BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.11.2019

CORAM
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A(MD).No.329 of 2014

1.Pappa Mary
2.Minor Kiruba
3.Minor Rooban

(Minors are represented through their mother and next guardian 1st appellant herein) ... Appellants/Petitioners

Vs.

1.Jegatha

2.The Branch Manager,
Iffco-Tokio General Insurance Company Ltd.,
No.82, 3rd Floor,
Court Road,
Nagercoil-629 001.

3.Malayandi @ Robert

4.Radha ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.08.2014 made in M.C.O.P.No.958 of 2012 on the file of the Motor Accident Claims Tribunal(II Additional District Court/II Additional Sessions Judge), Tirunelveli.

For Appellants:T.Selvakumaran

For R2 :Mr.S.Srinivasa Raghavan

For R1,R3&R4 :No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants challenging the quantum of compensation awarded by the Tribunal.

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

On 12.05.2012 at about 10.30 p.m., when one Senthil Kumar was riding a Motor cycle bearing Registration No.TN74 5386 from Nagercoil to Sucheendram. When the motor cycle reached near the NGO Colony TASMAC shop, at that time, another motor cycle bearing Registration No.TN74 AC 1022 belonging to the first respondent, came from the opposite direction in a rash and negligent manner, hit against the motor cycle of the Senthil Kumar. As a result of which, the rider Senthil Kumar was thrown out and sustained serious injuries and immediately, he was taken to Asaripallam Govt. Hospital, Kanyakumari, wherein he has succumbed to his injuries. Hence, the claimants claimed a sum of Rs.15 lakhs as compensation. The deceased viz., Senthil Kumar was aged about 42 years at the time of accident and he was working as Peon cum Scavenger in Little Flower Girls Higher Secondary School at Ramanputhur and thereby he was drawing a salary of Rs.5,000/- per month. The first appellant is the wife of the deceased and the second and the third appellants are the daughter and son of the deceased and they are the dependants and legal heirs of the deceased.

3.The case of the claimants was resisted by the second respondent/Insurance Company by filing a counter statement. According to the second respondent, due to the negligent act of the deceased, the accident had taken place and hence, they are not liable to pay compensation. It is further stated that it is for the claimants to establish the age, occupation and income of the deceased. In the absence of the same, the Insurance Company prayed for the dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimants as many as 11 documents were marked as Exs.P1 to P11 and P.Ws.1 to 3 were examined as witnesses and on the side of the respondents, as many as five documents were marked as Ex.Rs.1 to 5 and R.W.1 to R.W.3 were examined.

5.After considering the oral and documentary evidence, the Tribunal has given a finding that the accident had occurred only due to the rash and negligent driving on the part of the first respondent and directed the first and the second respondents to pay the compensation of Rs.7,30,000/- with 8% interest per annum at the first instance and thereafter, the second respondent to recover the same from the first respondent. Aggrieved against the award passed by the Tribunal, the claimants have filed the present appeal appeal.

6.The main challenge in this appeal is that the Court below has taken the income of the deceased as Rs.5,000/- per month, based on that the loss of income of the deceased was decided. The age of the deceased was 42 years at the time of accident and there is no dispute with regard to the fixing of liability on the part of the other side.

7.The learned counsel appearing for the appellants submitted that the deceased was working in three places and in this regard, the appellants had produced Ex.P.6 to Ex.P.8 before the Court below. In order to prove Ex.P.6 and Ex.P.8, on the side of the claimants, they have not examined the concerned Hospital authorities. The learned counsel further submitted that the claimants have examined P.W.3 and he has deposed that the deceased was working in the School as Scavenger and got salary of Rs.5,000/-p.m., which was marked as Ex.P.7. By referring Ex.P.6, the learned counsel for the appellants contended that the deceased was earning a sum of Rs.6,171/-p.m., and as per Ex.P.8, the deceased was earning a sum of Rs.800/- as part time job.

8.Though the claimants have produced the above documents before the Tribunal and marked the same to substantiate the contention that the deceased was earning more than a sum of Rs.8,500/- per month. Further, he contended that the Hon'ble Supreme Court in the case of ***Syed Sadiq v. Divisional Manager, United India Insurance Co., Ltd.,*** reported in ***2014(1)TNMAC 459 (SC),*** fixed a sum of Rs.6,500/- as notional income for a vegetable vendor in the absence of any income proof, who in an accident occurred in the year 2008. In the present case, accident was occurred in the year 2012. Therefore, the appellant contend that without considering all these aspects including the ruling of the Hon'ble Apex Court, the Tribunal has fixed the notional income of the deceased as Rs.5,000/- and hence, the same may be revised to the extent of Rs.6,500/- as held by the Hon'ble Apex Court.

9.The learned counsel appearing for the appellants fairly submitted that the Tribunal has applied the multiplier '14' instead of '15' and at the time of accident, the deceased was 42 years old. He further submitted that as held by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***, the Tribunal ought to have awarded future prospects. Therefore, this Court is inclined to add 25% income of the deceased towards future prospects. However, in the present case, the Tribunal has failed to award any amount towards 25% future prospects as held by the Hon'ble Apex Court, for the age group of below 40 years, the multiplier is '14'.

10.Considering the submission of the learned counsel for the appellants as well as the learned counsel for the Insurance Company, this Court is of the view that while the claimants have produced three salary certificates, the Tribunal has taken only one salary and the Tribunal has not taken other salary certificates while determining the income of the deceased, since according to the Tribunal, the same were not proved. Admittedly, in the present case, the deceased was a Scavenger and he was working more than one place and that being the case, there is no impediment for the Court below to fix the notional income, ignoring all the salary certificates in the event of any doubt arose in accepting the employment of the deceased. The Court below would have considered to fix the notional income of the deceased. The Tribunal should have applied the principle laid down by the Hon'ble Supreme Court in Syed Sadiq case and it should have fixed the minimum income of Rs.6,500/- as contended by the appellant. As contended by the learned counsel for the appellants, this Court restricted the notional income of the deceased to Rs.6,500/-, without providing any addition to the cost of increase between 2008 to 2012. Therefore, this Court is of the view that this is a fit case to fix the notional income as Rs.6,500/- per month since the appellant counsel himself restricted the same to Rs.6,500/- per month. Therefore, this Court is inclined to fix notional income of Rs.6,500/-. In the present case, there are three claimants and two dependents viz., father and mother of the deceased. Therefore, as held by the ***Hon'ble Supreme Court in the case of Smt.Sarala Varma and other vs. Delhi Transport Corporation and reported in 2009(2) TNMAC 1 (SC)***, ¼ has to be deducted. The Tribunal has also correctly deducted ¼ towards the personal expenses of the deceased. Therefore, the loss of income would be Rs.10,92,000/-.

11.The Tribunal has awarded a sum of Rs.10,000/- each claimed towards love and affection, which is on the lower side, since there are minors and they have lost the love and affection of their father. Therefore, this Court is inclined to award a sum of Rs.50,000/- each to the minor claimants towards love and affection. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and a sum of Rs.25,000/- towards consortium and no amount was awarded for loss of estate. As held by the Hon'ble Apex Court, the amount awarded by the Tribunal towards consortium and funeral expenses stand revised and this Court awards a sum of Rs.40,000/- towards consortium and Rs.15,000/- towards funeral expenses and the amount of Rs.10,000/- awarded by the Tribunal to the wife of the deceased is set aside. Since no amount was awarded by the Tribunal towards loss of estate, this Court awards a sum of Rs.15,000/- towards loss of estate. The Tribunal has wrongly mentioned the total award amount as Rs.7,30,000/-, instead of Rs.6,90,000/-. Therefore, the compensation awarded by the Tribunal stands revised from Rs.6,90,000/- to Rs.12,62,000/- in the manner stated below:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For loss of income	6,30,000/-	10,92,000/-	enhanced
2.	Loss of love and affection	10,000/-	1,00,000/- (50,000 x 2)	enhanced
3.	Consortium	25,000/-	40,000/-	enhanced
4.	Funeral and Transport Expenses	25,000/-	15,000	reduced
5.	Loss of Estate	-	15,000/-	granted
	Total compensation	6,90,000/-	12,62,000/-	

12.In view of the above modification, the Civil Miscellaneous Appeal is allowed in part and this Court directs the Insurance Company to deposit the entire award, if already not deposited, within a period of eight weeks from the date of receipt of a copy of this judgment, along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit. The Tribunal is directed to disburse the entire amount to the claimants by way of RTGS/NEFT system, after getting their Account details, within a period of three weeks thereafter, without waiting for an application from the claimant. Since the second and the third appellants are minors, their shares in the award amount shall be deposited in any one of the nationalized bank in fixed deposit, initially for a period of three years, and renewable thereafter, till they attain majority. The first respondent, who is the mother and the natural guardian of the minor claimants 2 and 3, is permitted to withdraw the accrued interest, once in three months directly from the bank and utilize the same for their welfare. No costs.

13.The appellants/claimants are directed to pay the deficit Court fee if any, to the Registry before the receipt of the judgment copy.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The II Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.

Copy to
The Record Keeper, -2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S. SRINIVASA RAGHAVAN, Advocate (SR-101080[F] dated 25/11/2019)

+1 CC to Mr.T. SELVAKUMARAN, Advocate (SR-101683[F] dated 27/11/2019)

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