

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2262 of 2018

1. Mahalakshmi
2. Minor Masilamani
3. Minor Pushpavalli
(Minor Petitioners rep. By their next friend
Guardian/Mother Mahalakshmi)
4. Kannammal
5. Thiruvenkadam ... Appellants/Petitioner

-vs-

1. M. Elumalai
2. The Oriental Insurance Company Limited,
Branch Office, No.75, Krishnan Street,
Behind Anna Statue,
Thiruvannamalai District.
3. P. Subbarayan
4. TATA AIG General Insurance Company Ltd.,
Peninsula Corporate Park, Nicholas Piramal Tower,
9th Floor, Ganapatrao Kadam Marg, Lower Parel,
Mumbai 400 013. ... Respondents/Respondents

(The Respondents 1 & 3 remained ex-parte before the Tribunal,
hence notice may be dispensed with them in this Appeal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the Judgment and decree in
MCOP No.1349 of 2013, dated 10.01.2017 on the file of the Motor
Accidents Claims Tribunal, Additional District Court at Namakkal.

For Appellants : Mr. Ma.P.Thangavel

For Respondents : Mr. S.Manohar for R2
Mr. R.Mohan Babu
for M/s.N.Vijayaraghavan for R4
R1 and R3 : Raman, Exparte

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The claimants who are the wife, children and parents of one Elumalai, who died in a motor accident that occurred on 20.05.2012, are the appellants.

2. The case of the claimants before the Tribunal was that on 20.05.2012 while the deceased Elumalai, was travelling as a pillion rider in a two wheeler, bearing Registration No.TN32/AA-1454, the rider of the two-wheeler drove the vehicle in a rash and negligent manner and dashed against a Tractor with Trailer bearing Registration No.TN32-C-8980 (Tractor), TN32-H-9027 (Trailer), which was parked on the middle of the road without any indication or warning signal. The pillion rider was thrown off the vehicle and as a result of the injuries, died on the spot. The claimants would term the negligence on the part of both the drivers as the cause for the accident. Contending that the deceased Elumalai was a professional driver, possessing a license to drive Heavy Motor Vehicles, the claimants quantified his monthly income at Rs.12,000/- and sought for a compensation of Rs.20,00,000/-.

3. The Tribunal, which heard the Claim Petition concluded that the accident had occurred due to the negligence of the drivers of both the vehicles, namely the Tractor and the two-wheeler. The negligence was apportioned equally between the two drivers.

4. On the quantum, the Tribunal took the monthly income of the deceased at Rs.10,000/- applied a multiplier of 15. Deducting 1/4th towards personal expenses, the Tribunal awarded a sum of Rs.13,50,000/- towards loss of dependency. The Tribunal also awarded a sum of Rs.3,00,000/- towards loss of love and affection at Rs.1,00,000/- each to the minor children and Rs.50,000/- each to the parents. A sum of Rs.1,00,000/- was awarded towards loss of consortium and Rs.25,000/- awarded towards funeral expenses. In all the Tribunal awarded a sum of Rs.17,75,000/-.

5. Terming the award as insufficient, the claimants are before us by way of this appeal. Since, the Insurance Companies have accepted the award, the only question that has to be decided in this appeal is the sufficiency of the quantum of compensation.

6. We have heard Mr.Ma.P.Thangavel, learned counsel appearing for the appellants/claimants, Mr.S.Manohar, learned counsel appearing for 2nd respondent /insurer of the Tractor and Mr.R.Madhan Babu, learned counsel appearing for Mr.N.Vijayaraghavan, for the 4th respondent/ insurer of the Two-wheeler.

7. Mr.Ma.P.Thangavel, learned counsel appearing for the appellants/claimants would contend that the Tribunal was not justified in fixing the monthly income of the deceased at Rs.10,000/-. Being a professional driver possessing a license to drive Heavy Motor Vehicles, the deceased would have easily earned more than Rs.12,000/- per month. He would also fault the Tribunal for not taking into account future prospects, which has been quantified at 40% by the larger Bench of the Hon'ble supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331.

8. Mr.S.Manohar and Mr.R.Mohan Babu, learned counsels appearing for the insurance companies of both the vehicles would contend that though the Tribunal had not taken into account the future prospects, the amounts awarded by the Tribunal under the conventional of heads, namely loss of consortium, loss of love and affection are over and above the limits suggested by the large Bench, namely Pranay Sethi's case, cited supra. Therefore, the award on the whole is just and reasonable.

9. We have considered the rival submissions.

10. Admittedly, the deceased was a professional driver possessing a Heavy Motor Vehicle License. The accident had occurred in the year 2012. Considering the prevailing salaries and the cost of living, we are of the considered view that the Tribunal was not right in fixing the monthly income of the deceased at Rs.10,000/-. Even an unskilled worker would have earned not less than Rs.300/- per day at the relevant period. We, therefore, fix the monthly income of the deceased at Rs.12,000/- per month. Adding 40% towards future prospects, the monthly income for the purposes of determination of the loss of dependency would be Rs.16,800/-. The deceased had left behind four dependants. Hence $\frac{1}{4}$ of the income is to be deducted towards personal expenses. Thus calculated, the total loss of dependency would be $\text{Rs.16,800/-} \times 12 \times 15 \times \frac{3}{4} = \text{Rs.22,68,000/-}$

11. As rightly contended by the learned counsel appearing for the Insurance Company, the awards made by the Tribunal under

the conventional heads, namely loss of consortium and loss of affection are on the higher side and the same requires modification. The Tribunal has not awarded any amount towards loss of estate and transportation. Hence we award a sum of Rs.15,000/- and Rs.10,000/- respectively on those two heads. Hence the award of the Tribunal is modified as follows:

S.No.	Heads	Amount
1.	Loss of Dependency	Rs.22,68,000/-
2.	Loss of Consortium	Rs. 40,000/-
3.	Loss of Love and Affection for the minor children (Rs.40,000/- x 2)	Rs. 80,000/-
4.	loss of love and affection to the parents (Rs.20,000/- x 2)	Rs. 40,000/-
5.	Loss of Estate	Rs. 15,000/-
6.	Funeral Expenses	Rs. 15,000/-
7.	Transportation	Rs. 10,000/-
	TOTAL	Rs.24,68,000/-

12. Though the claimants had originally sought for a compensation of Rs.20,00,000/-, at the time of filing the above appeal, they had amended the Claim Petition and sought for a compensation of Rs.35,00,000/-.

13. In fine, the appeal is partly allowed. The compensation granted by the Tribunal is enhanced to Rs.24,68,000/- with interest at 7.5% per annum from the date of petition till date of payment. However, there shall be no order as to costs in this appeal.

14. The compensation is apportioned as follows:

1. The 1st claimant, namely wife of the deceased/1st appellant, will take Rs.6,68,000/- with proportionate interest and entire costs.
2. The claimants 2 & 3, namely the minor children of the deceased/ appellants 2 & 3 will take Rs.6,00,000/- each, with proportionate interest.
3. The claimants 4 & 5, namely the parents of the deceased/appellants 4 & 5 will take Rs.3,00,000/- each with proportionate interest.

15. The finding on the liability of the Insurance Companies to satisfy the award is confirmed. The Insurance Companies are directed to deposit the award amount, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants 1, 4 & 5, namely, appellants 1, 4 & 5 will be entitled to withdraw their respective shares of the compensation. The Tribunal is directed to deposit the share of the minors, namely the claimants 2 & 3/appellants 2 & 3, in an interest earning fixed deposit in any one of the Nationalised Banks till they attain majority and the mother, namely the 1st appellant, is permitted to withdraw quarterly interest from the fixed deposit for the maintenance of the minor children.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

jv

To

The Motor Accidents Claims Tribunal,
Additional District Court at
Namakkal.

Copy To

The Section Officer, VR Section, High Court, Madras -104.

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.73861

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.74559

+1cc to Mr.S.Manohar, Advocate SR.No.74027

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SSV(CO)

GMV(26/02/2019)

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