

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.267 of 2013

1. B.Kunjumol Bobby
2. Minor B.Ansu Bobby
3. Minor B.Anoop @ Mathew Bobby
J.Annie Mathew (died)

...Appellants/Petitioners

(Minors 2 & 3 rep. by their next
friend and Mother B.Kunjumol Bobby)

-Vs-

1. B.Kumar
2. A.Muthusamy
3. United India Insurance Co Ltd.,
Branch Office, Trichy Road,
Ramanathapuram Post,
Coimbatore District.
4. The New India Assurance Co Ltd.,
Divisional Office, Amman Complex,
150-A, Mettur Road,
Erode District.

...Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 16.12.2003 made in MCOP.No.1182 of 1999 (F.T.C.O.P.No.219 of 2003) on the file of the Motor Accidents Claims Tribunal / Additional District and Sessions Court/Fast Track Court No.III Dharapuram (Special District Court), Salem.

For Appellants : M/s.N.Manokaran

For Respondents: R1 - Given up
R2 - No appearance
R3 - Mr.T.Ravichandran

J U D G M E N T

The appellants/claimants have preferred the present appeal, aggrieved by the order of Motor Accident Claims Tribunal/Additional District and Sessions Court/Fast Track Court No.III Dharapuram in MCOP No.1182 of 1999 (F.T.C.O.P.No.219 of 2003) dated 16.12.2003 against the award of Rs.8,12,000/-

2. Heard Mr.N.Manokaran, the learned counsel appearing for the appellants and Mr.T.Ravichandran, the learned counsel appearing for the third respondent.

3. The brief facts of the case are as follows:-

On 13.10.1998 at about 1:00 p.m the deceased was driving his car bearing Reg.No.TDE 1595 from Karur to Kangayam. He was proceeding towards west on the southern edge of the east west Kangayam to Karur main road near Veerankadu privu in a minimum speed. On that time the first respondent drove the Lorry bearing Reg.No.KL 12/432 in a rash and negligent manner without keeping the side or sounding the horn or following the rules of the road from west to east in a high speed. Due to high speed the first respondent lost the control the Lorry suddenly swerved to its right side came to the southern edge of the road and dashed against the car with a great force. Due to this the deceased was thrown off inside the car and sustained grievous injuries all over his body and died on the spot itself. The car was totally damaged due to the accident.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry KL 12/432 and directed the third respondent to pay the Appellants a sum of Rs.8,12,000/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal, seeking enhancement of the same.

6. Though in the grounds of appeal, the appellants raised various grounds for enhancement of compensation, at the time of arguments, the learned counsel for the appellants restricted his arguments with regard to enhancement of compensation towards loss of consortium, love and affection and funeral expenses. He also claimed compensation towards loss of estate, as the Tribunal failed to award any amount under the said head.

7. The learned counsel for the third respondent independently argued that the Tribunal has failed to apply the

correct multiplier for 41 years age of the deceased and applied wrong multiplier as "15" instead of applying multiplier "14".

8. Heard the learned counsel for the appellants as well as the third respondent and perused the materials available on record.

9. Considering all the materials on record, the Tribunal fixed the notional income of the deceased at Rs.6,550/- per month, which is reasonable. The deceased was aged 41 years at the time of accident, as per post-mortem certificate and other documents produced by the appellants. The Tribunal fixed the age as 41 years and erroneously applied multiplier '15', whereas the correct multiplier applicable for the age of 41 years is '14' as per decision rendered in Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The Tribunal has not granted any amount for future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects, as the deceased was aged 41 years at the time of accident. There are 3 claimants claiming compensation for the death and 1/3rd has to be deducted towards personal expenses of the deceased. In view of the same, the amounts awarded under the loss of income is modified as follows:-

$$[Rs.6,550 + (25\% \text{ of } Rs.6,550/-)] \times 12 \times 14 \times 2/3 = Rs.9,17,056/-$$

10. From the award of the Tribunal, it is seen that the amounts awarded under the heads of loss of consortium as well as funeral expenses are meager. As per the judgment of the Hon'ble Apex Court reported in 2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi and others], the 1st appellant is entitled to Rs.40,000/- towards loss of consortium and appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amount of Rs.5,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.15,000/- following the ratio in the above judgment of the Hon'ble Apex Court. The amount awarded under the head Transportation is enhanced to Rs.10,000/- from Rs.1,000/-. The award of the Tribunal is modified as stated above and the amount ordered under the head Love and Affection is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

11. Hence the total compensation payable to the claimants are as hereunder:-

S.No	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court
1	Loss of income	Rs.7,86,000/-	Rs.9,17,000/-
2	Funeral expenses	Rs.5,000/-	Rs.15,000/-
3	Loss of love and affection to the 1 st claimant	Rs.5,000/-	Rs.5,000/-
4	Loss of love and affection to the 2 nd claimant	Rs.5,000/-	Rs.5,000/-
5	Transportation	Rs.1,000/-	Rs.10,000/-
6	Loss of estate	-	Rs.15,000/-
7	Loss of consortium	-	Rs.40,000/-
	Total	Rs.8,12,000/-	Rs.10,07,000/-

12. The total amount of compensation shall be shared by the claimants 1, 2 & 3 in the following manner:-

The wife of the deceased who is the first claimant/appellant herein shall receive a sum of Rs.5,07,000/-, the first son of the deceased who is the second claimant/second appellant herein shall receive a sum of Rs.2,50,000/- and the second son of the deceased who is the third claimant/third appellant herein shall receive a sum of Rs.2,50,000/-

13. The Insurance Company/third respondent is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 9% per annum is reduced to 7.5% per annum and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through NEFT or RTGS within a period of two weeks thereon. The claimants are directed to pay the requisite court fee, if any and the Registry is directed to draft the decree only after the payment of Court fee.

14. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.8,12,000/- is enhanced to Rs.10,07,000/-. Consequently, the connected miscellaneous petition is also closed, if any. No costs.

dpq

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal /
Additional District and Sessions Court/
Fast Track Court No.III Dharapuram
(Special District Court), Salem.
2. The Section Officer,
V.R. Section, High Court,
Chennai.

+1cc to Mr.N.Manokaran, Advocate, SR.No.11063

C.M.A.No.267 of 2013

Kak (23/05/2019)

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