

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A. No. 3534 of 2017

1. M.Hemamalini
2. M.Jagadesan
3. M.Deepanatnan
4. A.Jagadambal

... Appellants/Petitioners

Versus

1. A.Arulselvam
2. Oriental Insurance Co.Ltd.,
Motor TB HUB Oriental House,
115, Broadway, Chennai-108. ... Respondents/Respondents

Appeal filed against the fair and decretal award passed by the learned III Additional District and Sessions Judge Cuddalore at Vridhachalam dated 29.04.2017 made in M.C.O.P.No.573 of 2015.

For appellants : : Mr.S.Udaya Kumar

For Respondents : : Ms. R. Sree Vidhya for R2

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the petitioners against the fair and decretal award passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam dated 29.04.2017 in M.C.O.P.No.573 of 2015.

2. For the sake of convenience, the parties will be referred to in this judgment as they are arrayed before the Tribunal.

3. The case of the petitioners is that the deceased Murugan, who is the husband of the first petitioner, father of the petitioners 2 and 3 and son of 4th petitioner was riding his motorcycle from south to north in Junction Road Vridhachalam. When he reached the place opposite to Mass Hotel near bus stand at 12.30 hours on 12.09.2015, the first respondent's tractor and trailer bearing Regn.No.TN-31-BV-2619 came at high speed, driven in a rash and negligent manner, dashed on the back side of the motorcycle driven by the deceased. Due to the impact, the deceased Murugan fell down and tractor ran over his hip. Consequently, the said Murugan

died and the accident occurred only due to the rash and negligent driving of the first respondent's Tractor driver. At the time of accident, the deceased was working as a Society employee of NLC, earning a sum of Rs.20,000/-. Therefore, the petitioners sought for compensation Rs.70,00,000/- from the respondents.

4. On the other hand, opposing the petition, the second respondent/ insurance company disputed the claim of the petitioners with respect to the manner of accident and also the avocation, income and other aspects. Hence, the second respondent seeks dismissal of the petition.

5. Before the Tribunal the petitioners 1 and 2 examined themselves as P.W1 and P.W.2 and an eyewitness was examined as P.W.3 and produced Exs.P.1 to P.16 to prove their claim. On the side of the respondent R.W.1 was examined and Ex.R.1 and R.2 were marked.

6. The Tribunal after considering the pleadings as well as the oral and documentary evidence held that the accident occurred only due to the rash and negligent driving of the offending vehicle and directed the second respondent to pay a sum of Rs.20,23,000/- as compensation.

7. The petitioners/claimants finding fault with the Tribunal for fixing the compensation at very low has come forward with the present appeal.

8. The learned counsel for the petitioners contended that the Tribunal has not calculated the monthly income properly and Tribunal should have taken the monthly income of deceased at Rs.12,000/- per month. The age of the deceased and income was not properly considered and the reasons stated by the Tribunal for fixing the award amount is not correct. Hence, the petitioners seek to enhance the award amount and to entertain the appeal. सत्यमेव जयते

9. Per contra, the learned counsel for the second respondent submitted that based on available evidence, the Tribunal has rightly come to the conclusion in fixing the amount and the same needs no interference. Hence the second respondent/ insurance company prays for dismissal of the appeal.

10. Heard both sides and perused the materials available on record. The details of the compensation awarded by the Tribunal is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
	Loss of pecuniary benefits to the dependants of the deceased prospects (Rs.9750 x 12 x 14)	Rs.16,38,000/-
2	Loss of Love and Affection for petitioners 2 and 3	Rs.2,00,000/-
3	Loss of Love and Affection for 4th petitioner	Rs.50,000/-
4	Loss of consortium to the first petitioner	Rs.1,00,000/-
5	Funeral Expenses	Rs.25,000/-
6.	Transportation	Rs.10,000/-
	Total	Rs.20,23,000/-

The petitioners produced Ex.P.1 Copy of F.I.R and examined P.W.1 to P.W.3 to prove the factum of negligence on the part of the first respondent's driver in causing fatal injuries. The same is not disputed by the second respondent. Hence considering the available materials on records, this court finds that the accident occurred only due to rash and negligent driving of the driver of the first respondent's vehicle and it needs no interference. Before the Tribunal, it is pointed out by the 2nd respondent that the driver of the 1st respondent was not having valid licence at the time of the accident. According to the 2nd respondent as the Trailer was attached with the Tractor at the time of accident, the driver must possess heavy vehicle license. But the 1st respondent driver was not having heavy vehicle license and the same is established by the evidence of R.W.1, a staff of the Regional Transport Office, Vridhachalam. He also produced driving licence extract of Sivaraman, Ex.R.2 and letter from the Motor Vehicle Inspector, Vridhachalam, Ex.R1. The Tribunal also observed in its order that the memo was filed by the second respondent counsel stating that he has no objection to order for pay and recovery from the 1st respondent. In the appeal also, the 2nd respondent has not raised any objection in that regard. As such, the Tribunal held that for want of valid driving licence, for the driver of the 1st respondent vehicle, at the time of the accident, will amount to violation of policy condition and therefore, the insurer is not liable to pay the compensation. The Tribunal further held that the 2nd respondent/insurance company shall pay the compensation and shall recover from the first respondent. The said finding is not disputed in the appeal and as such, the same is confirmed.

11. As regards the quantum of compensation arrived at by the Tribunal, it is stated by the petitioners herein that it is too low. The petitioners produced Ex.P.16 Salary Certificate to show that the deceased Murugan was working as industrial worker in Mines -II Neyveli Lignite Corporation,

earning a monthly salary of Rs.10,000/- However, it is pointed by the petitioners that total earning was Rs.11,975/- and after deductions he was getting Rs.10,000/- and the Tribunal has wrongly taken the salary as Rs.10,000/- per month. From Ex.P.16 Salary Certificate, it is clear that the pay of the deceased was Rs.11,975/- and employed permanently in N.L.C. Hence the said amount is to be taken as monthly income. The deceased was stated to be above 40 years old. In such situation 30% of the income should be added as future prospects. Accordingly, loss of earning of deceased is calculated as under, :-

Pay of the deceased	Rs.11,975.00
Add 30% towards future prospects	Rs. 3,592.00

	Rs.15,567.00
Deduct 1/4 th towards personal expenses	Rs. 3,891.75

Gross income	Rs.11,675.25
Loss of income	
(Rs.11,675 X 12 X 14)	Rs.19,61,400/-

12. Admittedly, the petitioners who are wife, sons and mother of the deceased are the claimants. In respect of awarding compensation under conventional heads, the Supreme Court, in the decision reported in [2017 (2) TN MAC 609], has held as follows:-

"The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seems to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage

basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads".

Following the above said Apex court Ruling, towards loss of estate, loss of consortium and funeral expenses, this court is inclined to modify the compensation as under:-

Loss of Estate	= Rs.15,000/-
Loss of consortium	= Rs.40,000/-
Funeral Expenses	= Rs.15,000/-

Further Rs.15,000/- is granted towards Transportation. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Dependency	Rs.16,38,000/-	Rs.19,61,400/-
2	Loss of Love and Affection for petitioners 2 and 3	Rs.2,00,000/-	...
3	Loss of Love and Affection for 4th petitioner	Rs.50,000/-	...
4	Loss of consortium to the first petitioner	Rs.1,00,000/-	Rs.40,000/-
5	Funeral Expenses	Rs.25,000/-	Rs.15,000/-
6	Transportation	Rs.10,000/-	Rs.15,000/-
7	Loss of Estate	...	Rs.15,000/-
	Total	Rs.20,23,000/-	Rs.20,46,400/-

The award granted by the Tribunal is enhanced from Rs.20,23,000 /-to Rs.20,46,400/- .

13. In the result, this appeal is partly allowed and award passed by the Tribunal is modified as shown above. The second respondent's insurance company is directed to deposit the award amount with interest at 7.5% per annum from the date of petition till date of disposal with costs to the credit of claim petition within a period of six weeks from the date of receipt of a copy of this Judgment, less the amount if any, already deposited. On such deposit, the claimants 1 to 3 are entitled to 30% each of the award amount and the fourth

petitioner is entitled to 10% of the award amount. The petitioners are entitled and permitted to withdraw the entire share with proportionate interest and costs by filing necessary applications. The second respondent /insurance is entitled to recover the award amount from the first respondent/owner of the vehicle.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

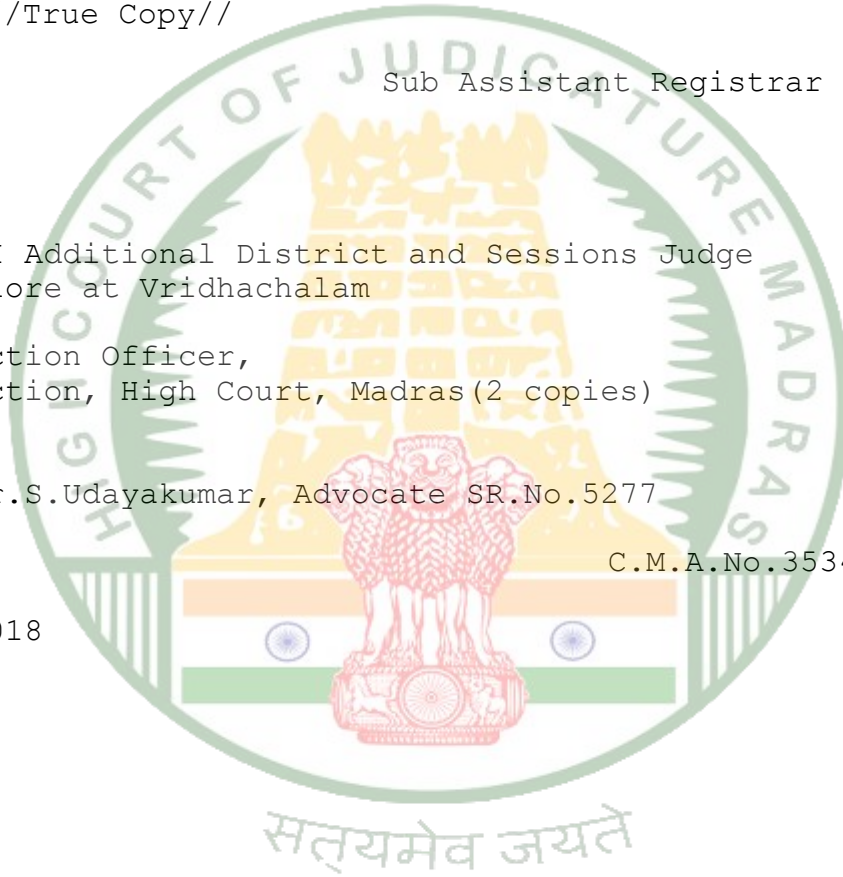
To

1. The III Additional District and Sessions Judge
Cuddalore at Vridhachalam
2. The Section Officer,
V.R.Section, High Court, Madras(2 copies)

+1cc to Mr.S.Udayakumar, Advocate SR.No.5277

C.M.A.No.3534 of 2017

KK(CO)
sm:22.3.2018



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