

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No. 3330 of 2013

1. G.Mahalakshmi
 2. Minor Harini
 3. Minor Pranesh
(Minor appellants 2 and 3 rep. by the
natural guardian and mother
G. Mahalakshmi, the 1st appellant)
- ..Appellants/Petitioner

Vs.

1. R.Manokaran
 2. The Branch Manager,
United India Insurance Co. Ltd.,
M.M. Reddy Complex,
Old Bangalore Road, Hosur,
Krishnagiri District - 635 109.
 3. N.Pathmavathi
 4. Minor Barathkumar
(minor represented by his natural
guardian and next friend
Dr.S.V. Kalaivani)
- ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 26.11.2012 in M.C.O.P. No. 887/2008 passed by the Motor Accidents Claims Tribunal (Principal District Judge), Krishnagiri.

For Appellants :: Mr.T. Meganathan

For Respondents :: Mr.T. Ravichandran
for R2

J U D G M E N T

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

Not being satisfied with award passed by the Motor Accidents Claims Tribunal (Principal District Judge), Krishnagiri, in and by award dated 26.11.2012, in M.C.O.P. No. 887 of 2008, the claimants have filed the present appeal, questioning the quantum.

2. The claim petition was filed seeking compensation to the tune of Rs.2,51,00,000/-, but restricted to Rs.1,50,00,000/- for the death of one Dr. N. Ramanathan, who is the husband of the 1st appellant and father of appellants 2 and 3. The deceased had married the 1st appellant after getting divorce from his first wife, by name, Dr.S.V. Kalaivani. The 3rd respondent is the mother of the deceased and the 4th respondent is the son of the deceased through his first wife.

3. The case of the claimants before the Tribunal was that on 10.12.2006, at about 9.45p.m., the victim in this case, namely, Dr. N. Ramanathan was proceeding to Krishnagiri from Pochampalli in Pochampalli Mathur Road in his Tata Indigo Car bearing Registration No. TN-24-2794 and while he was nearing Pochampalli Samathuvapuram, a lorry bearing Registration No. TN-21-Y-7244, belonging to the 1st respondent and insured with the 2nd respondent, driven in a rash and negligent manner, dashed against the car of Dr.N. Ramanathan, due to which, he sustained grievous injuries and succumbed to the injuries on the way to the hospital.

4. With regard to the claim for compensation, it is the case of the claimants before the Tribunal that the deceased was a Doctor by avocation and he was working as Assistant Surgeon, Government Headquarters Hospital, Krishnagiri at the time of accident. His salary per month was not less than Rs.25,243/- and he was also earning income from private practice to the tune of Rs.35,000/-. His total income per month was not less than Rs.60,000/- and hence, the claim petition was filed seeking compensation to the tune of Rs.1,50,00,000/-.

5. In order to prove the claim before the Tribunal, on the side the claimants, the 1st appellant examined herself as P.W.1 besides examining P.W.s 2 and 3 and marked 13 documents as Exs-P1 to P13. On the side of the 2nd respondent Insurance Company, three witnesses were examined as R.W.s 1 to 3 and six documents were marked as Exs-R1 to R6. The Tribunal, on evaluation of oral and documentary evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the lorry insured with the 2nd respondent

and on coming to such conclusion, has calculated the compensation under different heads and passed an award for a sum of Rs. 28,25,046/- together with interest @ 7.5% per annum. The break up details of the award passed by the Tribunal are as hereunder:

Loss of Income	::	Rs. 27,95,046/-
Loss of Consortium	::	Rs. 10,000/-
Loss of love and affection	::	Rs. 10,000/-
Funeral Expenses	::	Rs. 10,000/-
Total	::	Rs. 28,25,046/-

As already stated, aggrieved over the quantum awarded, the claimants have come forward with the present appeal.

6. Since the appeal has been filed questioning only the quantum of compensation, it is not necessary for this Court to deal with other aspects of the award.

7. It is the contention of the learned counsel for the appellants that the Tribunal, while computing "Loss of Income" has failed to add any amount towards "Future Prospects" of the deceased. That apart, the Tribunal has adopted split multiplier method, which has resulted in an inadequate compensation being awarded. Hence, the learned counsel sought for modification of the award passed by the Tribunal by adding "Future Prospects" and by setting aside split multiplier method.

8. Per contra, the learned counsel for the Insurance Company made submissions supporting the award passed by the Tribunal.

9. Keeping the submissions of the learned counsel on either side, we have gone through the entire materials on record.

10. It is seen that the Tribunal, while calculating the compensation had taken only a sum of Rs.21,673/- as the monthly income of the deceased whereas salary certificate, Ex-P12, marked on the side of the appellants/claimants would show that his gross salary was Rs.25,345/-. Therefore, we are of the opinion that the monthly income of the deceased could be fixed at Rs.25,000/- to arrive at a reasonable compensation.

11. As per the judgment of the Honourable Apex Court rendered in Sarla Verma and Others V. Delhi Transport Corporation and another reported in 2009 6 SCC 121, 30% of the income has to be added towards "Future Prospects", as the deceased was aged more than 40 years. Therefore, adding 30% to his income, the total income of the deceased would be,

Monthly Income Fixed	:: Rs.25,000/-
ADD: 30% towards 'Future Prospects'	:: Rs.25,000/- (+) 30%
(Rs.25,000/-)	
	:: Rs.25,000/- (+) Rs.7,500/-
Total Monthly Income	:: Rs.32,500/-
Annual Income	:: Rs.32,500 x 12
	:: Rs.3,90,000/-

Since the size of the family is three, one-third has to be deducted towards "Personal Expenses" of the deceased. Accordingly, deducting one-third, "Annual Contribution of the deceased to his family" would be,

Annual Income	::Rs.3,90,000/-
LESS:1/3 rd towards "Personal Expenses"	::Rs.3,90,000/- (-) 1/3
(Rs.3,90,000/-)	
Annual Contribution	::Rs.2,60,000/-

As far as the multiplier is concerned, the split multiplier adopted by the Tribunal is not sustainable and the same is set aside. Based on the age of the deceased, namely, 48 years, the appropriate multiplier would be 13. Accordingly, applying the same, "Loss of Income" is arrived at as hereunder:

Loss of Income	:: Rs.2,60,000 x 13
	:: Rs.33,80,000/-

Hence, the sum of Rs.27,95,046/- awarded by the Tribunal towards "Loss of Income" is enhanced to Rs.33,80,000/-.

12. As far as the amounts awarded under the conventional heads are concerned, we find that the Tribunal has awarded only a sum of Rs.10,000/- towards "Loss of Consortium". Following the recent Full Bench's judgment of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the amount awarded under the said head is enhanced to Rs.40,000/-. The amount of Rs.10,000/- awarded towards "Funeral Expenses" is enhanced to Rs.15,000/-. Further, we find that the Tribunal has awarded only a sum of Rs.10,000/- towards "Loss of Love and Affection" to the minor appellants. Considering the fact that the minor children have lost their father at a tender age, we feel that a sum of Rs.50,000/- could be awarded to each one of minor appellants 2 and 3 as well as to the 4th respondent towards "Loss of Love and Affection".

13. In the light of the above enhancements made in the amounts awarded under different heads, the total compensation payable works out to,

Loss of Income	::	Rs.33,80,000/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Love and Affection to 2 nd and 3 rd appellant	::	Rs. 1,00,000/-
Loss of Love and Affection to the 4 th respondent	::	Rs. 50,000/-
Funeral Expenses	::	Rs. 15,000/-
Total	::	Rs.35,85,000/-

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

14. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs. 28,25,046/- to Rs.35,85,000/- together with interest @ 7.5% per annum.

15. The 2nd respondent Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, 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 appellant would be entitled to a sum of ***Rs.11 lakhs** and appellants 2 and 3 are entitled to Rs.8 lakhs each. The 4th respondent is entitled to a sum of Rs.7 lakhs and the 3rd respondent is entitled to Rs. 1,85,000/-. The 1st appellant and the 3rd respondent are permitted to withdraw their respective shares. As far as the share of minor appellants 2 and 3 are concerned, the same shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit till they attain majority and the 1st appellant is permitted to withdraw interest accruing on such deposit once in three months. Likewise, the share of the 4th respondent shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks till he attains majority and his mother, namely, Dr.S.V. Kalaivani is permitted to withdraw interest accruing on such deposit once in three months.

Sd/-

Assistant Registrar(CS III)

dt.23.2.2018

*Paragraph No.15 has been corrected
as per order of the court dated
12.4.2018

Sd/-

Assistant Registrar(CS III)

dt.19.4.2018

//True Copy//

Sub Assistant Registrar

nv

To

1. The MACT (Principal Dist. Court), Krishnagiri. | To be substituted to the order already despatched on 4.4.2018
2. The Section Officer,
VR Section, High Court,
Madras (2 Copies)

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.27105

+1cc to Mr.T.Ravichandran, Advocate Sr.No.27213

C.M.A. No.3330 of 2013

VGII (CO)
CS/13/03/18
sm:19.4.2018



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