

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN
C.M.A.No.964 of 2018

Deivanai ... Appellant/Petitioner
Vs

1.M.Dhivayasanjeevi

2.Iffco-Tokio General Insurance Company Ltd.,
No.28 (Old No.195), North Usman Road,
T.Nagar, Chennai, Tamil Nadu 600 017.

... Respondents/Respondent

PRAYER : Civil Miscellaneous Appeal filed against the
Judgment and Decree dated 11.10.2017 made in MCOP.No.149 of
2015, on the file of Motor Accident Claims Tribunal/Principal
District Court at Namakkal.

For Appellant : Mr.Ma.Pa.Thangavel

For Respondents: Mr.M.B.Raghavan (for R2)
for M/s.M.B.Gobalan & Associates

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 claimant aggrieved
over the adequacy of the quantum of Rs.16,31,000/- as
compensation, for the death of one Vignesh, 18 year old, 1st
year B.E., student in the accident, which occurred on
23.11.2014, when the victim was travelling in a Tavera car,
which was hit by a lorry coming in the opposite direction,
driven rashly and negligently.

2.Heard, Mr.Ma.Pa.Thangavel, learned counsel appearing
for the appellant and Mr.M.B.Raghavan, learned counsel
appearing for the 2nd respondent.

3.The only question is with regard to quantum of
compensation and therefore, the question of negligence is not
gone into.

4.Admittedly, the victim was a first year B.E., student.
Therefore, the Tribunal notionally took Rs.10,000/- as monthly
income, relying upon the judgment of the Hon'ble Supreme Court

in V.Mekala Vs. M.Malathi, reported in 2014 ACJ 1441 (SC) and added 50% towards future prospects and determined the monthly income at Rs.15,000/- and deducted 50% towards personal expenses, as the victim was a bachelor. Since the deceased was aged about 18 years, the appropriate multiplier 18 was adopted and the loss of income was determined at Rs.16,20,000/-.

5.Though the learned counsel appearing for the appellant would contend relying upon the judgment of this Court in CMA.No.2655 and 2844 of 2015, dated 24.04.2018 that this Court determined the monthly income of a B.E., student at Rs.15,000/-, a close perusal of the referred case would reveal that the deceased completed B.E., degree in first class and therefore, this Court determined the monthly income at Rs.15,000/-, whereas in this case, the deceased was only a first year B.E., student. The Tribunal rightly determined the monthly income at Rs.10,000/- and added future prospects at 50% and determined the total monthly income at Rs.15,000/-, which is in consonance with the Division Bench judgment of this Court in Royal Sundaram Alliance Insurance Company Limited Vs. S.Lakshmi and two others reported in 2016 (1) TNMAC 490. Even though subsequent judgment of the Hon'ble Supreme Court in Pranay Sethi's case speaks about 40% towards future prospects, this Court in its discretion, confirms 50% towards future prospects as the victim left behind a widowed mother. Therefore, Rs.15,000/- determined by the Tribunal as monthly income cannot be disturbed and the same is confirmed.

6.As far as deduction of 50% towards personal expenses is concerned, the learned counsel appearing for the appellant would contend rely upon the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), that the claimant is widowed mother and therefore, instead of 50%, 1/3rd has to be deducted. The Sarla Verma's case speaks about 1/3rd deduction towards personal expenses, if the deceased died as a bachelor and left behind a widowed mother and a big family, whereas in this case the widowed mother is the only claimant. Therefore, 1/3rd cannot be deducted and deduction of 50% by the Tribunal towards personal expenses is upheld.

7.The Tribunal rightly applied the multiplier "18" as per the age of the deceased, namely, 18 years, based on Sarla Verma's case and therefore, the amount awarded by the Tribunal at Rs.16,20,000/- (Rs.15,000/- (-) 50% of Rs.15,000/- x 12 x 18), is confirmed.

8.Loss of love and affection:

The Tribunal awarded a sum of Rs.5,000/- under this head. Since the appellant is a widow, a sum of Rs.75,000/- is granted under this head.

9.Loss of estate:

The Tribunal awarded a sum of Rs.1,000/- under this head. 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), the same is enhanced to Rs.15,000/-.

10. Funeral expenses:

The Tribunal awarded a sum of Rs.1,000/- under this head. 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), the same is enhanced to Rs.15,000/-.

11. Transportation:

No amount was awarded by the Tribunal under this head. Therefore, a sum of Rs.10,000/- is awarded under this head.

Head	Amount (Rs.)
Total loss of income	1620000
Loss of love and affection	75000
Funeral expenses	15000
Loss of estate	15000
Transportation	10000
	1735000

12. Hence, the total compensation payable in this case is Rs.17,35,000/-.

13. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

14. The Insurance company is directed to deposit the award amount as per the modified award passed by this Court, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the entire award amount along with interest and costs to the bank account of the claimant through RTGS within a period of one week thereon.

15. The claimant is directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted. The necessity to include the above clause is only to see that the additional court fee is paid promptly, as many complaints are received from the registry stating that the claimant's counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, which prevented the insurance company or transport corporation to receive the order copy, so that they could file

an appeal or to act upon the order passed by this Court. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the Decree itself.

16. Accordingly, this appeal is partly allowed, enhancing the award of the Tribunal from Rs.16,31,000/- to Rs.17,35,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
(Motor Accident Claims Tribunal)
Namakkal.

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

+ 1 cc to M/s. M.B. Gopalan & Associates, Advocate Sr.55143
+ 1 cc to Mr. Ma.P.Thangavel, Advocate Sr.54702

C.M.A.No.964 of 2018

BR(CO)
EU(12/11/2018)

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