

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.09.2020	Pronounced on: 18.09.2020
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CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2500 of 2016
& C.M.P.No.17729 of 2016

National Insurance Co Ltd.,
Branch-2, 38-8-17, Poo. All India Radio,
MG Road, Vijayawada - 10,
Krishna District, Andhra Pradesh,
Now by National Ins.Co.Ltd.,
Motor Third Party Claims Hub,
3rd Floor, No.46, Moore Street,
Chennai - 600 001. ... Appellant/2nd respondent

/versus/

1. Smt.Devaki,
W/o.Late Seetharaman,
Kavarapattu Village & Post,
Chidambaram.
2. Minor Jayashree,
D/o.late Seetharaman
3. Minor Akshaya,
D/o.Seetharaman.
(Minors represented by their mother
and guardian - 1st respondent Devaki) ... Respondents 1 to 3/
Claimants 1 to 3

Rajavalli (since deceased)
W/o.Singaravelu.

Singaravelu (since deceased)
S/o.Annamalai. ... Claimants 4 & 5 (died)

4. A.Harinarayanan,
S/o.Sambasivaraj,
H.No.10-169, Kanchikacherla Village,
Post and Mandal,
Krishna District, Andhra Pradesh. ... 4th Respondents/
1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 27.04.2016 passed in M.A.C.T.O.P.No.70 of 2008 on the file of the Motor Accidents Claims Tribunal (Sub Court), Chidambaram.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : No appearance

J U D G M E N T

(The case has been heard through video conference)

The Appeal filed by the Insurance Company aggrieved by the quantum of compensation awarded to the claimants who have lost their breadwinner. Despite notice to the claimants, they have not engaged any counsel.

2. The facts relevant for decision in this appeal is extracted below:-

On 24.07.2007, at about 06.00 hours Mr.Setharaman while riding TVS Star Sports motor cycle bearing Registration No.TN-31-AY-4350 accompanied by his friend Mr.Kannan, on the pillion, a Taurus lorry bearing Registration No.AP-36-V-2399, proceeding towards them rash and negligently hit the motorcycle. In the impact, Mr.Setharaman and Mr.Kannan were thrown down. Mr.Setharaman died on the spot, due to severe head injury. The pillion rider Mr.Kannan survived with bodily injuries.

3. The Claim petition filed jointly by deceased Setharaman wife, his two children and parents, for a sum of Rs.25,00,000/-. The deceased Setharaman, had 8 acres of land, brick kiln and a tractor. Earning around Rs.1,00,000/- per year. He was 35 years old at the time of accident. The Insurance Company oppose the claim petition on the ground that the accident happened due to the negligence of the victim. He had no driving license and R.C to his vehicle. His earning capacity has been exaggerated. His earning was only Rs.2,000/- per month.

4. Before the Tribunal, the claimant produced 19 documents. Two witnesses were examined. Pending trial, the parents of the deceased who were the 4th and 5th respondents died. The claimants through Ex.P.8 and Ex.P.3 establish that the deceased had two wheeler and a tractor in his name. To prove, the claimant was earning an average of Rs.500/- per day by engaging the tractor marked Ex.P.8 and Ex.P.16. The adangal of the land in Kavarapattu Village, to prove that he has cultivated Sugarcane in his land marked as Ex.P.9.

5. The Tribunal, on considering the materials placed by the claimants, held that the deceased could have earned

Rs.300/- per day, from out of his agricultural income, brick kiln and hiring of tractor.

6. Fixing the age of the deceased as 38 years, the tribunal applied multiplicand 16 and computed a sum of Rs.17,28,000/-, towards the loss of income. Since he had aged parents, wife and two children to maintain, 1/4th of his income was deducted towards personal expenditure. Awarded a sum of Rs.14,61,000/- in total for the claimants 1 to 3 to be apportioned in the ratio of 50:25:25.

7. The Learned Counsel appearing of the appellant would submit that the quantum of compensation is very excessive and exorbitant. The Tribunal has fixed monthly income of the deceased at Rs.9,000/-, without any specific proof for the same. Ex.P.8, Ex.P.13 and Ex.P.16, indicate that the claimants is a defaulter. Therefore, fixing of his income as Rs.9,000/- per month is erroneous. The deceased was 38 years old at the time of his death. So, the Tribunal ought to have applied multiplicand 15 and not 16. Likewise, for personal expenditure, the Tribunal should have deducted 1/3rd of the income since they were only three dependants were surviving on the date of award. Pending trial, both his parents died.

8. The Learned Counsel for the appellant would further submit that in the year 2007, fixing of income notionally at Rs.9,000/- per month is unheard. The award of the Tribunal should be interfered on excessive fixing of notional income, on the wrong multiplicand and lessor deduction towards personal expenditure.

9. The Learned Counsel appearing for the appellant relying upon Ex.P.8, the RC for the tractor bearing Registration No.TN-31-K-1455 in the name of the deceased and Ex.P.15 and Ex.P.16, notice from the bank intimating the arrears in payment would submit the deceased was a defaulter. Further, the Counsel would submit that the demand notices indicates that he is not capable of repaying the loan. Hence, his income cannot be more than Rs.6,000/- per month.

10. In the light of fact that Ex.P.7 which is the receipt paid to the Local Authority for running brick kiln. Ex.P.9 Adangal of the Kavarappattu Village, which reveals that the claimant had property and cultivated commercial crops. Ex.P.10, certificate issued by M/s.Ananda Agency, to indicate that the deceased was working as Foreman for some time. The above said contention of the appellant cannot be countenance.

11. The claimants through documents had clearly establish that the deceased had substantial income from all these three sources. Though the claimants have stated that, he was earning Rs.1,00,000/- per year from agricultural, Rs.60,000/- p.a from brick kiln and Rs.500/- per day from his

tractor, the Tribunal has moderately fixed this income as Rs.300/- per day.

12. Even in the year 2007, a person who was in possession of the tractor could have easily earn an average of Rs.10,000/- per month after deferring all expenses. Therefore, Rs.9,000/- per month for a landed agriculturist with tractor and brick kiln is not at all excessive. The claimants able to prove that the victim had three sources of income and same been proved through documents like Adangal, Tax receipts for brick kiln and RC for tractor. Hence, this Court upholds fixation of notional income as Rs.9,000/- by the Tribunal as just and proper.

13. As per recent ruling, i.e., Pranay's Sethi case, the claimants are entitled for future prospects of 40%, which the Tribunal has not awarded. Therefore, the award passed by the Tribunal without including the future prospects is not just. The deceased has left behind his widow aged about 28 years and two children aged about 5 and 3 respectively. The aged parents though died pending trial, their demise, pending trial cannot be the reason to alter the deduction towards personal expenditure from $1/4^{th}$ to $1/3^{rd}$. On the date of death, the number of dependency has to be taken note. Such future contingent events cannot have a bearing. If argument of the appellant counsel is accepted, some may even argue that due to sudden death of their son, the shock has shortened his parents expectation of life and for the said collateral damages additional compensation has to be given. The Court has to determine the number of dependants on the date of cause of action, any increase or decrease at later point of time is not a relevant facts in normal circumstances. On the date of cause of action, his wife, two children and parents were his dependants and therefore, deduction for his personal expenditure has rightly being taken as $1/4^{th}$. Hence, this Court finds no error in it.

14. Regarding the multiplicand, referring Sarala Verma's case, for any person aged between 36 to 40, the tribunal ought to have applied multiplicand 15. The Tribunal has erred in applying multiplicand 16. Hence, the multiplier for the loss of income has to be modified by applying the multiplicand 15 instead of 16.

15. Under the head of loss of love and affection, consortium, funeral expense and damages, transportation, the Tribunal has awarded an additional sum of Rs.1,65,000/-. In view of Pranay Sethi case, the said award under non-pecuniary loss has to be modified and 40% has to be added towards the loss of future income. Though the Appeal is by the Insurance Company, taking into account that any compensation should be fair and just, even if the claimants have not sought for

enhancement, when the compensation is apparently denied or deprived, court cannot sit as a mute spectator. Hence, the award of the tribunal is modified as below:-

Loss of income [Rs.9,000/- + Rs.3,600 (40% FP)] x $\frac{1}{4}$ x 12 x 15	Rs.17,01,000/-
Loss of Spousal consortium for the 1 st claimant/wife	Rs.40,000/-
Loss of parental Consortium for the 2 nd and 3 rd claimants	Rs.80,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.18,36,000/-

16. The plaintiff shall deposit the award amount of Rs.18,36,000/- with 7.5% interest from the date of filing the petition till the date of realisation. The award amount with accrued interest shall be apportioned to the claimants 1 to 3 as below:-

(i). 1st Claimant/wife = Rs.8,36,000/-

(ii). 2nd and 3rd claimants (minor daughters) =
Rs.5,00,000/- each

17. Since, the 2nd and 3rd claimants are still minors, the Tribunal is directed to deposit the award amount with accrued interest in any one of the Nationalised Bank, till the 2nd and 3rd claimants attain 21 years of age. The first claimant being the mother and the natural guardian is permitted to withdraw the interest once in six months and spend the money for the welfare of the claimants. Time for deposit is 12 weeks, from the date of receipt of the order copy.

18. In the result, the award of the Tribunal passed in M.C.O.P.No.70 of 2008 is modified. The award is enhanced from Rs.14,61,000/- to Rs.18,36,000/-. Accordingly, the Civil Miscellaneous Appeal is dismissed, enhancing the compensation. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

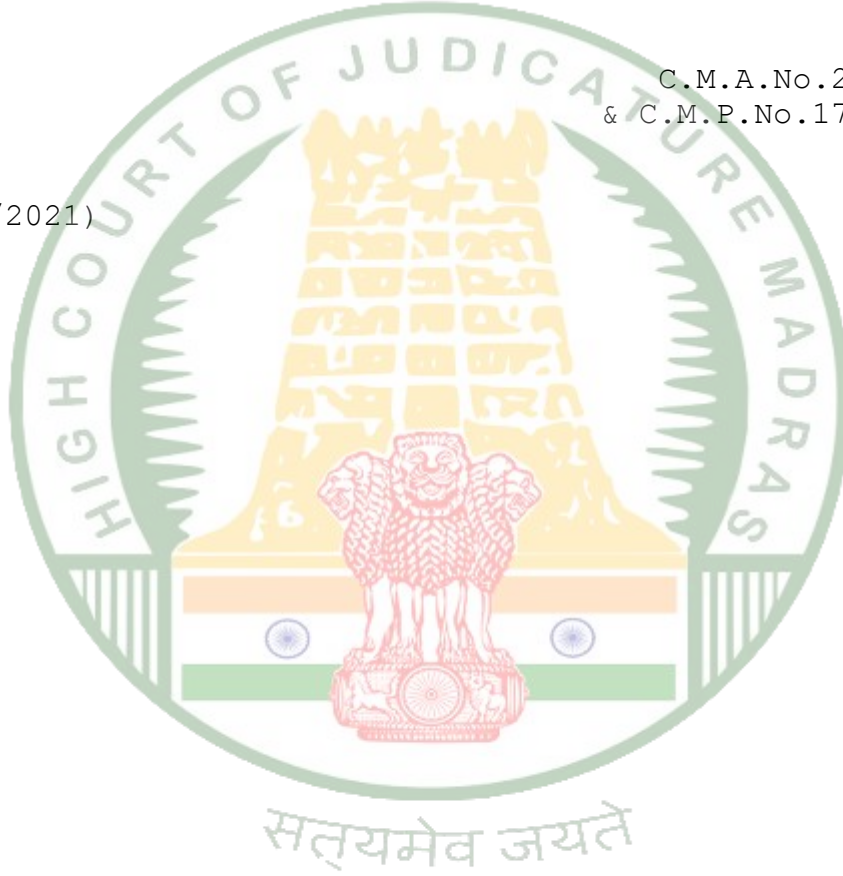
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To,

1. The Motor Accidents Claims Tribunal
(Sub Court), Chidambaram.
2. The Secretary, District Legal Service Authority,
Cuddalore,
3. The Section Officer,
VR Section, Madras High Court.

C.M.A.No.2500 of 2016
& C.M.P.No.17729 of 2016

GMR (CO)
GMY (05/05/2021)



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