



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD) No.501 of 2010

1. Rakkini Mary
2.S.Jekkap Jayaselan
3.Aruldoss Jeganathan
4.(Minor) S.Daniel Jeyakumar ... Appellants/claimants

- Vs -

1.M.Rajram
2.National Insurance Company Ltd.,
Represented by its Branch Manager,
8-A, Yanaikal Street, 2nd Floor,
Hotel President, Madurai.

3.R.Ganammal ... Respondents/Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2008 passed in M.A.C.O.P.No.1469 of 2004 by the III Additional District and Sessions Judge (PCR), Madurai.

For Appellants : No appearance
For R-2 : Mrs.P.Malini
For R-1 and R-3 : No Appearance
* * * * *

J U D G M E N T

The appeal is directed against the judgment dated 11.01.2008 passed in M.A.C.O.P.No.1469 of 2004 by the III Additional District and Sessions Judge (PCR), Madurai.

2.When the matter came up for hearing on 19.09.2019, there was no representation for the appellants. Hence, the matter was directed to be posted today under the caption 'for dismissal'. Today also, there is no representation for the appellants. This Court heard the learned counsel for the second respondent and inclined to dispose of this Civil Miscellaneous Appeal on merits.



3. The case of the claimants in the petition is briefly as follows:

On 04.01.2004 at about 13 hours, when the deceased Soundararajan was coming in his two wheeler bearing Registration No.TN 59 L 8609, from South towards North through the railway gate and was nearing Koil Pappakudi Burial ground, a three wheeler Mini goods vehicle bearing Registration No.TN 59 S 1404 came from North towards South in a rash and negligent manner and against the two wheeler, as a result of which, he died. So, the legal heirs of the deceased filed a petition before the Tribunal claiming a sum of Rs.20,00,000/-.

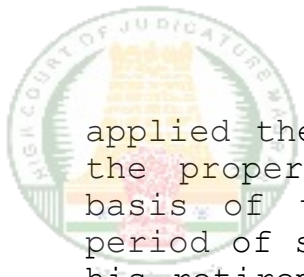
4. Before the Tribunal, on the side of the petitioners, P.Ws.1 to 4 were examined and Exs.P1 to P6 were marked. On the side of the respondents no oral and documentary evidence were marked.

5. On consideration of the evidence available on record, the Tribunal has awarded a sum of Rs.5,31,200/- payable by the respondents 1 and 2 with interest at the rate of 7.5%. Aggrieved over the award, the appeal has been preferred by the claimants for enhancement of compensation.

6. The only point for determination in this appeal is what is the just compensation?

7.The learned counsel for the second respondent / Insurance Company has submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Therefore, the order of the Tribunal is in accordance with law and the same has to be confirmed.

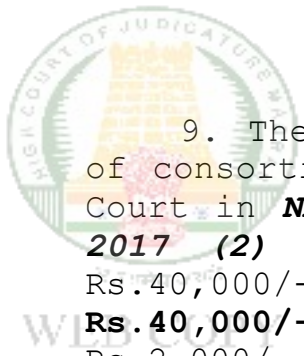
8.The appellants / claimants have challenged the quantum of compensation awarded by the Tribunal. In the present case, the accident had occurred on 04.01.2004. The deceased was working as A.C.Mechanic in Southern Railways and was drawing net salary of Rs.10,471/- p.m. as per Ex.P7-salary certificate, dated 10.01.2004, for the month of December, 2003. The gross salary drawn by the deceased for the month of December, 2003, as per the salary certificate dated 10.01.2004 is Rs.22,991/-. On perusal of the salary certificate, it appears that the deceased was also earning a sum of Rs.9,999/- p.m. by way of over time. However, the overtime will vary from time to time. Hence, this Court fixed the salary for over time as Rs.5,000/- instead of Rs.9999/-. Therefore, the loss of income to the dependants would come to Rs.22,991 - Rs.9999 + Rs.5,000 = **Rs.17,992/- p.m.** The Tribunal taken the age of the deceased at the time of his death as 54 years, since, as per the salary certificate, his Date of Birth is 04.08.1950. Therefore, the deceased is left with six more years of service. The Tribunal has



applied the multiplier as 11, since for the age group of 50 to 60, the proper multiplier is 11 and awarded the compensation on the basis of the salary received by the deceased for the remaining period of service of six years. For the remaining period, viz., after his retirement, the Tribunal has awarded a lump sum compensation of Rs.50,000/-. So while determining the compensation, the Tribunal has taken the income of the deceased as Rs.9352/- instead of Rs.17,992/-. Therefore, this Court fixed the income of the deceased based on the salary certificate as Rs.17,992/- p.m. instead of Rs.9,352/- as determined by the Tribunal. In the present case, there are four dependants and the deceased has got five years service. Therefore, 1/4 is liable to be deducted towards personal expenses of the deceased, whereas the Tribunal has wrongly deducted 1/3 for the personal expenses of the deceased, but only 1/4th would have been deducted, since the dependants of the deceased were four, as per the decision reported in **2009 ACJ 1298 (Sarlar Verma and others v. Delhi Transport Corporation and another)**, wherein it has been stated as follows:-

"Where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3; one-fourth (1/4th) where the number of dependent family members is 4 to 6; and one-fifth (1/5th) where the number of dependent family members exceed six."

Hence, by deducting 1/4 the net loss of income of the deceased would come to Rs.13,494/- p.m. Therefore, for the six years period, the loss of income would be Rs.13,494 x 12 x 6 + Rs.9,71,568/-. For the remaining five years, the Tribunal has awarded a sum of Rs.50,000/- as lump sum by fixing Rs.10,000/- per annum. However, this Court is not inclined to accept the mode of fixing the lump sum amount of compensation for the remaining five years period. Therefore, this Court is of the view that after retirement, the deceased will get 50% income of his salary as pension. Therefore, for the purpose of getting pension, the salary of the deceased is taken as Rs.12,992/- without adding the overtime. After deducting 50%, the pension would come to Rs.6,496/-, rounded off to Rs.6,000/-. Therefore, the annual income of the deceased would come to Rs.72,000/- (Rs.6,000 x 12). By adding 15% future prospects, then the annual income arrived at Rs.82,800/-. Therefore, the loss of income for the post retirement of two years i.e. upto 60 years of age, would come to Rs.82,800/- x 2 = Rs.1,65,600/- and as per the balance three years would come to Rs.72,000/- x 3 = Rs.2,16,000/-. Therefore, in the post retirement for five years, the loss of income would be a sum of Rs.3,81,600/- (Rs.1,65,600/- + Rs.2,16,000/-). After deducting 1/4 towards personal expenses of the deceased, the dependants are entitled to Rs.2,86,200/- (Rs.3,81,600 - Rs.95,400). Therefore, the loss of income during the service period is **Rs.9,71,568/-** and the loss of income for the post retirement period is **Rs.2,86,200/-**, totally, the appellants / claimants are entitled for a sum of **Rs.12,57,768/-** (Rs.9,71,568 + Rs.2,86,200), as loss of income.



9. The Tribunal has awarded a sum of Rs.15,000/- towards loss of consortium. However, as per the decision of the Hon'ble Supreme Court in **NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI**, reported in **2017 (2) TN MAC 609 (SC)**, the wife is entitled for a sum Rs.40,000/- . Therefore, the loss of consortium is enhanced to **Rs.40,000/-** from Rs.15,000/-. The Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses, which is very low and hence, the same is enhanced to **Rs.15,000/-**, as per **PRANAY SETHI** case. The Tribunal awarded a sum of Rs.500/- towards transportation, which is also very low and hence, the same is enhanced to **Rs.10,000/-**. The Tribunal has awarded a sum of **Rs.500/-** towards loss of damages to clothes, which is reasonable and hence, the same is confirmed. The Tribunal has awarded a sum of Rs.15,000/- towards loss of love and affection to the respondents 2 to 4, which are very low and hence, the same are enhanced to **Rs.50,000/-**. The Tribunal has not awarded any amount for loss of estate. Hence, this Court is inclined to award a sum of **Rs.15,000/-** towards loss of estate. Therefore the claimants are entitled to the enhanced compensation in the manner stated below:-

Heads	Amount
For Loss of income	Rs. 12,57,768/-
For Loss of consortium to 1 st claimant	Rs. 40,000/-
For Funeral Expnses	Rs. 15,000/-
For Transportation	Rs. 10,000/-
For Damages for clothes	Rs. 500/-
For Love and affection to R2 to R4	Rs. 50,000/-
For Loss of estate	Rs. 15,000/-
Total	Rs. 13,88,268/-

10.In the result,

(i).This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.5,31,200/-** (Rupees Five Lakhs Thirty One Thousand Two Hundred only) to a sum of **Rs.13,88,268/-** (Rupees Thirteen Lakhs Eighty Eight Thousand Two Hundred and Sixty Eight only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation with proportionate cost;

(ii).The second/Insurance Company is directed to deposit the entire award amount namely, **Rs.13,88,268/-** along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.1469 of 2004 on the file of the III Additional District and Sessions Judge (P.C.R.), Madurai, within a period of **Three weeks** from the date of receipt of a copy of this judgment;



(iii).On Such deposit, the Tribunal is directed to transfer the entire award amount namely **Rs.13,88,268/-** along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellants/claimants through RTGS/NEFT system, after getting his Account Details, within a period of **two weeks thereafter** in the manner stated below;

(i).Rakkini Mary	Rs.7,88,268/-
(ii).S.Jekkap Jayaselan	Rs.2,00,000/-
(iii).Aruldoss Jeganathan	Rs.2,00,000/-
(iv). Minor S.Daniel Jeyakumar	Rs.2,00,000/-

(iv).In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To:

The III Additional District and Sessions Judge (PCR),
Madurai.

COPY TO

The Section Officer,
V.R.Section,Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.P.MALINI, Advocate Sr. No.90097

+1CC TO MR.S.KARTHIK, Advocate Sr. No. 89868

C.M.A. (MD) No.501 of 2010

26.09.2019

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