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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| RESERVED ON  | 26.10.2018 |
| DELIVERED ON | 12.04.2019 |

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 818 of 2003

1. K.Ramesh (Deceased)  
2. Krishnamurthy  
3. Dhanalakshmi ...Appellants /Petitioners  
(Appellants 2 & 3 are brought on record as LR's of  
deceased vide order of this Court dated 18.01.2017)

Vs.

1. M. Natesan  
2. The Divisional Manager,  
New India Assurance Co.Ltd.,  
Paramathi Road, Namakkal.  
...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 10.12.2002 passed in MCOP. No. 60 of 2001 on the file of the Motor Accidents Claims Tribunal (Sub Court), Tiruvarur.

For Appellants : Mr. Srinath Sridevan

For Respondents : Mr. R. Sivakumar - For R2

JUDGMENT

This Civil Miscellaneous has been preferred against the judgement and decree 10.12.2002 passed in MCOP. No. 60 of 2001 on the file of the Motor Accidents Claims Tribunal (Sub Court), Tiruvarur

2. Brief facts leading to the claim application are as follows;

On 12.06.2000 at 6 am, the petitioner along with his two friends were proceeding in a Hero Honda Motor Cycle from Tiruvarur to Thanjavur. The said motor cycle was ride by the



petitioner in a slow and cautious manner. At the time near Nagapattinam - Thanjavur road, a tanker lorry bearing registration number SR 46, 7383 driven by its driver, came in a rash and negligent manner and hit against the motor cycle, as a result, the petitioner, who ride the motorcycle and his friend namely Ashok Kumar were thrown away, both sustained serious injuries. For the said injuries, the petitioner was given treatment in various hospitals and he took treatment as inpatient. He also sustained disability, which resulted him the inability to continue his profession as teacher. Hence the petitioner has claimed a sum of Rs. 25,00,000/- as compensation.

3. The 2<sup>nd</sup> respondent in his counter statement has stated that whether the driver of the tanker lorry was having a valid and effective driving license and having insurance with this respondent at the time of the accident is in question and further stated that the said accident had occurred only due to the negligence on the part of the petitioner, who ride motorcycle. It is further stated that the petitioner was not in possession of valid license for riding two wheeler. It is further stated that the compensation claimed by the petitioner is excessive, since his monthly income was only Rs.9,975/-.

4. The tribunal upon analysing the documents and evidence placed by both sides, has given a finding that the driver of the tanker lorry is responsible for the accident because of his rash and negligent driving and dashed against the petitioner who was riding the two wheeler which resulted in causing severe injuries and disability to the petitioner. The tribunal has awarded a sum of Rs.2 Lakhs as compensation under various head based on the documentary and oral evidence.

5. Aggrieved against the said judgment and decree, the claimants have preferred this appeal for enhancement.

6. In the grounds of appeal, it is stated that the tribunal ought to have seen that the claimant was working in a Training College as lecturer and was earning Rs.10,000/- per month. Due to the accident, the claimant has suffered permanent mental impairment which disabled him from working further on account of the loss of short term memory. It is further stated that the tribunal ought to have awarded a sum of Rs.12,85,000/- under loss of earning power. The tribunal without considering the fact that the claimant is a Master's Degree holder whose memory was seriously impaired due to the accident, has awarded a sum of Rs.75,000/- towards permanent disability, The tribunal has also not awarded the sum for nourishment and the expenses incurred for engaging the assistant to attend his basic needs. The claimant was in the Intensive Care Unit for 2 months.



7. Heard both sides and perused the documents available on record.

8. It is argued by the appellant that the present appeal has been preferred for enhancement of the award passed by the tribunal and also for the sum to be awarded under certain heads. It is argued that the sum awarded for disability is very much meagre since the claimant was only 23 years at the time of the accident and he was also working as a lecturer in a college and getting his monthly income of Rs.9,975/-. It is also argued by the appellant that after preferring the appeal, the claimant died and hence his legal heirs were brought on record as appellants as they are eligible for getting enhancement of award amount.

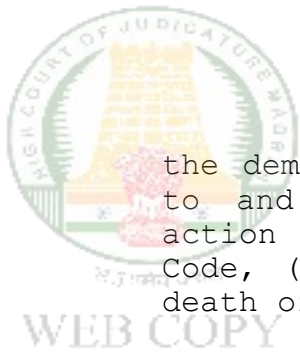
9. On the other hand, the learned counsel for the respondent has argued that the claimant has preferred the claim application for the disability and for the loss of earning capacity, pain and suffering, mental agony suffered by him because of the accident and once he died, the legal heirs are not entitled for the enhancement of sum for the personal injuries sustained by the deceased.

10. The learned counsel for the appellant has referred a judgment reported in 1942 (1) ALL ER 7, in the case of Benham Vs. Gambling, wherein it is observed as follows

" if an individual is injured by accident due to the negligence of another person, the claim for damages no longer abates at his death, but survives for the benefit of his estate, and can be enforced in an action brought by his personal representative against the negligent defendant, or against the defendant's personal representative if the defendant has died,...."

11. It is the argued by the respondent that the appellant is an injured claimant, who died pending disposal and hence the Legal representatives are not entitled for enhanced compensation, since the tribunal has awarded for pain and suffering and for other head that was suffered by the deceased, hence the appellants are not entitled to prefer the appeal for enhancement of compensation.

12. On the other hand , it is argued by the appellant that the principle of maxim 'Actio Personalis moritur cum persona' is only to personal or abate injuries and not to the case of loss of estate of the deceased by the testator. But the provision of Section 306 of the Indian Succession Act provides



the demands and rights of action of or against deceased survive to and against executor or administrator, except causes of action for defamation, assault, as defined in the Indian Penal Code, (45 of 1860.) or other personal injuries not causing the death of the party.

13. The appellants to substantiate their claim for loss of estate, has cited a judgment of this Court reported in 2013 (1) TN MAC 723 reported in a case of Venkatesan (Deceased) and other Vs. Kasthuri and others . The relevant portion of the judgment is as follows;

"6. .... Under these circumstances, in my opinion, the claim regarding damage on account of pain, suffering and mental agony to the deceased will not survive but the claim regarding loss to the property will survive and the appellants are entitled to continue the proceedings"

.....

.....

12. At this juncture, it is relevant to state that the legal representatives are entitled to receive the award amounts awarded which form part of the estate of the deceased. As there is award against the insured as well as the Insurer, the legal representatives step into the shoes of the claimant and are entitled to the amount, which the deceased claimant would have recovered and said amount would be treated as estate of the legal representatives. In the light of the views expressed by this court referred to above, this court is of the considered view that the legal representatives of the injured claimant are entitled to the above said award amount as loss to the estate."

14. It is also further argued by the learned counsel for the appellant that the legal representatives are entitled to prosecute the appal and the appeal does not get abated on the death of the deceased who has preferred the appeal for enhancement of compensation.

15. Per contra, the learned counsel for the respondent has argued that after the death of the injured, the cause of action will not survive and the legal representatives will not be entitled to further prosecute the litigation, since the award of compensation cannot be made as lifetime of the injured .

16. In the present case on hand, the claimant was an MBA graduate and he was working as lecturer in a college and was earning Rs.9,975/- per month . However it is contended the claimant had suffered loss memory because of the head injuries sustained in the accident. He was under the special care in the



ICU for nearly 5 months. Likewise, the injuries sustained in his legs caused more inconvenience to drive his two wheeler and also he was under continuous treatment. Before the tribunal PW4-doctor was examined, who has assessed the disability at 54% and after medial expenses incurred by the claimant, Ex.P15 documents were filed for a sum of Rs. 82,611/-. The claimant has also filed relevant documents for the expenses incurred by him for transport. Ex.P2 is the certificate issued by the Principal of the College, which reveals that the claimant was working in a private college and the Principal was examined before the tribunal PW2. Exhibit P16 is the salary certificate of the claimant, showing the claimant's monthly salary as Rs.9,975/-.

17. It is also argued by the appellant that when the claimant was under treatment as inpatient, he could not earn any income during the period and because of the disability and he could not continue his profession, he was totally disabled from earning any money for himself or for his family members. Hence it is argued by the appellant that since the award passed by the tribunal is very much meagre, the legal representatives are entitled to proceed with the appeal for enhancement preferred by the injured person, who subsequently died pending disposal of the appeal and lost his whole carrier because of the injuries caused by the negligent act on the part of the respondent.

18. On perusal of the documents placed before the tribunal, it is seen that the claimant was a MBA graduate and as per the evidence and documents produced to prove his earning, loss of income sustained by him and by his family members has to be properly considered.

19. On the side of the respondent, it is argued that while considering the claim of loss of estate only certain heads of claim can be allowed. On perusal of the documents and records, it is observed that the person who was a prime earning member of his family, had become dependant to his family due to the loss of income, which is very unfortunate. When a person sustained severe injuries and was under treatment for a long period who could spend such medial expenses and to provide all the needs that are required to bring the injured person to his original position. Here, it is seen that the injured person is a graduate and the only earning person in his family, who had under gone treatment for a long period and incurred huge medical expenses. It is also seen that the disability of 54% made him unfit totally to continue his profession as lecturer as he suffered loss of memory.

20. On perusal of the award of the tribunal, it is seen that the monthly income of the injured person was taken at Rs.5,000/- and calculated the loss of income for 6 months at



Rs.30,000/- (Rs.5000 x 6). This court is of the opinion that the said sum is very much meagre, when the injuries sustained by claimant is to the extent of affecting his entire teaching profession, which purely rely upon his memory and efficiency. Hence in the absence of any contrary evidence placed by the respondents, the sum as mentioned in EX.P16 has to be taken as such. Further, it cannot be said that when a person dies, the entire pain and suffering will come to an end and Legal Representatives cannot claim any sum under those heads. Here it is very much observed that the injured person was under treatment for six months and though the tribunal has observed that without the assistance, the injured person cannot be taken care all the time by the family members, no sum has been awarded for under the heads attendant charges and nourishment. Hence a sum of Rs. 25,000/- each is awarded towards 'Attendent Charges' and 'Nourishment'.

21. It is contended by the appellant that the sum awarded for medical expenses at Rs.95,000/- is based on Ex.P15 documents, same need not be modified and further argued that the sum awarded for pain and suffering at Rs.25,000/- has to be properly enhanced by taking into consideration the nature of injury and the period of treatment. It is clear from the records that the injured was under treatment for long period and he lost his income, which necessitated him to expect his family members to spend for him for regaining and restoration of his original health, hence that aspect has to be properly considered. Even as per the assessment of the tribunal, the future loss of income has been assessed at Rs.45,000/- for 9 months. Since, no evidence has been placed on the side of the respondent showing that the disability and the inconvenience sustained by the injured person will be restored after 9 months, this Court by taking into consideration the nature of injury and the disability, inclined to enhance the amount awarded for future loss of income by taking the salary as per Ex.P16. Accordingly a sum of Rs.89,775/- (Rs.9,975 x 9 ) is awarded under the head of 'Future Loss of Income'.

22. Since the Loss to estate may also arise, if the existence estate suffer loss by application of money towards medical expenses, Transport charges, Pain and Suffering, nourishment, attendant charges, etc., the sum awarded under the said heads also covered under the head 'loss of estate' as observed this Court in a jugment cited supra. Therefore, the argument of the respondent/Insurance company that the appellants are not entitled for compensation under the other heads except 'Loss of Estate' is not proper. In view of the above discussion, the sum awarded by the tribunal under the heads Transport and Pain and suffering is confirmed and the sum awarded by the



tribunal under the head Other expenses at Rs.4,300/- is set aside.

The award of the tribunal modified by this Court is as follows;

| Head                                      | Sum awarded by the tribunal | Sum modified by this Court |
|-------------------------------------------|-----------------------------|----------------------------|
| Loss of Income (6 moths treatment period) | Rs. 30,000/-<br>(5000 x 6)  | Rs. 59850/-<br>(9975 x 6)  |
| Future Loss of Income (9 months)          | Rs. 45,000/-<br>(5000 x 9)  | Rs. 89,775/-<br>(9975 x 9) |
| Transport                                 | Rs. 700                     | Rs. 700                    |
| Medical Expenses                          | Rs. 95,000                  | Rs. 95,000                 |
| Pain and Suffering                        | Rs.25,000                   | Rs. 25,000                 |
| Other expenses                            | Rs. 4300/-                  | --                         |
| Nourishment                               | --                          | Rs. 25,000                 |
| Attendant Charges                         | --                          | Rs.25,000                  |
| Total                                     | Rs. 2,00,000/-              | Rs. 3,20,325/-             |

23. In view of the above enhancement, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petitions if any, are closed. The appellants are directed to pay additional court fee on the enhanced award amount.

24. The 2nd respondent/ Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest at 7.5% per annum and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank accounts thro' RTGS within one week thereon.

Sd/-  
Assistant Registrar(CS V)

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Sub Assistant Registrar



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- 1.The Sub Judge,  
The Motor Accidents Claims Tribunal,  
Tiruvarur.
- 2.The Section Officer,  
VR Section, High Court, Madras.

+1cc to Mr.Srinath Sridevan, Advocate Sr.37171  
+1cc to Mr.R.Sivakumar, Advocate Sr.36215

C.M.A.No. 818 of 2003

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srg 17/10/2019