

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM :

The Hon'ble Mr.Justice N.KIRUBAKARAN

AND

The Hon'ble Mr.Justice R.PONGIAPPAN

C.M.A.No.3155 of 2017

1.Shanthi
2.Suganya
3.Palappan
4.Indirani ... Appellants/Petitioners

-vs-

1.Sugumari
2.The National Insurance Co. Ltd.,
Rep. By its Branch Manager,
Having Office at Thiruvarur. ... Respondents/Respondents
(first respondent set exparte before Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 06.04.2016 made in M.C.O.P.No.121 of 2015 on the file of Principal District Judge, Nagapattinam.

For Appellants : Mrs.T.Aananthi

For Respondents : Mr.S.Vadivel for R-2

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 aggrieved over the quantum of compensation of Rs.25,06,000/- awarded for the death of one P.Parthiban, aged about 50 years, Professor and Head of Commerce Department, in Thiru.Vi.Ka. Government Arts College, Tiruvarur, earning about a sum of Rs.57,342/- in the accident which occurred on 09.10.2014 when he was riding his two wheeler on Tiruvarur-Nagapattinam main road, travelling from west to east, the bus insured with the second respondent

belonging to the first respondent driven rashly and negligently hit against him causing the accident. Therefore, the claim petition.

2.The Tribunal found that the accident occurred because of the rash and negligent driving of the driver of the first respondent and awarded a sum of Rs.25,06,000/-. The said award is being challenged before this Court.

3.Heard Mrs.T. Aananthi, learned counsel appearing for the appellants and Mr.S. Vadivel, learned counsel appearing for the second respondent/Insurance company. Notice to the first respondent was served and his name is printed in the cause list. Hence this Court after hearing the appellant and the Insurance company, disposes the appeal.

4.The appeal has been preferred by the claimants seeking enhancement and no appeal has been preferred by the Insurance Company and therefore, the issue of negligence is not before this Court. In any event, the Tribunal, taking into consideration the filing of Ex.P-1, F.I.R., against the driver of the bus and the evidence of P.W.2, eye witness, rightly found that the accident occurred because of the rash and negligent driving of the bus. Therefore, the Tribunal was right in finding that the driver of the bus was at fault.

5.With regard to the compensation, the Tribunal took the age of the deceased as 52 years, even though Ex.P-8, Higher Secondary mark list was filed before the Court. The said determination of the age of the deceased at 52 years is erroneous, as the date of birth of the deceased was 10.06.1964 as per Exs.P-8, P-9, P-10 and P-11 and the date of accident is 09.10.2014. Therefore, the age of the deceased was only 50 years at the time of accident. Hence, this Court determines the age of the deceased as 50 years by setting aside the determination made by the Tribunal.

6.Even though the salary certificate, Ex.P-5 was exhibited before the Tribunal to show that the deceased was earning about a sum of Rs.57,342/-, the Tribunal took only Rs.49,920/- and applied multiplier 11 to determine the loss of income. A perusal of Ex.P-5 would show that the total salary drawn by the deceased was Rs.57,342/- and there is a deduction to the extent of Rs.7,419/- and the net salary was taken as Rs.49,923/-. What has to be seen by the Court is only the total salary which the deceased was entitled to at the time of death. The deduction and the contributions cannot be taken into consideration. Therefore, Rs.49,920/- determined by the Tribunal as monthly income is set aside and it is re-determined as Rs.57,342/- as per Ex.P-5.

7.No amount was awarded for future prospects by the Tribunal and therefore, this Court awards 30% towards future prospects. The deceased was aged about 50 years and 30% has to be added as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). This Court is aware of the hefty increase in the salary of teachers after the implementation of VII Pay Commission. Even then, this Court adds only 30% towards "Future Prospects" of the deceased as he was aged about 50 years at the time of accident. Therefore, adding 30% towards future prospects, the monthly income would be Rs.57,342/- (+) Rs.17,202/- (30% of Rs.57,342/-) which comes to Rs.74,544/-. The annual income would be Rs.8,94,528/- (Rs.74,544/- x 12). Towards deduction under Income-tax, upto Rs.5,00,000/-, a sum of Rs.25,000/- has to be deducted and on the balance amount of Rs.3,94,528/-, 20% has to be calculated towards income tax, which comes to Rs.78,905/- and totally, Rs.1,03,905/- (Rs.78,905/- + Rs.25,000/-) has to be deducted under the head of income tax payable. When the said amount towards income tax is deducted from the total income, i.e., Rs.8,94,528/-, it comes to Rs.7,90,623/-.

8.The size of the family is 4. Therefore, one-fourth of the income has to be deducted towards personal expenses, whereas the Tribunal deducted one-third alone and therefore, this Court, as per the judgment of the Honourable Apex Court in Sarla Verma & Others Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), deducts one-fourth on Rs.7,90,623/-, which comes to Rs.5,92,967.25.

9.The appropriate multiplier as per the judgment in Sarala Verma, supra, for the age of 50 years, is 13, whereas the lower Court has erroneously taken the multiplier as 6 determining the age of the deceased as 52 years. As already found by this Court, as per Ex.P-8, the date of birth of the deceased was 10.06.1964 and therefore, his age was 50 years and the proper multiplier is 13. Therefore, multiplier 13 is applied to calculate the compensation and thus, the same is arrived at Rs.77,08,574.25 (Rs.5,92,967.25/- x 13).

10.The Tribunal awarded a sum of Rs.25,000/- each to the appellants towards loss of love and affection. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), supra, the first appellant is entitled to Rs.40,000/- towards loss of consortium and similarly, the second appellant, as the child of the deceased, is entitled to Rs.50,000/- and appellants 3 and 4 are entitled to each Rs.25,000/- towards loss of love and affection, which is

akin to the award towards loss of consortium. Rs.9,840/- was awarded towards funeral expenses and the same is enhanced to Rs.15,000/-. Similarly, for loss of estate, a sum of Rs.15,000/- has to be awarded and accordingly, awarded. Thus, the total compensation payable to the appellants is as hereunder:

Loss of Income	::	Rs.77,08,574.25
Loss of Consortium	::	Rs. 40,000/-
Loss of Love and Affection	::	Rs. 1,00,000/-
Funeral Expenss	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs.78,78,574.25
rounded off to		:: Rs.78,80,000/-

The rate of interest awarded by the Tribunal @7.5% per annum remains intact.

11. In fine, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal to the tune of Rs.25,06,000/- is enhanced to a sum of Rs.78,78,574.25 rounded off to Rs.78,80,000/-. The appellants shall pay additional court-fee for the enhanced amount, if any. No costs.

12. It is submitted that the 2nd respondent Insurance Company has already deposited a sum of Rs.25 lakhs and the said amount has also been withdrawn by the appellants.

13. Hence, the 2nd respondent is directed to deposit the balance award amount, as per the modified award passed by this Court, ie., Rs.53,80,000/- with proportionate interest and costs, 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 3rd and 4th appellants would be each entitled to 10% of the amount deposited while the 1st and the 2nd appellants would be entitled to 50% and 30% respectively. The Tribunal shall transfer the respective shares of the appellants, as per the ratio fixed by this Court, to their respective bank accounts, through RTGS, within a period of two weeks thereon.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

sra

To

1. The MACT (Prl. Dist. Court),
Nagapattinam.

2. The Record Keeper, VR Section
High Court, Madras.

+1cc to Mr.S.Vadivel, Advocate SR.No.30659
+1cc to M/s.T.Ananthi, Advocate SR.No.31094

C.M.A.No.3155 of 2017

GMV (20/09/2018)



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