

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.08.2018

Delivered on : 19.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1517 of 2015

1.R.Moorthi
2.M.Mani

... Appellants/Petitioners

Vs

1.K.Prabukumar
2.The Manager,
M.M.S.Road Lines, Chettipalayam,
Erode District.
3.New India Assurance Company Limited,
by its Manager,
12, New Hospital Road,
Gobi,
Erode District-638 452.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order dated 27.4.2009 passed in M.C.O.P.No.689 of 2008 on the file of the Motor Accident Claims Tribunal (I Additional District Judge), Erode.

For Appellants : Mr.V.Kadhirvelu

For Respondents: Mr.J.Michaelvisuvasam (for R3)

R1 & R2 - Exparte

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JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.3,53,260/- awarded by the Tribunal in M.C.O.P.No.689 of 2008, dated 27.4.2009, the appellants have filed the Civil Miscellaneous Appeal seeking enhancement.

2. The appellants are claimants, who are parents before the Tribunal and have claimed compensation of Rs.8,00,000/- for the death of deceased Vijayakumar in the road traffic accident occurred on 4.11.2007.

3. The case of the appellants is that on 04.11.2007 at about 3.30 P.M., the deceased was riding his motorcycle bearing registration No.TN-33 AF 1741 from Getticheniyur to Gobi in a normal speed and when he was nearing Veeramathiyur Kovil, the first respondent drove the bus bearing registration No.TN-36 J 7878 owned by the second respondent and insured with the third respondent in a rash and negligent manner and without blowing horn by overtaking a lorry and by crossing the centre line hit against the deceased. Due to the impact, the deceased sustained grievous injuries and immediately, the deceased was taken to Government Hospital, Gobi where from the deceased was shifted to Erode Government Hospital. Thereafter, for better treatment, the deceased was shifted to Erode Trust Hospital and succumbed to injuries on 07.11.2007. Regarding the accident, a criminal case was registered in Crime No.243 of 2007 by Kunnathur Police Station. At the time of accident, the deceased was aged 25 years and was earning Rs.10,000/- per month by doing centering civil contract work and also real estate business. Stating that the accident occurred due to rash and negligent driving of the first respondent, the parents of the deceased have filed the claim petition claiming compensation of Rs.8,00,000/-.

4. Denying the manner of accident, the third respondent filed counter stating that on the date of accident, the first respondent drove the bus in a moderate speed following the road traffic rules. At that time the deceased who drove the motorcycle came from the opposite direction and overtake a lorry in a rash and negligent manner and on seeing the same, the first respondent blew horn and swerved the bus on the left extreme side of the road and inspite of that due to excessive speed of the deceased dashed against the bus and invited the accident voluntarily. Thus, the deceased contributed negligence. The third respondent also denied age, occupation and monthly income of the deceased and that the total compensation claimed by the claimants is excessive.

5. Before the Tribunal, the first claimant examined himself as P.W.1 and one Subramaniam was examined as P.W.2. Exs.P1 to P8 were marked. No oral and documentary evidence on the side of the third respondent. Taking the monthly income of the deceased at Rs.3,000/- and deducting one-third towards personal expenses and adopting multiplier 13, the Tribunal awarded Rs.3,12,000/- towards loss of dependency. Adding conventional damages, the Tribunal awarded total compensation of Rs.3,53,260/- payable with interest at the rate of 7.5% per

annum from the date of claim petition till the date of deposit.

6. Assailing the quantum, the learned counsel for the appellants submitted that the Tribunal ought to have fixed the monthly income of the deceased at Rs.10,000/-. He would submit that the Tribunal went wrong conclusion that the deceased was supporting the first claimant in centering contract work. In fact, the deceased was engaged in centering contract work and real estate business independently without the support of the first claimant. The learned counsel further submitted that the Tribunal ought to have adopted multiplier 18 and thus, prayed for enhancement of compensation.

7. On the other hand, reiterating the quantum awarded, the learned counsel for the third respondent submitted that the total compensation of Rs.3,53,260/- awarded by the Tribunal is just and reasonable and there is no need to enhance the same and prayed for dismissal of the appeal.

8. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the claimants and secondly, none of those findings are under challenge. Being dissatisfied with the quantum, the claimants have preferred the present appeal.

9. According to the appellants, the deceased was aged 25 years at the time of accident and was earning Rs.10,000/- by doing the centering civil contract work and also real estate business. Considering the oral evidence of P.W.1 that the deceased was assisting his father for centering work at the time of accident, the Tribunal had fixed the monthly income of the deceased at Rs.3,000/-.

10. On the perusal of the oral evidence of P.W.1, it is seen that P.W.1 deposed that he and his son were doing centering contract work at Tiruppur and on the date of accident, his son was gone to Gobi for purchasing materials for centering work. From the evidence of P.W.1, it is clear that P.W.1 and the deceased were doing centering contract work. In fact, the deceased was not assisting P.W.1 for centering work. However, the Tribunal misconstrued that the deceased was assisting the first claimant for centering work and had fixed the monthly income at Rs.3,000/-.

11. Though the appellants claimed that the deceased was earning Rs.10,000/- per month, nothing has been produced to prove the same. Considering the avocation of the deceased at the time of accident, this Court feels that it would be

appropriate to fix the monthly income of the deceased at Rs.4,500/-, i.e., Rs.54,000/- per month. Since the deceased was a bachelor, it would be appropriate to deduct 50% towards personal and living expenses. Deducting 50%, the contribution to the family would come to Rs.27,000/-.

12. As far as adoption of multiplier is concerned, the Tribunal has adopted multiplier 13 and awarded compensation. In the present case the deceased was a bachelor. There is a difference of opinion as to what should be the multiplier in the case of fatal injury case, where deceased was unmarried son/daughter.

13. In *Shyam Singh*, reported in 2011 (7) SCC 65 = 2011 ACJ 1990 (SC), it has been held that Multiplier in the case of death of unmarried son/daughter, proper multiplier should be arrived at by assessing average age of parents of the deceased. But different views are taken by Hon'ble Apex Court in the cases of *P. S. Somnathan vs. Dist. Insurance Officer*, reported in 2011 ACJ 737 (SC), *Amrit Bhanu Shali vs. NI Com.*, reported in 2012 ACJ 2002 (SC), *Saktidevi vs. NI Com.*, reported in 2010 (14) SCC 575 and *Reshma Kumari vs. Madan Mohan*, reported in 2013 ACJ 1253 (SC) and lastly Hon'ble Constitutional Bench, in the case of *N.I.Com Ltd vs. Pranay Sethi*, reported in 2017 (3) GLH 536 = AIR 2017 SC 5157. In the above referred cases it has been held that in the case of death of unmarried son/daughter, multiplier should be applied on the basis of age of the deceased and not on the basis of average age of the parents of the deceased.

14. Following the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of *Pranay Sethi*, supra, this Court adopted multiplier "18" taking the age of the deceased. Adopting multiplier "18", the loss of dependency is calculated at Rs.4,86,000/-.

15. As far as conventional damages are concerned, the Tribunal awarded Rs.10,000/- towards mental stress and shock and another Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses.

16. With respect to conventional heads, Hon'ble Supreme Court in the case of *Pranay Sethi* (supra), para No.61 (viii) has held that, reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years. The Tribunal has not awarded any amount towards loss of estate. This Court is inclined to award Rs.15,000/- towards loss of estate by deleting Rs.10,000/- awarded by the Tribunal towards mental stress and shock.

17. In Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and others, reported in 2018 Supreme (SC) 892, the Hon'ble Supreme Court considered awarding Rs.50,000/- towards loss of love and affection.

18. Following the decision of the Hon'ble Supreme Court in Magma General Insurance Company Limited, supra, Rs.10,000/- awarded by the Tribunal towards loss of love and affection is enhanced to Rs.1,00,000/- (Rs.50,000/- each).

19. Similarly, following the decision of the Hon'ble Supreme Court in the case of Pranay Sethi (supra), Rs.5,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.15,000/-.

20. In Magma General Insurance Company Limited, supra, the Hon'ble Supreme Court considered awarding of compensation of Rs.40,000/- under the head "loss of filial" to the parents of the deceased who lost their children in the accident. Following the decision of the Hon'ble Supreme Court in Magma General Insurance Company Limited, supra, Rs.40,000/- each is awarded towards loss of filial.

21. In view of the above discussion, the total compensation of Rs.3,53,260/- awarded by the Tribunal is enhanced to Rs.6,96,000/- as under:

Heads	Rs.
Loss of dependency	4,86,000.00
Loss of estate	15,000.00
Loss of love and affection (Rs.50,000/- each)	1,00,000.00
Funeral expenses	15,000.00
Loss of Filial	80,000.00
Total	6,96,000.00

22. In Nagappa v. Gurudayal Singh and others, reported in (2003) 2 SCC 274 : 2004 (2) TN MAC 398 (SC), the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such as award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable.

23. In the present case, based on the evidence produced by the claimants and considering the dependency and also following the decision of the Hon'ble Supreme Court in Nagappa v. Gurudayal Singh and others, supra, this Court enhanced the compensation to Rs.6,96,000/- and the claimants are directed to pay the difference court fee.

24. In the result, the Civil Miscellaneous Appeal is allowed with proportionate cost. The total compensation of Rs.3,53,260/- awarded by the Tribunal is enhanced to Rs.6,96,000/-. The 3rd respondent is directed to deposit the award amount together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within period of eight weeks from the date of receipt of a copy of this order. The enhanced compensation of Rs.3,42,740/- will carry interest at the rate of 7.5% per annum only from the date of this order till the date of deposit. The claimants 1 and 2 are entitled to get equal share with accrued interest. The claimants are directed to pay difference court fee within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vs

To

I Additional District Judge,
The Motor Accident Claims Tribunal,
Erode.

Copy To
The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.J.Michaelvisuvasam, Advocate SR.No.15806

+1cc to Mr.V.Kadhirvelu, Advocate SR.No.15996

C.M.A.No.1517 of 2015

SSD(CO)
GMY(05/03/2020)