

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1236 of 2018

1.Jebastin Punitha

2.Jenitha (Minor) Rep., by M.N.F.Jebastin Punitha

3.Kirubai

4.Koilmani

.... Appellants/Petitioners

Vs

1.S.Selvaraj

2.The Oriental Insurance Co.Ltd.,
Motor III Party Claims Office,
No.115, Prakasam Salai,
Broadway, Chennai 108.

.... Respondents/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 (to encash) against the Judgement and Decree dated 13.02.2018 made in M.C.O.P.No.4565 of 2014 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Ms.Y.Jayanthi Bhaskar

For Respondents: Mr.R.Sivakumar for R2.

R1 - Exparte.

J U D G M E N T

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

The appeal has been preferred by the claimants against the award of Rs.19,60,000/- for the death of one Joyal Sowndar Singh aged about 35 years working as a Tourist Bus driver allegedly earning a sum of Rs.24,000/- per month who died in the accident occurred on 25.05.2014, when the deceased was driving the bus bearing registration No.TN-76-P-6036 belonging to Surya Travels from south to north direction at G.S.T.Road, Kallabiranpuram,

Madhurantakam and hit by a lorry bearing registration No.TN-21-AY-61292 belonging to the 1st respondent, insured with the 2nd respondent, driven rashly and negligently.

2.The appeal is only by the claimants and not by the insurance company. Therefore, the liability fixed is not in question. In any event, the trial Court based on the evidence of PW2, eye witness and filing of the FIR against the driver of the lorry and in the absence of any contra evidence by the insurance company, rightly fixed the liability on the driver of the lorry.

3.Ms.Y.Jayanthi Bhaskar, learned Counsel for the appellants would submit that inspite of Ex.P.5, Salary certificate which shows the salary of the deceased as Rs.24,000/-, the tribunal fixed Rs.10,000/- per month which is on the lower side. Further she would submit that the deceased died only one day after the accident and therefore, some amount has to be paid towards Pain and sufferings.

4. Mr.R.Sivakumar, learned Counsel for the 2nd respondent would oppose enhancement of any amount and would submit that the amount awarded by the tribunal is very reasonable.

4.A close scrutiny of the evidence on record would reveal that PW3, the Manager of Surya travels spoke about Ex.P.5 which shows the monthly income of the deceased as Rs.24,000/-. However, the tribunal rightly rejected the evidence of PW3, since there is no receipt for the payment of the salary and there is no voucher. That finding of the tribunal cannot be disturbed. However Rs.10,000/- determined by the tribunal as monthly income is very low. The accident occurred on 25.05.2014 and it is very impossible, that too a heavy vehicle driver viz., driver of a bus, to earn a sum of Rs.10,000/- per month. Therefore, this Court redetermines the monthly income of the deceased as Rs.15,000/-

5.The tribunal rightly added 40% towards future prospects as the age of the deceased was about 35 years as proved by Ex.P.5, Salary certificate and Ex.P.6, driving licence. As per the Judgment of "National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC)", 40% is added towards future prospects and the income of the deceased would be Rs.15,000/- + 40% of future prospects = Rs.21,000/-.

6.The appropriate multiplier to be applied for the age of the deceased is '15' and the tribunal rightly adopted the said multiplier and the same is confirmed. Hence, the loss of income would be Rs.21,000/- x 12 x 15 = Rs.37,80,000/-.

7.The size of the family is 4 and therefore, the tribunal rightly deducted 1/4th towards personal expenses and after deduction of 1/4th, the loss of income would be Rs.37,80,000/- (-) $\frac{1}{4}$ (Rs.37,80,000) = Rs.28,35,000.

8.The accident occurred on 25.05.2014 and the victim died on 26.05.2014. Therefore, for pain and sufferings suffered by the deceased, some amount has to awarded and therefore, a sum of Rs.50,000/- is awarded for pain and sufferings.

9.Rs.40,000/- awarded towards loss of consortium, Rs.15,000/- awarded towards loss of estate and Rs.15,000/- awarded towards funeral expenses are all confirmed. No amount has been awarded towards transportation and a sum of Rs.10,000/- is awarded for the same.

10.Similarly, no amount has been awarded towards loss of love and affection and a sum of Rs.50,000/- each is awarded to the 2nd respondent/minor daughter and to the parents and together, a sum of Rs.1,00,000/- is awarded towards loss of love and affection. Therefore, the sum of Rs.19,60,000/- awarded by the tribunal is modified and re-calculated as follows:

SI. No.	Head	Amount (Rs.)
1.	Loss of income	28,35,000
2.	Pain and sufferings	50,000
3.	Loss of love and affection	1,00,000
4.	Transportation	10,000
5.	Loss of consortium	40,000
6.	Loss of estate	15,000
7.	Funeral expenses	15,000
	Total	30,65,000

11.Hence, the total compensation payable in this case is Rs.30,65,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The appellants shall pay the additional Court fee, if any, within a period of two weeks from the date of receipt of the copy of this order failing which the enhancement made shall not accrue to the appellants.

12.The 2nd respondent is directed to deposit the entire award amount before the trial Court as per the modified award of this Court after deducting the amount deposited if any, along with interest and costs within a period of six weeks from the date of receipt of a copy of this order. The wife of the

deceased viz., 1st appellant is entitled to a sum of Rs.12,50,000/- and similarly, 2nd appellant is entitled to a sum of Rs.12,50,000/-. The 3rd and 4th appellants who are the parents of the deceased are entitled to a sum of Rs.3,15,000 and Rs.2,50,000 respectively. The share of the major appellants, as per the apportionment made by this Court, shall be transferred to their respective accounts through RTGS within a period of one week from the date of receipt of the copy of this order and the minor's share is directed to be deposited in any one of the Nationalised Banks in the name of the minor in interest bearing fixed deposit until she attains majority. The 1st appellant is permitted to withdraw interest accruing on such deposit once in every two months.

13. Accordingly, this appeal is allowed, by enhancing the award of the Tribunal from Rs.19,60,000/- to Rs.30,65,000/- with interest @ 7.5% per annum. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judge,
The Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

2. The Section Officer,
VR Section,
High Court, Madras.

+2cc to Mr. J. Mahalingam, Advocate sr.no.88588

+1cc to Mr. R. Sivakumar, Advocate sr.no.87742

C.M.A.No.1236 of 2018

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nr 06/03/2019