

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.1948 of 2018

1.A.Mary Anto Kalpana
2.S.Roshini Sunandha
3.S.Nivin Pranesh (Minor)
rep by his mother & guardian A.Mary Anto Kalpana
4.R.Mani ...Appellants/Claimants

Vs.

1.P.Palanisamy
2.Hari Ganesh Wood Products,
345, Thudiyalur Road,
Saravanampatti,
Coimbatore - 641 035.
3.M/s.United India Insurance Company Limited,
178, First floor, Dr.Nanjappa Road,
Coimbatore - 641 018. Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 12.06.2017 made in M.C.O.P.No.2105 of 2013 on the file of The Motor Accidents Claims Tribunal/Special Subordinate Judge, Coimbatore.

For Appellants : Mr.A.S.Vijayaragavan
For Respondents : Mr.S.Arunkumar, for R3
No Appearance for R1 & R2

J U D G M E N T

Judgement of the Court was delivered by Krishnan Ramasamy,J.

This appeal has been preferred by the appellants/claimants challenging the quantum of award passed by the tribunal dated 12.06.2017 made in MCOP No.2105 of 2013.

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

On 01.10.2012 at about 4.30 pm the deceased (Sundararaj) was driving the motorcycle bearing Registration No.TN 66 D 4565, from Vellalore to go to Sultur, proceeded from North to South and while turning towards East on the L & T Bypass road, near Pattanampudur Piriyu, Pattanam Village, an Eicher Lorry bearing Registration No.TN 38 BA 5961, which was driven by the first respondent in a rash and negligent manner at a high speed, dashed against the deceased vehicle and due to the said accident, the deceased was thrown away. Subsequently, he was taken to the Saraswathy Hospital where first aid was given and thereafter, he was shifted to Coimbatore Medical College Hospital, Coimbatore for further treatment. In spite of the treatment given to him, he died.

3. The appellants/claimants herein have filed a claim petition before the tribunal for a sum of Rs.4,00,000,00/-. before the tribunal. On behalf of the claimants, P.W.1 to P.W.4 have been examined and Exs.P1 to P45 have been marked. On behalf of respondents 1 to 3, no one was examined and no documents have been marked. After hearing both the parties, the tribunal awarded a sum of Rs.92,69,255/- along with interest at 7.5% per annum.

4. Aggrieved by the quantum of compensation awarded by the tribunal, the appeal has been filed by the claimants seeking enhancement of compensation.

5. Heard, Mr.A.S.Vijayaragavan, learned counsel for the appellant and Mr.S.Arunkumar learned counsel for the third respondent.

6. The learned counsel for the appellants contended that that the deceased was employed as General Manager in BGR Energy Systems Ltd., which is one of the very large establishment not only in India but also internationally. Further, he would contend that the deceased monthly salary was Rs.94,000/- as on 30.11.2009. When he joined as General Manager in BGR Energy Systems Ltd., the annual package worked out to a sum of Rs.11,28,000/-. Further, he would contend that the said package

was revised on 02.01.2011 to a sum of Rs.13,99,632/- per annum. Further, the said amount was also revised with effect from 01.07.2011 to a sum of Rs.19 lakhs. When that being the case, the tribunal has taken last pay drawn by the deceased for the month of September 2012, which was Rs.1,38,317/- as income which includes Income Tax and other deductions. However, he filed his Income Tax return for the assessment year 2012-2013 on 27.07.2012, wherein the deceased had shown his income as Rs.12,54,096/-. After the deductions, his income was shown as Rs.10,22,934/-. Therefore, the tribunal has taken the monthly income as Rs.85,245/- and determined the compensation.

7. The tribunal has deducted 1/4th towards the personal expenses and therefore after deducting 1/4th, the loss of dependency was arrived at a sum of Rs.7,67,205/- per month and by applying the multiplier 11 for the age group of the deceased namely 50 years, the loss of dependency was arrived by the tribunal at Rs.84,39,255/-. According to the appellant, the said amount is too low. Therefore, the said amount requires revision. Further he would contend that Loss of Estate for a sum of Rs.5,000/- is also too low and a sum of Rs.15,000/- should be awarded as held by the Hon'ble Supreme Court reported in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC).

8. Rebutting the submission of the claimants, the learned counsel appearing for the third respondent/Insurance Company would contend that though the award amount of the tribunal is just and fair, he fairly made a submission and filed a calculation memo before this Court, which is as follows:-

As per Ex.P37

Annual Income = Rs.94,292+15%X12 = Rs.13,01,232/-

(availed from the salary)

Exemption Allowances = Rs. 3,00,000/-

सत्यमेव जयते
Rs. 10,01,232/-

2012 - 2013 year- Rs.2,50,000/- No Tax

Rs.2,50,001 to 5,00,000/- Tax 10%

Rs.5,00,001 to 10,00,000/- Tax 20%

Rs.10,00,000 above Tax 30%

Rs.13,01,232 - Rs.1,25,000 (Tax)	Rs.12,76,232/-
Loss of Income	
Rs.12,76,232X1/4X11	Rs.1,05,28,914/-
Loss of Consortium	Rs. 40,000/-
Loss of love & affection	Rs. 1,20,000/-
Loss of estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-

Total	Rs.1,07,18,914/-

Interest 7.5%	

9. The learned counsel appearing for the appellants though initially he had opposed calculation filed by the third respondent/Insurance Company, he would fairly submit that the said calculation provided by the third respondent/Insurance Company for a sum of Rs.1,07,18,914/- is without providing anything towards transportation. Therefore, he would contend that the said amount may be rounded off to Rs.1,08,00,000/-.

10. In view of the submissions made by both the counsel appearing for the appellants and the respondents, that they are in agreement of the calculation memo filed by the third respondent. Taking into consideration of the submission of appellants about failure to award any amount towards transportation, this Court is inclined to fix the total compensation as Rs.1,08,00,000/-. Therefore, the award of the tribunal viz., a sum of Rs.92,69,255/- stand enhanced by this Court to Rs.1,08,00,000/- as stated above. The total amount of compensation shall be shared along with 7.5% interest by the appellants/claimants in the following manner:-

(i) The wife of the deceased, who is the first appellant/claimant herein shall receive a sum of Rs.50,00,000/-.

(ii) The daughter of the deceased, who is the second appellant/claimant herein shall receive a sum of Rs.22,50,000/-.

(iii) The Son of the deceased, who is the third appellant/claimant herein shall receive a sum of Rs.22,50,000/-.

(iv) The mother of the deceased, who is the fourth appellant/claimant herein shall receive a sum of Rs.13,00,000/-.

11. The Insurance Company is directed to deposit entire award amount as modified by this Court along with interest @ 7.5%. We also direct the Court below to transfer the entire amount to the appellants/claimants to their respective bank accounts by way of RTGS, within three weeks from the date of receipt of a copy of this order. If the award amount is already been deposited and not withdrawn by the claimants, the same shall be transferred to the claimants bank account in the manner stated above, within three weeks from the date of receipt of a copy of this judgment.

12. In the result, the civil miscellaneous petition is partly allowed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

AT

To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Coimbatore.

copy to
The Section officer
VR Section
High Court Madras

+1 cc to Mr.Arunkumar Advocate sr104695
+1 cc to Mr.Vijayaraghavan Advocate sr105050

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