

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

C.M.A. No. 2982 of 2017

Royal Sundaram Alliance General Insurance
Co. Ltd., Legal Department,
Sundaram Building, 2nd Floor,
No.1, Club House Road,
Chennai - 2.

...Appellant/2nd Respondents

Vs.

1. Sharmila
2. Sathana (Minor)
3. Vishva (Minor) ...Respondents 1 to 3/Petitioners 1 to 3
(Minor respondents rep. by their mother and next friend Sharmila)
4. Vairam ...4th Respondent/4th Petitioner
5. Kaliyamoorthy ...5th Respondent/5th Petitioner
6. M. Elumalai ...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 04.07.2017 made in M.C.O.P. No. 5780 of 2015 by the Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai.

For Appellant :: Mr.S. Manohar

For Respondents :: Mr.A. Abdhul Kani for R1
to R5

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the Insurance Company as against the award of Rs. 46,60,000/- as compensation for the death of one Gunasekaran, aged about 33 years, a mechanic, who owns a mechanic shop, in the accident, which occurred on 11.06.2015 when he was driving his tempo

traveller towards Trichy and was compelled to dash against the lorry going in the front, which suddenly applied break. While he got down and was checking the vehicle, standing in front of the tempo traveller, a lorry, which was coming behind, driven rashly and negligently, dashed against the van, which in turn mowed down the said Gunasekaran. Therefore, the claim petition.

2. The Tribunal, on analysis of oral and documentary evidence, found that the 6th respondent, owner/driver of the lorry, insured with the appellant Insurance company was responsible for rash and negligent driving of the vehicle and awarded a sum of Rs. 46,60,000/-. The said award is being challenged before this Court by the appellant Insurance Company on the question of negligence as well as quantum.

3. Heard Mr.S. Manohar, learned counsel for the appellant and Mr.Abdhul Kani, learned counsel for respondents 1 to 5/claimants. Since the 6th respondent-owner/driver of the insured vehicle remained ex parte before the Tribunal, no notice is required to be sent to the 6th respondent as per the Full Bench's judgment of the Mrs.Jamuna Bai V. V. Chhote Singh reported in I (2004) Acc. 190 (FB).

4. Learned counsel for the appellant would submit that tempo traveller, without any indication, had suddenly stopped in the middle of the road and therefore, the driver of the insured vehicle hit against the vehicle and the tempo traveller alone was responsible for the accident. However, the Tribunal, taking into consideration the evidence of P.W.2, eye witness, and filing of Ex-P1 FIR as against the driver of the lorry found that the driver of the lorry was responsible for the accident. It has also relied upon the evidence of the driver of the lorry, namely, R.W.1, who had categorically stated that he had seen the tempo traveller parked and applied his break. However, due to rain, the breaks did not work and therefore, the accident had occurred. When that is the categorical evidence of R.W.1 stating that in spite of applying the break, his lorry went and dashed against the parked tempo traveller resulting in the death of the driver of the tempo traveller, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the lorry driver. Hence, the finding reached by the Tribunal with regard to rash and negligent driving of the driver of the lorry insured with the appellant Insurance Company cannot be set aside.

5. Mr.S. Manohar, learned counsel for the appellant would submit that the income earned by the deceased is not his personal income and it is only his business income and

therefore, that cannot be taken into consideration for calculating the compensation.

6. The documents, Ex-P6, copy of the registration certificate issued by the Central Board of Excise and Customs and Ex-P7, copy of acknowledgement card issued by the Department of Industries and Commerce would prove that the deceased was running a mechanic shop and he was a mechanic. Therefore, it is only his personal income and Exs-P8 to P10, income tax returns would prove that the deceased was an income tax assessee. The income shown in the income tax return for the assessment year 2014-2015, Ex-P10, before his death, would denote that he was earning a sum of Rs.3,91,900/-. However, the Tribunal took Rs.25,000/- as monthly income. Considering Ex-P10, ie., the income tax return filed for the assessment year 2014-2015, to the tune of Rs.3,91,900/-, his monthly income should have been determined in accordance with the same and therefore, the monthly income of the deceased is fixed as Rs.32,658/- based on Ex-P10.

7. The Tribunal added 50% towards "Future Prospects" as per the position of law which was in force at the relevant point of time. However, in the light of the law laid down by the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700, if the deceased is a self-employed person, aged below 40 years, then 40% of the actual salary has to be added towards "Future Prospects". Accordingly, if 40% is added towards "Future Prospects", then total monthly income of the deceased would be,

Monthly Income	::	Rs.32,658/-	
Add:40% towards "Future Prospects"	::	Rs.32,658/-	(+) 40%
(Rs.32,658/-)			
Total Monthly Income	::	Rs.45,721/-	
Annual Income	::	Rs.45,721 x 12	
	::	Rs.5,48,652/-	

As per the income tax rates applicable at the relevant point of time, the exemption limit was upto Rs.2 lakhs and applying the said exemption, the taxable income comes to Rs.3,48,652/-, on which 10% has to be deducted towards income tax. After 10% deduction towards income tax, the annual income of the deceased is calculated as hereunder:

Annual Income	::	Rs.5,48,652/-	
Taxable Income after exemption	::	Rs.5,48,652/- (-) Rs.2,00,000/-	
	::	Rs.3,48,652/-	
Less: 10% towards income tax	::	Rs.5,48,652/- (-) 10%	
(Rs.3,48,652/-)			

:: Rs.5,48,652/- (-) Rs.34865/-

:: Rs.5,13,787/-

Since the size of the family is five, one-fourth deduction has to be made towards "Personal Expenses". Therefore, "Annual Contribution of the deceased to his family" is,

Annual Contribution :: Rs.5,13,787/- (-) 1/4 (Rs.5,13,787/-)
:: Rs.3,85,340/-

The deceased was aged about 37 years, as proved by Ex-P3 and the appropriate multiplier to be applied is 15. Therefore, applying the same, "Loss of Income" is arrived at as hereunder:

Loss of Income :: Rs.3,85,340/- x 15
:: Rs.57,80,100/-

8. For loss of consortium, Rs.50,000/- has been awarded and the same is reduced to Rs.40,000/- in the light of the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case. The sum of Rs.5000/- awarded towards "Transport Expenses" is enhanced to Rs.10,000/- and the amount awarded towards "Funeral Expenses" is reduced to Rs.15,000/- No amount was awarded towards "Loss of Estate". Hence, a sum of Rs. 15,000/- is awarded towards the same. Only a sum of Rs.30,000/- was awarded towards "Loss of love and affection" to the 4th and 5th respondents, the parents of the deceased. Hence, the said amount is enhanced to Rs.50,000/-. Likewise, only Rs.50,000/- was awarded to respondents 2 and 3 towards "Loss of love and affection" who were minors aged about 3 ½ years and 1 ½ years at the time of accident and they have lost their father at a very young age, depriving them of his love, care, affection and guidance throughout their lives. Losing one's father is a very painful one and it cannot be compensated by any amount of money nor could anyone take his place. The amount awarded towards "Loss of love and affection" is akin to "Loss of Consortium" awarded to the spouse of the deceased. Therefore, considering the age of the minors, this Court awards Rs.75,000/- towards "Loss of love and affection" to each of the minors. Hence, the total compensation payable to the claimants comes to,

Loss of Income :: Rs.57,80,100/-
Loss of Consortium :: Rs. 40,000/-
Loss of love and affection
to respondents 4 & 5 :: Rs. 50,000/-
Loss of love and affection
to respondents 2 & 3 :: Rs. 1,50,000/-
Transport Expenses :: Rs. 10,000/-
Funeral Expenses :: Rs. 15,000/-
Loss of Estate :: Rs. 15,000/-
Total :: Rs.60,50,100/-
:: Rs.60,60,000/- (rounded off)

The rate of interest awarded by the Tribunal @ 7.5% per

annum remains intact.

9. Though the appeal has been preferred by the Insurance Company, by re-appreciating the evidence on record and applying the law, as on date, this Court, has enhanced the compensation from Rs.46,60,000/- to Rs.60,60,000/-, even in the absence of appeal/cross-appeal by the claimants, only in an endeavour to award just and reasonable compensation. This Court has power and jurisdiction to do so by invoking Order XLI Rule 33 CPC and Section 151 CPC and Article 227 of the Constitution of India, which has also been recognised by the Honourable Apex Court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

10. Out of the total compensation amount, as per the award passed by this Court, the 1st respondent would be entitled to Rs.14 lakhs; 2nd & 3rd respondents/minors would be entitled to Rs. 18 lakhs each; 4th and 5th respondents would be entitled to Rs.5,30,000/-each, with proportionate interest and costs. The claimants shall pay additional court-fee for the enhanced amount, if any.

11. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, as per the modified award passed by this Court, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of the major claimants to their respective bank accounts, through RTGS, after getting their bank account details, within a period of two weeks thereafter. The share of the minor claimants shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks till they attain majority. The 1st respondent, being the mother of the minors is permitted to withdraw interest accruing on such deposit once in three months.

12. In fine, the Civil Miscellaneous Appeal is dismissed enhancing the compensation awarded by the Tribunal to the tune of Rs. 46,60,000/- to Rs.60,60,000/-. No costs.

Sd

ASSISTANT REGISTRAR (CS IV)

TRUE COPY

SUB ASSISTANT REGISTRAR

TO:

1.THE CHIEF JUDGE, COURT OF SMALL CAUSES, CHENNAI.

2 THE SECTION OFFICER, VR SECTION,
HIGH COURT, MADRAS (2 COPIES)

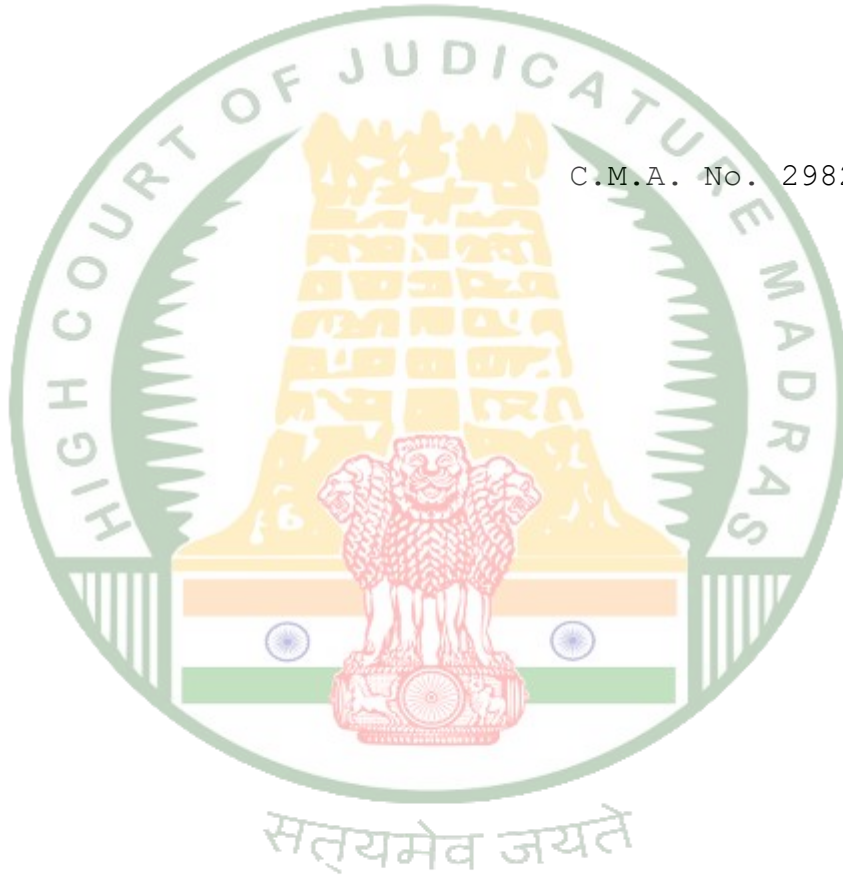
2CC'S TO MR. S. MANOHAR, ADVOCATE SR.NO. 30516 30515

1CC TO MR. A. ABDUL KANI, ADVOCATE SR.NO. 30166

SDR

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C.M.A. No. 2982 of 2017



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