

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.190 of 2016

1.Hemalatha
2.Minor S.Vishaaal
3.Minor S.Snekha
4.Jayapal
5.M.Chakkubai

Minors 2 & 3 rep.by their natural
guardian and mother Hemalatha ...Appellants/Petitioners

/versus/

1.M.Jayaraj

2.New India Assurance Company Ltd.,
Sri Vari Complex, ARRS Multi Buildings,
Meyyanoor, Salem 4
rep by the Divisional Manager

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act against the judgment and decree of the
Motor Accidents Claims Tribunal, Salem court of Special District
Judge, Salem made in M.C.O.P.No.273 of 2014 dated 23.07.2015.

For Appellants : M/s. Abbirami
for Mr.J.Ramakrishnan

For Respondents:Mr.J.Chandran for R2
Ex-parte for R1

J U D G M E N T
(The case has been heard through video conference)

Heard the learned counsel for the appellants and the
learned counsel for the 2nd respondent.

2. This appeal is filed by the claimants for
enhancement of compensation awarded by the Tribunal.

3. The claimants are the wife, minor children and
parents of the accident victim J.Saravanan. On 21.01.2014, the
said Saravanan while riding his motorcycle bearing registration

No.TN 38 AA 7121 along the Kandampatti-Kondalampatti bye-pass road, a Maruthi Swift car bearing registration No.TN 01 AE 2254 came in the same direction rash and negligently and hit the motorcycle from behind. The accident victim Saravanan was thrown out from the motorcycle. He sustained severe injury all over the body Hence he was taken to the hospital but succumbed to the injuries on 22.01.2014.

4. A claim petition for Rs.1,00,00,000/- was filed on the ground that at the time of death Saravanan was 43 years old, working as a Secondary grade teacher and earning around Rs.40,000/- per month.

5. The Insurance Company contested the claim petition on the ground that the accident had occurred due to negligence of the accident victim and the accident was due to his contributory negligence. The owner of the motorcycle and the insurer who are necessary parties not impleaded. Since the claimants failed to implead them as a party, the claim petition is liable to be dismissed. The income of the deceased was also disputed by the Insurance Company.

6. The Tribunal, taking note of the pay slip marked as Ex.P-13 fixed the monthly income of the deceased as Rs.28,081/- out of which, 30% of the income was added towards future prospect, $1/3^{\text{rd}}$ was deducted for personal expenditure and multiplier 14 applied. After deducting 20% towards income tax, taking into account the loss under the other conventional and non-conventional heads plus medical expenses, a sum of Rs.35,49,184/- was awarded as compensation.

7. The learned counsel for the appellants/claimants would point out that the Tribunal has erroneously deducted 20% towards income tax when at the relevant point of time the tax deducted between 2 lakhs to 5 lakhs was only 10%. Further the learned counsel would also submit that the deceased left behind five dependants namely his aged parents, wife and two minor children. While so, the Tribunal ought not to have deducted $1/3^{\text{rd}}$ towards the personal expenditure, but should have deducted only $1/4^{\text{th}}$.

8. The learned counsel appearing for the Insurance Company would submit that if the tax during the relevant period was only 10%, he has no objection to deduct 10% instead of 20%. At the same time he stated that for the other conventional and non-conventional heads, the Tribunal has awarded more and above, what prescribed under the Pranay sethi case by the Constitutional Bench of the Hon'ble Supreme Court. Therefore, sought necessary modification in those heads should be made.

9. On considering the rival submissions, this Court finds that the award passed by the Tribunal has to be modified in according to the structured formulated by the Hon'ble Supreme Court. Hence the award of the Tribunal is modified as below:

Head of compensation	Tribunal award in MCOP	Modified in CMA
Pecuniary loss: [As per the tribunal award (Rs.2,33,626/- x 14) Modified in CMA (28081+8424) x3/4x12-10%x14)]	Rs. 32,70,764/-	Rs,41,39,667/-
Loss of consortium for the first claimant	Rs.40,000/-	Rs.40,000/-
Loss of love and affection [As per the tribunal award Rs.50,000/- each to the claimants 2 and 3, Rs.10,000/- each to the claimants 4 & 5] Modified in CMA Rs.20,000/- each to the claimants 2 to 5]	Rs.1,20,000/-	Rs.80,000/-
Medical Expense	Rs.73,420/-	Rs.73,420/-
Ambulance bill	Rs.20,000/-	-----
Funeral expenses	Rs.25,000/-	Rs.15,000/-
Total	Rs.35,49,184/-	Rs.43,48,087/-

10. After modification, the compensation awarded for the claimants stand enhanced from Rs.35,49,184/- to Rs.43,48,087/-, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The award amount shall be apportioned by the claimants as below:

- (i) 1st claimant : Rs.14,48,087/-
(ii) 2nd & 3rd claimants : Rs.12,50,000/- each = Rs.25,00,000/-
(ii) 4th & 5th Claimants : Rs. 2,00,000/- each = Rs. 4,00,000/-

11. The 2nd respondent/Insurance Company is directed to deposit the award amount within a period of twelve weeks from the date of receipt of copy of this order. On such deposit, the claimants 1, 4 and 5 shall withdraw the same on filing appropriate petition.

11. The shares of the claimants 2 and 3,

Rs.12,50,000/- each has to be invested in any one of the nationalised banks till they attain the age of 21 years and the interest on their share shall be withdrawn by the first appellant once in three months to meet out the personal expenditures.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Special District Judge,
The Motor Accident Claims Tribunal,
Salem.

Copy To

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

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No. 31168
+1cc to Mr.J.Chandran, Advocate, S.R.No. 31084

C.M.A.No.190 of 2016

BR(CO)
GN(04/05/2021)

WEB COPY