the compensation first to the claimants and thereafter to recover the same from the first

respondent owner cum driver of the motor cycle bearing Registration No.TN 38 BF 9936. We also concur the same with the views of the Tribunal.

6. The deceased was working as a lecturer and Head of the Department in Arulmurugan Polytechnic Institution at Thennilai and the age of the deceased was mentioned as 32 years old. However, as per Ex.P.4, Ex.P.10, Ex.P.13 the age of the deceased was mentioned as 31 years. Therefore the Tribunal took the age of the deceased as 31 years. We also concur with the findings of the Tribunal in this regard.

7. On behalf of the claimants with regard to the salary, Ex.P.11, Ex.P.12, Ex.P.14, Ex.P.15, Ex.P.16, Ex.P.17, Ex.P.18, Ex.P.19 & Ex.P.20 were marked. On perusing these documents the salary of the deceased was mentioned as Rs.15,000/-. The Tribunal also rightly came to the conclusion in fixing the salary of the deceased as Rs.15,000/-

8. Now in order to calculate the future prospects it is necessary to refer the judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, in which the Hon'ble Apex Court has held that if the deceased was having either self employment or fixed salary and below the age of 40 years, 40% of the monthly income to be added as future prospects. Thereby 40% of monthly income is added for calculating the pecuniary loss. (Rs.21,000 = Rs.15,000 + 40% of Rs.15,000). Therefore the salary per year along with future prospects will be a sum of Rs.21000x12 = Rs.2,52,000/- p.a.

9. The size of the family is 3 and therefore, as per the judgment of the Hon'ble Supreme Court in the case of Sarla Verma & Others Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) 1/3rd has to be deducted towards personal expenses and after deducting 1/3rd, the annual contribution would be Rs.84,000/- = (Rs.2,52,000 (-) 1/3rd of Rs.2,52,000). The loss of dependency per annum will be a sum of Rs.1,68,000/- = (Rs.2,52,000 (-) Rs.84,000).

10. The deceased was 31 years old at the time of accident. Therefore, following the judgement in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, the multiplier "16" will be applicable for the purpose of calculation of loss of income. Based on the multiplier "16" loss of income for the family of the deceased will be a sum of Rs.26,88,000/- = (Rs.1,68,000x16). Therefore, the total loss of income for the deceased family is Rs.26,88,000/-. The Tribunal has wrongly taken 30% for future prospects instead of 40%, therefore after taking 40% of future prospects the total loss of income is at Rs.26,88,000/-. Further

the Tribunal had fixed Rs.10,000/- towards Funeral expenses, however as held in the National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12 we inclined to enhance it to a sum of Rs.15,000/- towards funeral expenses.

11. The Tribunal awarded a sum of Rs.30,000/- towards loss of consortium to the 1st claimant/wife and the same has to be enhanced to Rs.40,000/- as per the Constitution Bench's judgment of the Hon'ble Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Accordingly, loss of consortium is enhanced to Rs.40,000/-.

12. The Tribunal had fixed a sum of Rs.30,000/- towards love and affection, however we inclined to enhance it to a sum of Rs.25,000/- each for the second and third respondents. As no amount was awarded towards "Loss of estate" and "Transportation" by the Tribunal, a sum of Rs.15,000/- and Rs.10,000/- is fixed respectively under that captions.

13. Hence the total compensation payable to the claimants is as hereunder.

Head	Amount (Rs.)
Loss of income	Rs. 26,88,000/-
Loss of estate	Rs.15,000/-
Love and affection to the second claimant / mother of the deceased	Rs.25,000/-
Love and affection to the third claimant /father of the deceased	Rs.25,000/-
Funeral expenses	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Transportation	Rs.10,000/-
Total	Rs. 28,18,000/-

14. The total amount of compensation shall be shared by the respondents 1 to 3 herein in the following manner:-

The wife of the deceased shall receive a sum of Rs.20,18,000/- and the mother of the deceased who is the second respondent herein and father of the deceased who is the third respondent herein shall receive a sum of Rs.4,00,000/- each.

15. Accordingly, the Insurance Company is directed to deposit the entire amount, with interest and costs directly

through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the respondents 1 to 3 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed this Court. The respondents are directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

16. Accordingly, award of the Tribunal (i.e.,) Rs.25,66,000/- is enhanced to Rs.28,18,000/- invoking Order 41 Rule 33 of CPC, and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial 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 Hon'ble Supreme Court in Nagappa Vs. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

17. Accordingly, CMA.No.473 of 2016 is dismissed. CMA.No.1017 of 2017 is partly allowed by enhancing the award of the Tribunal from 25,66,000/- to Rs.28,18,000/- with interest and costs. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Additional District Court No.3, Dharapuram.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 41337.

+1 CC to Mr.N.B. Surekha, Advocate sr 41298.

C.M.A.Nos.473 of 2016 and 1017 of 2017
and

M.P.No.3720 of 2016

SKV(CO)

SP(06/09/2018)