

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A. No.572 OF 2018 and
C.M.P. No.5033 of 2018 and

United India Insurance Co. Ltd.,
Regional Office,
Dr.Nanjappa Road, Coimbatore. .. Appellant/3rd respondent

Versus

1.Padmavathy
2.Manimaladevi .. Respondents 1 & 2/
Petitioners 1 & 2

3.A.Krishnamoorthy ..3rd respondent/1st respondent
4.A.Parthasarathy ..4th Respondent/2nd Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 27.07.2017 made in M.C.O.P.No.1233 of 2016 on the file of the Motor Accidents Claims Tribunal [III Additional District and Sessions Judge], Coimbatore.

For Appellant : Mr.S.Arun Kumar

For Respondent Nos.1 and 2 : Mr.V.Thillaisamy

J U D G M E N T

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

This Civil Miscellaneous Appeal is directed against the order dated 27.07.2017 in M.C.O.P.No.1233 of 2016, whereby the Tribunal has awarded compensation of Rs.89,25,000/- to the claimants, who are the mother and wife of the deceased, namely, K.Balaji Krishnan, who died in a road accident on 21.01.2016.

2. The brief facts are that, on 21.01.2016, at about 05.15 hours, while the deceased [Balaji Krishnan] was driving his motor cycle bearing Registration No.TN-40-H-7746 from Annur to Mettupalayam Road, from east to west near Allikaranpirivu Subramaniam Vathiyar house by observing the traffic rules and regulations, at that time, on the same road, a Lorry bearing Registration No.TN-41-C-3679, owned by the second respondent and insured with the appellant driven by its driver in a rash and negligent manner without following the traffic rules and regulations, hit against the vehicle of the deceased, thereby, the deceased fell down and the back wheel of the Lorry ran over on the head of the deceased, as a result of which, the face and head got crushed and died on the spot. At the time of death, the deceased [Balaji Krishnan] was aged about 35 years and he was working as a Deputy Manager in M/s.Sundaram Finance Company Limited. Regarding the accident, a criminal case was registered in Crime No.27 of 2016 by the Annur Police Station, Coimbatore District alleging that the accident had happened due to the rash and negligent act of the lorry driver. The claimants, who are the mother and wife of the deceased [Balaji Krishnan] filed a Claim Petition claiming compensation of Rs.1,25,00,000/-. After elaborate enquiry, the Claims Tribunal awarded compensation of Rs.89,25,000/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred by the Insurance Company.

3. Before the Tribunal, the first claimant [Padmavathy] was examined as P.W.1. One Ranganathan was examined as P.W.2 in order to prove the rash and negligent driving of the lorry. One R.Prasannan was examined as P.W.3 in order to prove the earnings of the deceased. Ex.P.1 to Ex.P.20 were marked on the side of the claimants. On the side of the respondents none had been examined.

4. After elaborate trial, the Claims Tribunal came to the conclusion that the alleged accident had happened only due to the rash and negligent act of the lorry driver. Further, on going through the findings of the Claims Tribunal with regard to the Loss of Dependency, the Claims Tribunal has fixed the monthly income of the deceased as Rs.44,960/-. Further, added 50% of the monthly income towards Future Prospects and deducted $1/3^{\text{rd}}$ of the monthly income towards Personal and Living Expenses of the deceased. Thereafter, applying the multiplier 16, calculated the Loss of Dependency as Rs.86,32,320/-. Further, the Claims Tribunal awarded Rs.25,000/- under the head of Funeral Expenses, Rs.1,00,000/- towards Loss of Consortium, Rs.1,50,000/- towards Loss of Love and Affection and Rs.15,000/- for Loss of Estate and ordered the appellant to pay the said amount to the claimants.

5. It is not necessary for us to narrate the entire facts in detail, as to how the accident had occurred, who is negligent and who is liable to pay the compensation. It is for the reason that these aspects are recorded in favour of the claimants and consequently none of the findings are under challenge and only the quantum is under dispute in this appeal.

6. According to the evidence given by P.W.3 [R.Prasannan], who is the Senior Manager of the M/s.Sundaram Finance Company Limited, the deceased Balaji Krishnan was working as a Deputy Manager and drawing monthly salary of Rs.49,955.50/-. The said averment was supported through Form -16, which was marked as Ex.P-13. A copy of the salary certificate was also enclosed along with Form-16. In this aspect, the Claims Tribunal after deducting 10% of the total salary towards income tax came to the conclusion that the monthly income of the deceased was Rs.44,960/-. In this regard, the learned counsel appearing for the appellant would submit that in the salary certificate Rs.3,150/- and Rs.1,000/- were given to the deceased towards transport allowance and meal allowance respectively. Further, he would submit that the said amount cannot come under the purview of the salary. The said allowance is payable for completing the work assigned to the employee, thereby, he prays that the said amounts have to be deducted while calculating the monthly income of the deceased. It is true that if a person has not attended the duty, it is not necessary for providing transport allowance and meal allowance. Those allowances are given to the employee for the purpose of travelling outside the office enable him to complete the work assigned to him. So excluding the said amount for calculating the monthly income is a reasonable one. Therefore, after deducting Rs.4,150/-, the monthly income of the deceased is fixed as Rs.40,810/-.

7. Coming to the Future Prospects, it is necessary to follow the judgment of our Honourable Apex Court in NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has held that if a person is self-employed and under the age of 35 years, 50% of the established monthly income to be the Future Prospects for calculating the Loss of Dependency. In this way, after adding 50% of the monthly income, the total monthly income of the deceased Balaji Krishnan is calculated as follows:

Total Monthly Income	::	Rs.40,810/- (+) 50% (Rs.40,810/-)
	::	Rs.40,810/- (+) Rs.20,405/-
	::	Rs.61,215/-

8. Now, coming to the point of deduction, it is settled law that if the family of the deceased consists of 2 members, $1/3^{\text{rd}}$ of the total income has to be deducted towards Personal and Living Expenses of the deceased. In this case, the size of the family is 2, so necessarily we have to deduct $1/3^{\text{rd}}$ of the annual income towards Personal and Living Expenses of the deceased. After deducting $1/3^{\text{rd}}$ towards Personal and living Expenses, the monthly income of the deceased comes to Rs.40,810/- [Rs.61,215 - $1/3^{\text{rd}}$].

9. Coming to the choice of multiplier, at the time of accident, the deceased [Balaji Krishnan] was aged about 35 years. In this case, the Postmortem Certificate marked as Ex.P.10, evidences that the age of the deceased was 35 years. The Degree Certificates [B.A., M.A., M.B.A.] of the deceased were marked as Ex.P.14 to Ex.P.16. Further, Ex.P.18 and Ex.P.19, the Transfer Certificate and the Passport respectively confirm the Date of Birth of the deceased as 01.01.1982. Since the accident had happened on 21.01.2016 it is correct that the age of the deceased, at the time of accident, was 35 years.

10. Taking into consideration of the age of the deceased, the Claims Tribunal had adopted multiplier 16 and calculated the compensation. Now on going through the judgment of our Honourable Apex Court in SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, if a person is of the age of 35 years at the time of death, the appropriate multiplier for calculating the Loss of Dependency is 16. Therefore, we decided that the appropriate multiplier for calculating the total pecuniary loss in this appeal is 16. So, the Loss of Dependency is calculated as follows:

Loss of Dependency :: Rs.40,810 x 12 x 16
:: Rs.78,35,520/-

11. In so far as the conventional damages, the Tribunal awarded Rs.25,000/- towards Funeral Expenses, Rs.1,00,000/- for the Loss of Consortium and Rs.1,50,000/- towards Loss of Love and Affection. Even though the said amounts awarded by the Tribunal are reasonable, now, as per the judgment in Pranay Sethi's case [stated supra], this Court necessarily has to fix Rs.40,000/- towards Loss of Consortium to the second claimant and Rs.15,000/- towards Loss of Estate and Rs.15,000/- towards Funeral Expenses. So, following the judgment of our Honourable Apex Court, we are also following the said verdict and awarded Rs.70,000/- towards the conventional heads as above. Accordingly, the claimants / respondents 1 and 2 are entitled to the compensation as follows:

Head	Amount (Rs.)
Loss of Dependency	78,35,520.00
Funeral Expenses	15,000.00
Loss of Estate	15,000.00
Loss of Consortium	40,000.00
Total	79,05,520.00

Hence, the compensation arrived by the Claims Tribunal is modified to the extent of Rs.79,05,520/-. The claimants / respondents 1 and 2 are entitled to equal share.

12. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Accordingly, the award of the Tribunal [i.e.,] Rs.89,25,000/- is reduced to Rs.79,05,520/-. The appellant / Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the respondents 1 and 2 / claimants through RTGS/NEFT within a period of one week.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS VII)
//True Copy//

Sub Assistant Registrar

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To

The III Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Coimbatore

C.M.A. No.572 OF 2018

GJII (CO)
CS/28/08/18