



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 20.03.2019

Judgment Delivered on : 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1608 of 2009

1.R.Anuradha

2.R.Santhith (Minor)

3.R.Archana (Minor)

4.R.Pechaiyee

5.R.Rajalingam

(Minors rep. by mother & N.F
the petitioner)

... Appellants/Petitioner

Vs.

1.K.Radhakrishnan

2.United India Insurance Co.Ltd.,

No.38, Anna Salai,

Chennai - 600 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 14.07.2008 made in M.C.O.P.No. 414 of 2004, on the file of the Motor Accidents Claims Tribunal, (VI Small Causes Court), Chennai.

For Appellant : Mr.K.Ayyadurai

for Mr.N.M.Muthurajan

For R2

:Mr.M.Krishnamoorthy

JUDGMENT

The appellants are the claimants in M.C.O.P.No.414 of 2004, on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai. They have filed the above claim petition seeking compensation of Rs.20,00,000/-, for the death of one Ramesh, in a road accident that took place on 13.08.2002.

2. The case of the appellants/claimants is as follows:

(i) The first claimant is the wife; second claimant is the daughter; third claimant is the son; fourth and fifth claimants are the parents of the deceased.

(ii) The deceased was aged about 34 years at the time of the accident. He was a Lorry Driver at M/s.JRV Blue Metals, Nerkundram earning a sum of Rs.3,000/- per month as salary and Rs.250/- batta per day.



(iii) On 13.08.2002 at about 00.30 hours, the deceased Ramesh aged about 34 years, parked his lorry bearing Reg.No.TN-28-V-1204 at GWT Road, Maduraivoyal, opposite to Bala Murali Krishna Cinema Theatre. The deceased was crossing the road so as to phone. At that time, the Auto-Rickshaw bearing Registration No.TN-09-K-5022 which was driven in a rash speed and negligent manner, came along GWT Road from East to West direction and dashed against the pedestrian (deceased), in which he sustained serious injuries and died later in the hospital. At the time of accident, the deceased Ramesh was earning Rs.3000/- per month and batta Rs.250/- per day. The accident was due to rash and negligent driving of the 1st respondent driver and hence, the 1st respondent as owner and the 2nd respondent as insurer, are liable for the claim made by the claimants.

(iv) The deceased R.Ramesh was the only bread-winner in the family and the above named claimants including two minor children were depending upon the earnings of the deceased.

3. The first respondent remained ex-parte before the Tribunal. Before the Tribunal, on the side of the appellants/claimants, PW1 was examined and Exhibits P-1 to P-8 were marked. On behalf of the Insurance company, no one was examined and no documents were marked.

4. On a consideration of the fact that the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the first respondent's vehicle and awarded compensation of Rs.6,57,000/- and having not satisfied with the quantum of compensation, the claimants have preferred this appeal.

5. On the point of quantum, both the parties are heard. The factum of the accident and the manner of the accident and the rash and negligent driving on the part of the driver of the first respondent's vehicle, having remained unchallenged, are hereby confirmed.

6. It is seen from the records that based upon the salary certificate issued by the owner of the vehicle under Exhibit P6, the income of the deceased was arrived at Rs.4,500/- and age of the deceased was fixed as '33' years.

7. As per the Constitutional Division Bench judgment of the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, 40% has to be included for future prospectus and further, as per the said decision, the age of the parents should not be the criteria and only the age of the victim should be taken into



account while calculating the compensation. Accordingly, the age of the deceased is fixed as '33' years.

WEB COPY

8. Hence, the annual income of the deceased is arrived at Rs.4500/-+ Rs.1,800 (i.e. 40% of 4,500) x12, i.e. Rs.75,600/-. As the number of the dependents are more, the deduction of 1/4 has to be made towards his personal expenses instead of 1/3 as is done by tribunal.

9. Further, based on the decision of the Supreme Court reported in 2009 (2) TN MAC 1 SC [Sarala Verma and Others Vs. Delhi Transport Corporation and another], the multiplier of '16' is adopted. Resultantly, the annual income contributed by the deceased to the family is arrived at Rs.75,600 - 18,900 (i.e. 1/4 of 75,600) = Rs.56,700/- . Accordingly, the following calculation is made towards 'loss of earning':

$$\text{Rs.}56,700 \times 16 = \text{Rs.}9,07,200/-.$$

10. Furthermore, the claimants are the parents, wife and children of the deceased. Accordingly for loss of love and affection to both the children, Rs.50,000/- each is granted, totalling Rs.1,00,000/-. For parents of the deceased, Rs.40,000/- each is awarded, totalling Rs.80,000/-.

11. With regard to funeral expenses, this Court enhances the same from Rs.2,000/- to Rs.15,000/-.

12. For loss of consortium to the wife of the deceased, Rs.40,000/- is hereby awarded.

13. The amount awarded under medical expenses is hereby confirmed.

14. Thus, in toto, the compensation awarded is hereby tabulated:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning	Rs. 6,12,000/-	Rs. 9,07,200/-
2.	Funeral expenses	Rs. 2,000/-	Rs. 15,000/-
3.	For loss of Love and affection to children	Rs. 10,000/- (Rs.5,000/- each)	Rs. 1,00,000/- (Rs.50,000/- each)
4.	For loss of Love and affection to parents	Rs. 10,000/- (Rs.5,000/- each)	Rs. 80,000/- (Rs40,000/- each)
5.	For medical expenses	Rs. 18,000/-	Rs. 18,000/-
	Total	Rs. 6,57,000/-	Rs. 11,20,200/-



15. Thus, the compensation awarded by the Tribunal is enhanced from Rs.6,57,000/- to Rs.11,20,200/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment.

16. In the result,

(i) The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

(ii) The second respondent-United India Insurance Company Limited is directed to deposit the entire compensation as calculated above together with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the appellants/claimants are permitted to withdraw their share of compensation amount, in the proportion mentioned by the Tribunal. As far as the minor appellants 2 and 3/claimants are concerned, their respective share amount of compensation shall be deposited in any interest bearing Nationalized Bank and the interest accrued thereon shall be withdrawn by their natural guardian mother once in three months and their share of compensation amount shall be kept in deposit, periodically renewed till they attain majority.

(iv) Since this Court has enhanced the award amount of the Tribunal, the claimants shall pay necessary Court fee, if any on the enhanced compensation amount.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
(VI Small Causes Court), Chennai.

Copy to : The Section Officer, V.R.Section,
High Court, Madras.

+1 cc to M/s.M.Krishnamoorthy, Advocate Sr.No. 58256

+1 cc to M/s.N.M.Muthurajan, Advocate, SR.No. 57738

AKM/11.12.19/4P-5C /

Judgment in
C.M.A.No.1608 of 2009