

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.03.2019

Judgment Delivered on : 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.834 of 2010

1.K.P.Raju

2.R.Renuga

... Appellants

Vs.

1.S.Bala Gurusamy

2.M/s.Transport Corporation of India,
57/58, 2nd Cross
KPN Extension Jumma Majid Building,
Main Road, Puthur District.

3.National Insurance Company Ltd.,
Division No.XXIII,
106, Palika Bhavan,
R.K.Puram,
New Delhi.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 17.12.2009 made in M.C.O.P.No. 517 of 2007, on the file of the Motor Accidents Claims Tribunal, (Additional District and Sessions Court/Fast Track Court No.I), Coimbatore.

For Appellant : Mr.N.Manokaran

For R1&R2 :Not ready in notice

For R3 :Mr.S.Vadivel

JUDGMENT

The appellants are the claimants in M.C.O.P.No.517 of 2007, on the file of the Motor Accidents Claims Tribunal (Additional District Judge/Fast Track Court No.I), Coimbatore. They have filed the above claim petition seeking compensation of Rs.50,00,000/-, for the death of one Karthick, in a road accident that took place on 02.10.2006.

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

(i) The first claimant and the second claimant are the parents of the deceased.

(ii) The deceased was aged about 24 years at the time of the accident. He was a Software Engineer at M/s.Patni Computer Systems Limited, Akruti, earning a sum of Rs.1,68,000/- per month as salary plus other perks.

(iii) On 02.10.2006, the deceased Karthick and his brother Sathishkumar and their four friends have gone to their friend's house situated at Edayarpalayam of Vellalore village by name Kumar Thottam for the purpose of worshipping in a temple situated in the said Thottam. After the Darshan in the temple, they had their dinner at Kumar Thottam at about 12.00 p.m., Thereafter, at 12.15 p.m., they have started coming to their home at Kuniamuthur.

iv) The deceased brother-Sathishkumar was driving the motorcycle (Fashion plus) bearing Registration No.TN 37 AF 1104 in a normal speed along with his brother-the deceased Karthick as a pillion rider and their friends in two difference motorcycles. The above said Sathishkumar was driving the motorcycle in a normal speed on the left side of the road. While, they were coming near to the SMNMV college pirivu in the L&T Bye Pass road, the accident took place. By that time, one container lorry bearing Registration No.KA 21 4091 came from same, in the East to West which was driven by the 1st respondent in a rash and negligent manner, without following any of the traffic rules and without making any horn had hit the above said motorcycle.

v) As a result, both the Sathishkumar who was driving the motorcycle and his brother Karthick who was his pillion rider were thrown out the motorcycle and they were fell down from the motorcycle. Sathishkumar sustained serious head injury with other injuries all over the parts of the body. The deceased Karthick was also fell down and while so, he was trapped under the left side back wheel of the said container lorry, in which he sustained serious injuries and died later in the hospital.

3. The first respondent and second respondents were remained ex-parte before the Tribunal. Before the Tribunal, on the side of the appellants/claimants, PW1 to P.W.3 were examined and Exhibits P-1 to P-20 were marked. On behalf of the respondents side, R.W.1 was examined and Exhibits R1 and R2 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.8,25,000/- 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. The deceased Karthick was an Engineer, working at M/s.Patni Computer Systems Limited.,Akruti. As per Exhibit P18-salary slip, the deceased was earning a sum of Rs.14,000/-.

7. After going through Exhibit P18-Salary slip marked through P.W.3, this Court is of the considered view that after the disallowing the non-allowable heads, the monthly salary can safely be fixed at Rs.10,000/-and age of the deceased was fixed as '24' years.

8. 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 '24' years.

9. Hence, the annual income of the deceased is arrived at
 $\text{Rs.10,000} + \text{Rs.4,000} = \text{Rs.14,000} \times 12 = \text{Rs.1,68,000} \times 18 = \text{Rs.30,24,000} / \times 1/2 = \text{Rs.15,12,000/-}$

10. 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 '18' is adopted. Accordingly, the following calculation is made towards 'loss of earning':
 $\text{Rs.10,000} + \text{Rs.4,000} = \text{Rs.14,000} \times 12 = \text{Rs.1,68,000} \times 18 = \text{Rs.30,24,000} / \times 1/2 = \text{Rs.15,12,000/-}$

11. Furthermore, the claimants are the parents of the deceased. Accordingly for 'loss of love and affection' to the parents, Rs.50,000/- each is granted, totalling Rs.1,00,000/-.

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

13. For 'loss of estate of the deceased, Rs.15,000/- is hereby awarded. For 'Damages to cloth and articles', the Tribunal was awarded a sum of Rs.1,000/- and the same 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 income	Rs. 7,80,000/-	Rs.15,12,000/-
2.	Transportation	Rs. 1,000/-	----
3.	Love and affection	Rs. 20,000/-	Rs. 1,00,000/- (Rs.50,000/- each)
4.	Damages to cloth and articles	Rs. 1,000/-	Rs. 1,000/-
5.	Mental agony and hardship	Rs. 20,000/-	-----
6.	Funeral expenses	Rs. 2,000/-	Rs. 15,000/-
7.	Cost of expenditure	Rs. 3,000/-	-----
8.	Loss of estate	-----	Rs. 15,000/-
	Total	Rs. 8,27,000/-	
	But the Tribunal has awarded	Rs. 8,25,000/-	Rs.16,43,000/-

15. Thus, the compensation awarded by the Tribunal is enhanced from Rs.8,25,000/- to Rs.16,43,000/-, 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 third respondent/ National Insurance Company 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.

(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 (CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
(Additional District and Sessions Court/
Fast Track Court No.I), Coimbatore.

2.The Section Officer,
V.R.Section,
High Court,Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.63984

+1cc to Mr.S.Vadivel, Advocate SR.No.63569

AD(CO)
GMY(06/01/2020)

C.M.A.No.834 of 2010

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