

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2018

DELIVERED ON : 29.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CIVIL MISCELLANEOUS APPEAL NO.446 OF 2015

1.E.Kavitha
2.Minor E.Dharani Dharan
3.Minor E.Kiruthiga Devi
Minors 2 & 3 are Rep. by their mother and
guardian E.Kavitha
4.Ramasamy
5.Rangammal Appellants

Vs

1.A.Sundarraaj
2.The Managing Director,
Tamilnadu State Transport Corporation,
37, Mettupalayam Road,
Coimbatore.
3.Mary Rajam
4.United India Insurance Co. Ltd.,
Sreeji Chambers, Mount Road,
Post Box No.52, Coonoor,
Regional office at United India Buildings,
Dr.Nanjappa Road,
Coimbatore. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order dated 26.07.2013 passed in M.C.O.P.No.961 of 2011 on the file of the Motor Accident Claims Tribunal (IV Additional District Court), Coimbatore.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.Srinivasan
for M/s.S.V.Vasantha Kumar
for respondent No.2

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.5,00,000/- awarded by the Tribunal in M.C.O.P.No.961 of 2011, dated 26.7.2013, the appellants have filed the Civil Miscellaneous Appeal seeking enhancement of another Rs.9,00,000/-.

2. The appellants are claimants before the Tribunal and have claimed compensation of Rs.5,00,000/- for the death of deceased R.Elangovan in the road traffic accident occurred on 25.12.2010.

3. The case of the appellants is that on 25.12.2010, the deceased Elangovan was driving a Toyota Qualis car bearing registration No.TN-39 T 7376 from Mettupalayam to Ooty. The car was running up to the hill station. When the car was nearing RDO Trust, Kannikaraj Nagar, Anuvangadu, Coonoor, a bus bearing registration No.TN-43 N 0349 owned by the second respondent coming from the hill towards plain in a rash and negligent manner and without control, hit the car. Due to the impact, the deceased and two other passengers travelled in the car died on the spot.

4. Regarding the accident, a criminal case in Crime No.111 of 2010 was registered by Aruvangadu Police Station against the driver of the bus. According to the appellants, at the time of accident the deceased Elangovan was aged 42 years and was earning Rs.7,500/- per month by working as driver. Stating that the accident occurred due to rash and negligent driving of the driver of the bus, the claimants, who are wife, minor son and daughter and parents of the deceased have filed the claim petition claiming compensation of Rs.5,00,000/- by impleading the owner and insurer of the Toyota car as respondent Nos.3 and 4 in the claim petition.

5. Denying the manner of accident, the second respondent filed counter stating that on 25.12.2010, the driver of the bus drove the same by observing traffic rules and regulations. When the bus was nearing RDO Trust, while on negotiate a blind curve, the driver of the second respondent slowly and cautiously move the bus by keeping left in the Ghat road. At that time, he saw a lorry came in the opposite side and on seeing the same, the driver of the bus stopped the bus at the extreme left side of the road so as to give way to the opposite coming lorry in the up gradient Ghat road. At that time, a Qualis car bearing registration No.TN-39 T 7376, which came behind the lorry was suddenly overlook the lorry without considering the second respondent's bus stationed at the left side of the road and dashed against front right side of the bus and caused the accident. Therefore, there was no fault on the part of the

driver of the second respondent bus and the second respondent is not liable to pay compensation. It is also stated that the compensation claimed by the claimants is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first claimant was examined as P.W.1 and one Syed Mohammed Ali was examined as P.W.2. Exs.P1 to P9 were marked. On the side of the respondents, two witnesses were examined and Ex.R1 was marked.

7. Upon consideration of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver (first respondent) of the second respondent bus and therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the claimants. Taking the monthly income of the deceased at Rs.5,000/- and deducting 1/5th towards personal expenses and adopting multiplier 15, the Tribunal awarded Rs.7,20,000/- towards loss of dependency. Adding conventional damages, the Tribunal awarded total compensation of Rs.7,62,000/-. Since the claimants have restricted their claim to Rs.5,00,000/-, the Tribunal awarded Rs.5,00,000/- payable with interest at the rate of 7.5% per annum. Being dissatisfied with the quantum, the claimants have filed the present Civil Miscellaneous Appeal.

8. It is pertinent to note that by an order dated 04.3.2015 in M.P.No.2 of 2014 in C.M.A.No.SR 14916 of 2014, the claim was amended from Rs.5,00,000/- to Rs.14,75,000/- and accordingly, the appellants are claiming Rs.14,75,000/- as compensation for the death of the deceased in the appeal.

9. The learned counsel for the appellants submitted that though the appellants have claimed Rs.14,75,000/- in the claim petition, for the purpose of paying the court fee, they have restricted the claim to Rs.5 lakhs. While the Tribunal arrived at compensation for Rs.7,20,000/-, on its own suo-motu restricted the award amount to Rs.5,00,000/- as claimed by the appellants. He would submit that as per the pronouncement of the Hon'ble Apex Court, the claim petition can be amended at any stage and accordingly, in the appeal by way of amendment the appellants are claiming Rs.14,75,000/-.

10. The learned counsel further submitted that the Tribunal failed to consider that at the time of accident, the deceased was working as driver and was earning Rs.7,500/- per month, but the Tribunal wrongly fixed the monthly income at Rs.5,000/-. The Tribunal has also failed to consider the future prospects of the deceased. The learned counsel then submitted that the compensation awarded in respect of other heads are also very meager and therefore, prayed for enhancement.

11. The learned counsel for the second respondent submitted that the claimants have failed to prove the avocation and monthly income of the deceased and anyhow, the monthly income of Rs.5,000/- taken by the Tribunal is high. He would submit that the compensation of Rs.5,00,000/- awarded by the Tribunal is reasonable and the claimants have no ground to seek enhancement.

12. 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.

13. In the claim petition, the claimants have stated that the deceased was earning Rs.7,500/- per month by doing driver work. In her evidence, P.W.1 deposed that her husband was working as driver under the third respondent and was earning Rs.7,500/- per month. No document has been produced to prove that the deceased was getting salary of Rs.7,500/- from the third respondent.

14. The learned counsel for the claimants submitted that the driver's job being a skilled, it would be appropriate to fix the monthly income of the deceased at Rs.9,000/-. In support, the learned counsel relied upon the decision of the Hon'ble Supreme Court in Kala Devi and others v. Bhagwan Das Chauhan and others, reported in 2014 (2) TN MAC 680 (SC).

15. In Kala Devi and others v. Bhagwan Das Chauhan and others, supra, the Hon'ble Supreme Court considered that a driver in Himachal Pradesh on an average earns Rs.9,000/- per month as per Minimum Wages Act. Considering the facts and circumstances of the said case, the Hon'ble Supreme Court has taken the gross monthly income of the deceased at Rs.9,000/- per month.

16. In the case on hand, nothing has been produced by the claimants to show that in hill area like Ooty, a driver was getting Rs.9,000/- per month or more. Therefore, in the absence of proof, the Tribunal was right in fixing the monthly income of the deceased at Rs.5,000/- per month, which is also a reasonable.

17. In the claim petition, the claimants have stated that at the time of accident the deceased was aged 42 years. However, in Ex.P6-post-mortem certificate, the age of the deceased was mentioned as 38 years. The second respondent has not disputed the age of deceased mentioned in Ex.P6. Thus, the age of the deceased is taken as 38 years.

18. As is seen from the impugned award, the Tribunal has not given any addition towards future prospects while determining the compensation. Had he been alive, the deceased would have earned more. Therefore, keeping in view the potentiality, a benefit of 40% increase in the income is given. Giving 40% addition, the monthly income of the deceased is fixed at Rs.7,000/- per month i.e., Rs.84,000/- per annum.

19. The Tribunal deducted one-fifth towards personal expenses. Since the family members are 5 in numbers, it would be appropriate to deduct one-fourth. Deducting one-fourth, the contribution to the family is calculated at Rs.63,000/- per annum.

20. As stated supra, at the time of accident, the deceased was aged 38 years. For the age group 36 - 40, the multiplier to be adopted is "15". Adopting multiplier "15", the loss of dependency is calculated at Rs.9,45,000/-.

21. Insofar the conventional damages are concerned, the Tribunal awarded Rs.10,000/- towards loss of consortium; Rs.5,000/- towards funeral expenses; Rs.2,000/- towards transport charges and Rs.25,000/- towards loss of love and affection.

22. In National Insurance Co. Ltd. v. Pranay Sethi, reported in 2017 (2) TN MAC 609 (SC), the Hon'ble Supreme Court set out the various amounts to be awarded as compensation under the conventional heads in case of death. The relevant portion of the decision reads thus:

"Therefore, we think it seemly to fix reasonable sums. It seems to us 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years."

23. Following the decision of the Hon'ble Supreme Court in Pranay Sethi (supra), compensation of Rs.15,000/- is awarded

towards loss of estate. Rs.10,000/- awarded by the Tribunal towards loss of consortium is enhanced to Rs.40,000/- to the 1st claimant. Similarly, Rs.5,000/- awarded towards funeral expenses is enhanced to Rs.15,000/-.

24. Considering the fact that the minor claimants 2 and 3 have lost their father at the age of 11 and 8 respectively at the time of accident, it would appropriate to award them each Rs.40,000/- towards loss of love and affection. Thus, Rs.25,000/- awarded by the Tribunal towards loss of love and affection is enhanced to Rs.80,000/- to the minor claimants 2 and 3. Similarly, the claimants 4 and 5, who are parents of the deceased have lost their son at the age of 65 and 62 years respectively, it would be appropriate to award a sum of Rs.40,000/- each towards loss of love and affection. The Tribunal awarded Rs.2,000/- towards transport charges and the same is maintained.

25. In view of the above discussion, the compensation of Rs.5,00,000/- awarded by the Tribunal is enhanced to Rs.11,77,000/- as under:

Heads	Rs.
Loss of dependency	9,45,000.00
Loss of estate	15,000.00
Loss of consortium to 1 st claimant	40,000.00
Loss of funeral expenses	15,000.00
Loss of love and affection to claimants 2 and 3	80,000.00
Loss of love and affection to claimants 4 and 5	80,000.00
Transport charges	2,000.00
Total	11,77,000.00

26. The total compensation of Rs.11,77,000/- is apportioned to the claimants as under:

- (i) First claimant - Rs.4,17,000/-
- (ii) Second and Third claimants - Rs.2,40,000/- each
- (iii) Fourth and Fifth claimants - Rs.1,40,000/- each

27. It appears that at the time of filing the claim petition, the claimants 2 and 3 were aged 11 and 8 years respectively. It also appears that now the second claimant would have attained majority. The second claimant is permitted to

withdraw his share after declaring him as major and after discharging his guardianship.

28. In the result:

(a) The Civil Miscellaneous Appeal is partly allowed with proportionate costs.

(b) The compensation of Rs.5,00,000/- awarded by the Tribunal in M.C.O.P.No.961 of 2011 is enhanced to Rs.11,77,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(c) The second respondent is directed to deposit the compensation amount with interest aforesaid within a period of eight weeks from the date of receipt of a copy of this judgment.

(d) On such deposit, the claimants are permitted to withdraw their respective shares with accrued interest and the share in respect of minor claimants, it is directed to be invested in a nationalised bank as ordered by the Tribunal.

(e) Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accident Claims Tribunal,
IV Additional District Court,
Coimbatore.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.7113

C.M.A.No.446 of 2015

AD(CO)
CS/16/04/2021