

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3294 of 2019

1.Karamani
2.Minor.Sandhiya
3.Minor.Gopi Krishnan
4.Minor.Mythili
(Minors -2 to 4 represented
by the next
friend/guardian/Mother
Mrs.Karamani)

5.Chinnappa

6.Manickam ... Appellants/ Petitioners

vs.

1.Amarjothi Logistics Pvt. Ltd.,
Dundahera Village, Gugaon,
Haryana - 122 001.

2.ICICI Lombard General Insurance Co. Ltd.,
No.142, 1st Floor, ECR Road,
Pondicherry - 1

... Respondents

(The 1st respondent remained ex parte before the Tribunal, hence
notice may be dispensed with for the 1st respondent in this
Appeal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 for enhancement of compensation in
the Judgment and Decree dated 27.11.2015 made in MCOP.No.15 of
2014 on the file of the Motor Accident Claims Tribunal / III
Additional District Court, Thiruvallur at Poonamallee.

For Appellant : Mr.Ma.P.Thangavel

For Respondent 2 : Mrs.R.Srividhya

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 27.11.2015 passed by the Motor Accident Claims Tribunal (IIIrd Additional District Court, Thiruvallur) at Poonamallee in MCOP.No.15 of 2014.

Brief facts leading to the filing of the instant appeal:

2. A person by name M.Singaravelan died as a result of an accident caused by a container lorry bearing registration No.HR55-Q-6538 owned by the first respondent and insured with the second respondent. The accident happened when the deceased M.Singaravelan was travelling as a passenger in a Government bus bearing registration No.TN23-N-2273 from Koyambedu to Vellore at Chennai to Bangalore High way, Sunguvarchatram near Milestone Hotel, when the container lorry bearing registration No.HR55-Q-6538 which was proceeding in front of the bus and due to the sudden applying of brake by its driver and turning right without any indicator, the bus dashed against the container lorry and as a result of the said accident, some of the passengers in the bus including the deceased sustained fatal injuries and the deceased died on the spot.

3. The dependents of the deceased are his wife, three minor children and his parents. They preferred a claim before the Motor Accident Claims Tribunal (IIIrd Additional District Court, Thiruvallur at Poonamallee) in MCOP.No.15 of 2014 against the respondents seeking a compensation of Rs.25,00,000/- for the death of M.Singaravelan.

4. The Motor Accident Claims Tribunal by its award dated 27.04.2015 in MCOP.No.14 of 2014 directed the second respondent insurance company to pay the claimants a sum of Rs.12,95,000/- together with interest at the rate of 7.5% per annum from the date of claim petition i.e., from 04.1.2014 till the date of realisation and also awarded costs. Out of the total compensation, the Tribunal determined the compensation payable to (a) the first respondent at Rs.4,95,000/-, (b) the second, third and fourth respondents at Rs.2,00,000/- each and (c) the fifth and sixth respondents at Rs.1,00,000/- each.

5. Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned award dated 27.04.2015, this appeal has been filed by the claimants seeking enhancement of compensation.

6. Heard Mr.Ma.P.Thangavel, learned counsel appearing for the Appellants/Claimants and Mrs.R.Srividhya, learned counsel

appearing for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

Discussion:

7. According to the Appellants, the assessment of monthly notional income of the deceased by the Tribunal at Rs.5,000/- is too low and the Tribunal has not taken note of the fact that at the time of the accident, the deceased was 33 years and working as a bakery master at Thiruvottiyur earning Rs.750/- per day. According to them, despite production of Ex.P15 - shop license and Ex.P16-rental agreement which were marked through the employer PW3, the Tribunal has erroneously fixed the monthly notional income of the deceased at Rs.5,000/-. It is also their case that the Tribunal has not added loss of future prospects at the rate of 40% as per the settled principles of law. Further it is their case that the Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased instead of 1/5th as the dependents are six in number. It is also their case that the Tribunal has not awarded any compensation towards Transportation charges, loss of consortium, loss of estate and under other conventional heads as per settled principle of law.

8. This court has perused and examined the impugned award as well as the materials and evidence available on record.

9. Before the Tribunal, the claimants have filed 18 documents which were marked as Ex.A1 to Ex.A18 and four witnesses were examined viz., PW1 - the wife of the deceased, PW2 - the driver of the bus in which the deceased was travelling and also a claimant in another claim petition, PW3 - the employer of the deceased and PW4 - the doctor who issued a disability certificate. On the side of the respondents, neither any witness was examined nor any document filed.

10. The claimants have claimed in the claim petition that the deceased was working as a bakery master and earning a sum of Rs.750/- per day. PW3 - the employer of the deceased has also deposed that the deceased was working as a bakery master in his bakery for the last seven years and earning 700/- per day. He has also marked Ex.A15 - Shop license and Ex.A16 - Rental Agreement. However, there is no documentary evidence to prove that the deceased was earning a sum of Rs.700/- per day. Since there was no documentary evidence, the Tribunal assessed the monthly income of the deceased on notional basis at Rs.5,000/-.

11. The accident happened in the year 2013. Even an unskilled labourer would have earned at least Rs.400/- per day, during that time. During a month, normally a daily labourer will get an employment for a maximum period of 24 days excluding

saturday and sunday. If Rs.400/- is taken as his daily wage, an unskilled labourer will get a maximum of Rs.9,600/- for a month. But the deceased was a bakery master who was skilled in making bakery items would definitely have earned more than an unskilled labourer. No contra evidence has also been produced by the second respondent insurance company to disprove the contents of the claim that the deceased was a bakery master, at the time of the accident. We are of the considered view that in the year 2013, a bakery master would have earned a minimum of Rs.500 per day and on an average as a bakery master, he would have been able to get work for 22 days in a month and accordingly, we assess the monthly notional income of the deceased as a bakery master in the year 2013 at Rs.11,000/-. The Tribunal has not considered these factors before fixing the notional income of the deceased at Rs.5,000/- which is an erroneous finding.

12. The Tribunal has not awarded loss of future prospects to the claimants which is payable as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. The deceased was aged 31 years at the time of the accident as evidenced by Ex.A5 - postmortem report of the deceased. Considering the age of the deceased who was not having a permanent employment, the loss of future prospects has to be assessed at 40% as per Pranay Sethi Judgment referred to supra.

13. The Tribunal has not followed the Judgment of the Hon'ble Supreme Court in the case of Sarla Verma & others vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 SC by erroneously deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses instead of $\frac{1}{4}^{\text{th}}$, since the dependents of the deceased are six in number. Accordingly, we deduct $\frac{1}{4}^{\text{th}}$ from and out of the notional income of the deceased towards his personal expenses, if he was alive.

14. The deceased was aged 31 years. As per Sarla Verma Judgment referred to supra, 16 multiplier would have to be applied for calculating loss of dependency. But the Tribunal has erroneously applied 17 multiplier and accordingly, we modify the same by applying 16 multiplier to assess the loss of dependency to the claimants.

15. The Tribunal has rightly awarded a sum of Rs.15,000/- towards funeral expenses which in our view is in accordance with Pranay Sethi Judgment referred to supra. We do not find any infirmity in the same.

16. The Tribunal has erroneously awarded a sum of Rs.1,00,000/- towards pain and suffering to the wife of the deceased/loss of consortium which is excessive and not in accordance with the settled principle of law. As per Pranay Sethi Judgment referred to supra, we assess the compensation towards loss of consortium for the wife as Rs.40,000/-.

17. The Tribunal has awarded a sum of Rs.1,00,000/- each

towards pain and suffering to the children/Appellants 2 to 4 of the deceased and another sum of Rs.50,000/- each towards pain and suffering to the parents/Appellants 5 & 6 of the deceased which is excessive and not in accordance with settled principle of law. We assess the compensation towards loss of love and affection at Rs.1,20,000/- which is a just compensation.

18. The Tribunal has not awarded any compensation towards loss of estate which the claimants are entitled to as per Pranay Sethi Judgment. Accordingly, we assess it at a sum of Rs.15,000/- as compensation towards loss of estate.

19. We have adequately compensated the claimants under the heads loss of love and affection and loss of consortium and therefore, the compensation awarded by the Tribunal to the claimants under the head pain and suffering will not arise as it would amount to duplication. Accordingly, we are setting aside the award of compensation granted by the Tribunal under the heads pain and suffering.

20. The Tribunal under the impugned award has awarded the compensation to the Appellants/claimants in the following manner:

Sl. No.	Heads	Amount (Rs.)
1	Loss of dependency (5,000 - $\frac{1}{3}$ = 3333 x 12 = 40,000 (39,999) x 17)	6,80,000/-
2	Pain and suffering	1,00,000.00
3	Pain and suffering to the first Appellant	1,00,000.00
4	Pain and suffering to the 2 nd , 3 rd & 4 th Appellants	3,00,000.00
5	Pain and suffering to the 5 th & 6 th Appellants	1,00,000.00
6	Funeral expenses	15,000.00
	Total	12,95,000.00

21. However, we modify the award payable to the Appellants/claimants in the following manner:

Sl.No .	Heads	Amount (Rs.)
1	Loss of dependency (11,000 + 40% = 15,400 x 12 x 16 = 29,56,800 -1/4)	22,17,600.0 0
2	Loss of consortium	40,000.00
3	Loss of love and affection	1,20,000.00
4	Funeral expenses	15,000.00
5	Loss of estate	15,000.00
	Total	24,07,600.0 0

Conclusion:

22. For the foregoing reasons, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% per annum is confirmed. The second respondent Insurance Company is directed to deposit the modified award amount i.e., Rs.24,07,600/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation excluding the period of delay in filing this appeal i.e., 1185 days and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.15 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the respected share of award amount together with accrued interest to the first, fifth and sixth respondents through RTGS within a period of four weeks thereafter. The second, third and fourth respondents being minors, the respective shares of their compensation shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
III Additional District Court, Thiruvallur at Poonamallee..

2.The Section Officer,
VR Section, High Court,
Chennai.

+lcc to Mr.Ma.P.Thangavel , Advocate SR.No. 82348
C.M.A.No.3294 of 2019

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A.SK(06/08/2020)