

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE T. RAVINDRAN

C.M.A. No. 3235 of 2013

1. Sharmila Banu
 2. Rameeja Bibi
 3. Minor. Abu Thaheer
rep. by mother,
the 1st appellant
- Vs.
1. Balu
 2. V. Ganesh
 3. Reliance General Insurance Co.
Limited,
I Floor, Gee Jay Arcade,
141/71, T.V. Samy Road,
West R.S. Puram,
Coimbatore.
- ..Appellants/Petitioners
..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 19.03.2013 passed in M.C.O.P. No. 413 of 2009 by the Motor Accidents Claims Tribunal (III Additional District Court), Erode at Gobichettipalayam.

For Appellants :: Mr.A.V. Arun

For Respondents:: Mr.S. Arunkumar for R3

J U D G M E N T

(Judgment of the Court was delivered by R. SUBBIAH, J.)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (III Additional District Court), Erode at Gobichettipalayam, in and by award dated 19.03.2013, in M.C.O.P. No. 413 of 2009, the claimants, who are wife, mother and minor son of deceased, by name, Shahul Hameed, have come forward with the present appeal, seeking enhancement.

2. The facts that led to the filing of the claim petition are:

On 20.05.2009, at about 10.30p.m., when Shahul Hameed, the deceased in this case, was driving his motor cycle bearing Registration No. TN 36 B 1786 on Sathy to Athani Main Road, near Mothur Pirivu, a lorry bearing Registration No. TN 38 E 5459, belonging to the 2nd respondent herein and insured with the 3rd respondent Insurance Company, driven in a rash and negligent manner, dashed against the motor cycle of Shahul Hameed, consequent to which, the said Shahul Hameed fell down and wheels of the lorry ran over him, resulting in his death instantaneously.

3. The claimants, to sustain their claim, examined three witnesses as P.W.s 1 to 3 and marked as many as 14 documents as Exs-P1 to P14. However, neither oral nor documentary evidence was produced on the side of the respondents therein. The Tribunal, on appreciation of entire evidence on record, came to the conclusion that it was the driver of the lorry, who was rash and negligent and awarded a sum of Rs. 9,29,620/- as compensation together with interest @ 7.5%per annum. Hence, the present appeal, by the claimants.

4. Since the appeal has been filed questioning only the quantum of compensation awarded by the Tribunal, it is not necessary for this Court to traverse into other aspects of the award.

5. Assailing the award, the learned counsel for the appellants would contend that the Tribunal, while calculating "Loss of Income" had erroneously taken the net salary of the deceased instead of gross salary and further, it is contended that the Tribunal had also failed to consider the "Future Prospects" of the deceased, who was aged about 35 years, which had resulted in awarding inadequate compensation. In support of his contentions, the learned counsel relied upon the judgment of the Honourable Apex Court rendered in Sarla Verma and Others V. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC.

6. Per contra, the learned counsel for the Insurance Company would support the award passed by the Tribunal.

7. Keeping the submission of the learned counsel on either side, we have carefully gone through the entire materials on record.

8. The case of the claimants before the Tribunal was that the deceased was working as a Tap Inspector in Gobichettipalayam Municipality and to prove the income earned by

the deceased, his salary certificate was marked as Ex-P14 through P.W.3 and it is seen that the gross salary of the deceased was Rs.12,977/-. However, as rightly contended by the learned counsel for the appellants, the Tribunal wrongly took the net income of the deceased to compute "Loss of Income". Therefore, we are of the opinion that this is a fit case for enhancement of compensation and following the judgment of the Honourable Apex Court rendered in Sarla Verma's case (cited supra), it would be appropriate to take the gross salary of the deceased for re-calculating the compensation. Accordingly, the gross salary of Rs.12,977/- is taken as the income of the deceased. Since the deceased was aged about 35 years, at the time of accident, 50% of his income has to be added towards "Future Prospects". Adding the same, the total monthly income of the deceased is,

Total Monthly Income:: Rs.12,977/- (+) 50% (Rs.12,977/-)
 :: Rs.12,977/- (+) Rs.6488.5
 :: Rs.19,465.5

Considering the number of dependants, one-third was rightly deducted by the Tribunal towards "Personal Expenses" of the deceased. Applying the same, the "Monthly Contribution of the deceased to his family" would be,

Total Monthly Income :: Rs.19,465.5
 LESS: One-third towards
 "Personal Expenses " :: Rs.19,465.5 (-) 1/3
 (Rs.19,465.5)
 :: Rs.19,465.5 (-) Rs.6488.5

Monthly Contribution of the
 deceased to his family :: Rs.12,977/-
 Annual Contribution :: Rs.12,977 x 12

Since the deceased was aged about 35 years, the appropriate multiplier to be adopted is 15, which has also been rightly done by the Tribunal. Hence, "Loss of Income" works out to,

Loss of Income :: Rs.12,977 x 12 x 15
 :: Rs.23,35,860/-

Therefore, the sum of Rs. 8,74,620/- awarded by the Tribunal towards " Loss of Income" is enhanced to Rs.23,35,860/-.

9. As far as the amounts awarded under other heads are concerned, only a sum of Rs.10,000/- was awarded towards " Loss of Consortium", which requires to be enhanced to Rs.40,000/- in the light of the recent judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Accordingly, the amount awarded under " Loss of Consortium" is enhanced to Rs.40,000/-. Likewise, the amount awarded towards " Funeral Expenses" is enhanced to Rs.15,000/-. A sum of Rs.15,000/- is awarded towards " Loss of Estate" while the amount awarded towards " Loss of Love and Affection" is set aside. Now, the total

compensation payable to the appellants is as follows:

Loss of Income	::	Rs.23,35,860/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Estate	::	Rs. 15,000/-
Funeral Expenses	::	Rs. 15,000/-
Total	::	Rs.24,05,860/-

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

10. The appellants are directed to pay appropriate additional court-fee for the enhanced amount.

11. The 3rd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st and the 2nd appellants are entitled to Rs.10 lakhs and Rs.4 lakhs respectively and the 3rd appellant would be entitled to the balance amount. The 1st and 2nd appellants are permitted to withdraw their respective shares. As far as the minor's share is concerned, the same shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit till he attains majority. The 1st appellant is permitted to withdraw interest accruing on such deposit once in three months.

12. In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.9,29,620/- to Rs.24,05,860/-. No costs.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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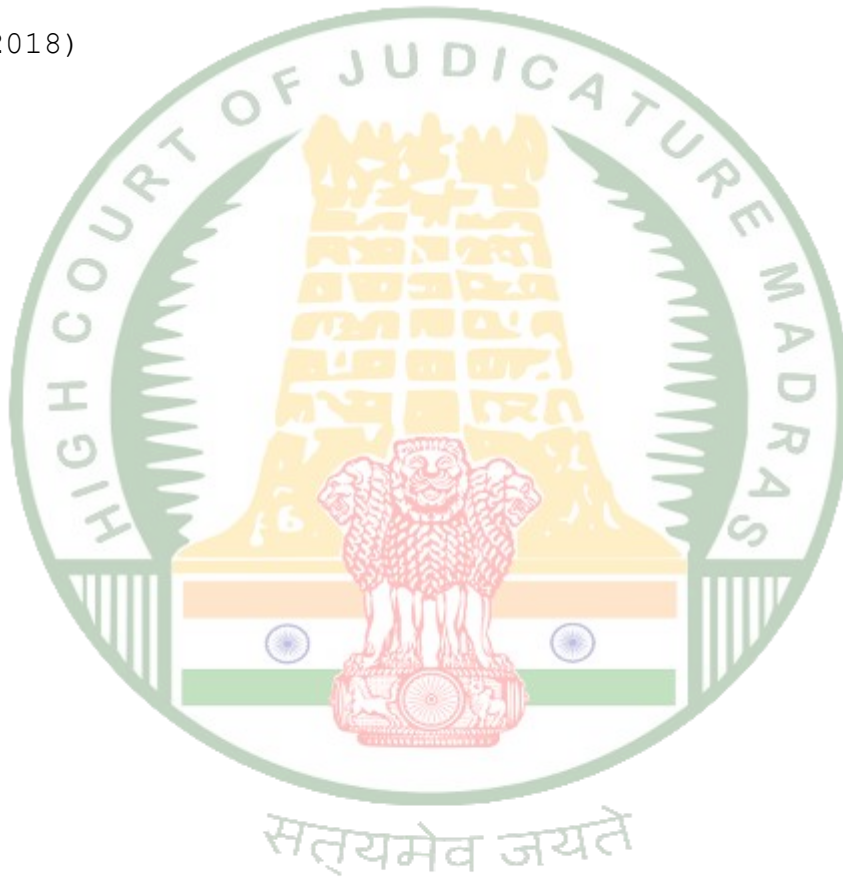
To

1. The (III Addl. District Judge),
The Motor Accidents Claims Tribunal,
Erode at Gobichettipalayam.
2. The Section officer
VR Section, High Court, Madras.(2 copies)

+1 CC to Mr.S. Arunkumar, Advocate sr 3822.
+1 CC to Mr.A.V. Arun, Advocate sr 3845.

C.M.A. No. 3235 of 2013

NMI (CO)
SP (12/02/2018)



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