IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1592 of 2019
(heard through video-conferencing)

Prem Sankar .. Appellant

Vs.

1. Subhashini

2. Minor Srinik Krishna
   (rep. by his mother/next friend - 1st respondent)

3. R.Govindaraj

4. IFFCO-Tokio General Insurance Company Limited,
   Rep. by its Authorised Signatory
   No.306A, 1st Floor, Katpadi Main Road,
   Virudhampet, Vellore-6. .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and decree dated 11.10.2018 made in M.C.O.P.No.880 of 2015 on the file of the Motor Accidents Claims Tribunal (First Additional District and Sessions Court), Vellore.

For appellant : Mr.K.A.Ravindran

For respondents: Mr.B.Jawahar for RR-1 and 2
Mr.S.Prasad for R-3
Mr.S.Arunkumar for R-4

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This appeal is filed by one of the sons of the deceased, as against the Award dated 11.10.2018 passed by the Motor Accidents Claims Tribunal (First Additional District and Sessions Court), Vellore, in M.C.O.P.No.880 of 2015, awarding a sum of Rs.14,54,000/- to the claimants with interest @ 7.5% per annum from the date of claim petition till the date of deposit, as against the claim of Rs.50 lakhs made by the claimants. The

Tribunal awarded the said amount to an extent of 85% from the total compensation of Rs.17,10,620/-, after deducting 15% of the amount towards the contributory negligence on the part of the deceased.

2. Brief facts which are necessary to decide the issue involved in this appeal are as follows:

(a) The deceased in this case is one C.Ravi. He had two sons, one is Thiru.Prem Sankar who is the appellant herein and the other son is Parthiban, who pre-deceased his father Ravi. The claimants before the Tribunal are the wife and minor son of the said Parthiban. In other words, the first claimant is the daughter-in-law of the deceased Ravi and the second claimant is her minor son who is the grand son of the deceased Ravi. The claimants have filed claim petition before the Tribunal claiming compensation of Rs.50 lakhs for the death of the said C.Ravi. In the said claim petition, the other son of the deceased, namely Prem Sankar, has been shown as the third respondent, who is the appellant herein.

(b) The case of the claimants before the Tribunal is that on 27.03.2015 at about 7 a.m., while the deceased Ravi was riding his two-wheeler Yamaha bearing Reg.No.TN-23-BF-4785 on the Anaicut to Ussoor Road, near Renderikodi Bus Stop, towards Vellore, a lorry belonging to the third respondent herein, bearing Reg.No.TN-39-D-6273 came from behind in a rash and negligent manner and hit the deceased and thus caused the accident, as a result of which, the deceased had fallen down and sustained grievous injuries and he died on the spot.

(c) At the time of accident, the deceased Ravi was working as Assistant Engineer, Tamil Nadu Electricity Board (TNEB), Vellore and earning a sum of Rs.50,000/- p.m. Hence, in order to compensate the death of Ravi, the claimants have preferred the claim petition seeking a claim of Rs.50,00,000/- as compensation.

(d) In order to prove the claim, on the side of claimants, the first claimant examined herself as P.W.1, besides one Anand as P.W.2 and marked Exs.P-1 to P-12. On the side of the respondents before the Tribunal, R.Ws.1 to 3 were examined, besides marking Exs.R-1 to R-3.

(e) The Tribunal, on an analysis of the evidence adduced by both sides, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver who drove third respondent's lorry. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and passed the award for a total sum of Rs.17,10,620/- and the break-up details of the compensation awarded by the Tribunal under different heads, are as follows:

Sl.No.	Head under which the Tribunal granted compensation	Amount (in Rs.)
1	Loss of income	16,75,620
2	Loss of love and affection	15,000
3	Funeral expenses	15,000
4	Transport expenses	5,000
	Total	17,10,620

(f) The Tribunal observed that 15% of the award amount is to be deducted for not wearing Helmet by the deceased Ravi at the time of accident. The fourth respondent-Insurance Company was made liable to pay 85% of the compensation, i.e. Rs.14,54,027/-, rounded off to Rs.14,54,000/- as compensation to the claimants. The Tribunal further observed that the first claimant who is the daughter-in-law of the deceased, is entitled to get Rs.2,54,000/- from the said award amount and the third respondent before the Tribunal (appellant herein), who is the son of the deceased, is entitled to get Rs.6,00,000/- and the minor claimant (another son) is entitled to get Rs.6,00,000/-.

3. In the present appeal, it is the contention of the learned counsel for the appellant/son of the deceased that the deceased was working as Assistant Engineer in the TNEB at the time of accident and was drawing net salary of Rs.59,045/- and in order to prove the same, the Administrative Supervisor of the TNEB was examined as P.W.2 and his Last Pay Certificate was marked as Ex.P-10 by the claimants. The Tribunal had taken only the basic salary of Rs.23,273/- as the monthly income on the reasoning that during cross-examination, P.W.2 had admitted that the deceased was under suspension at the time of his death, and was left only with three months of unexpired period of service. The said finding of the Tribunal for fixing a sum of Rs.23,273/- as monthly income is not legally sustainable. The Tribunal ought to have taken the net salary of Rs.59,045/- as the basis for calculating the Loss of Income, especially when it was not disputed that the deceased was earning Rs.59,045/- as net salary at the time of accident. Since the Tribunal had taken only Rs.23,273/- as the monthly income of the deceased, it has resulted in awarding inadequate compensation of Rs.14,54,027/- (rounded off to Rs.14,54,000/-). Thus, the learned counsel for the appellants submitted that the amount awarded by the Tribunal under the head "Loss of Income" needs to be re-calculated.

4. It is the further submission of the learned counsel for the appellant that the first respondent herein, who is the

daughter-in-law of the deceased, is not entitled for any compensation, since she is not the legal heir of the deceased Ravi, and therefore, the sum of Rs.2,54,000/- awarded by the Tribunal to her, is liable to be set aside and the total compensation may be apportioned only between the minor claimant and the appellant herein.

5. Per contra, it is the submission of the learned counsel for the respondents 3 and 4 that the Tribunal, while calculating the amount towards the Loss of Income, had deducted only 1/3 amount towards personal expenses. In this regard, the learned counsel for the respondents submitted that since the first respondent before the Tribunal is major, he is having his own source of income, he cannot be construed as a dependent of his father, and under such circumstances, the Tribunal ought to have deducted 50% of the amount towards personal expenses.

6. This Court also heard the submissions made by the learned counsel for the respondents 1 and 2/claimants.

7. Keeping the above submissions made on either side, we have perused the materials available on record.

8. We find some force in the submission made by the learned counsel for the appellants that the Tribunal ought to have taken only net salary at Rs.59,045/- as the basis for calculating the Loss of Income, but, instead of taking into account the net salary of the deceased, the Tribunal has taken only the basic salary at Rs.23,273/- as the basis for calculating the total Loss of Income. Hence, we are of the opinion that the amount awarded by the Tribunal needs to be enhanced by re-calculating the amount awarded under the head Loss of Income. Therefore, the amount of Loss of Income has to be re-calculated by fixing the sum of Rs.59,045/- as the monthly net income of the deceased, and if calculated so, the annual Loss of Income works out to Rs.7,08,540/-. (Rs.59,045 x 12). The income tax slab rates for the assessment year 2015-2016 are as follows:

upto 2,50,000	- No tax
2,50,000 - 5,00,000	- 10%
5,00,000 - 10,00,000	- 20%
above 10,00,000	- 30%

i.e. the income tax deduction for the deceased in this case is as follows:

2,50,000 - 5,00,000 - 10%, i.e. 25,000
5,00,000 - 10,00,000 - 20%,
i.e. his income at Rs.2,08,540 (5,00,000 - 7,08,540) x 20% = Rs.41,708/-

Therefore, the total tax = Rs.25,000 + Rs.41,708 = Rs.66,708/-. Thus, the actual annual salary is Rs.7,08,540 - 66,708 =

Rs.6,41,832/-. The loss of income is thus computed below by deducting 50% of the amount towards personal expenses: 6,41,832 - 50% x 9 multiplier = Rs.28,88,244/-.

9. The amounts awarded by the Tribunal under the other heads being just and reasonable, are hereby confirmed. Thus, now the compensation is worked out as follows :

Sl.No.	Head under which the amount is awarded	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1	Loss of income	16,75,620	28,88,244
2	Loss of love and affection	15,000	15,000
3	Funeral expenses	15,000	15,000
4	Transport expenses	5,000	5,000
	Total	17,10,620 (after deducting contributory negligence at 15% = Rs.14,54,000/- (rounded off).	29,23,244 (after deducting contributory negligence at 15% = Rs.24,84,800/- (rounded off)

10. From the above amount computed by this Court as total compensation at Rs.29,23,244/-, contributory negligence of 15% had to be deducted, thus, the actual compensation is Rs.24,84,757/- (29,23,244 - 15% (4,38,487)) and the same is rounded off to Rs.24,84,800/-, which would carry 7.5% interest from the date of claim petition till the date of deposit.

11. As contended by the learned counsel for the appellant, the appellant and the respondents 1 and 2 are equally entitled for the above compensation. Since it is reported that the first respondent herein, i.e. the daughter-in-law had already withdrawn her share of compensation awarded by the Tribunal at Rs.2,54,000/-, the same is not interfered with by this Court and the remaining amount of compensation is to be shared by the appellant and the second respondent herein equally.

12. The fourth respondent-Insurance Company is directed to pay the balance amount of compensation as computed above, after adjusting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such total deposit being made, the appellant shall withdraw his respective share. As far as the share of the second respondent-minor claimant is concerned, the same shall be

deposited in any nationalised Bank in any interest bearing fixed deposit scheme and the interest accrued thereon is permitted to be withdrawn by the mother, the first respondent herein once in three months.

13. With the above observations and directions, the appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Presiding Officer,
   Motor Accidents Claims Tribunal,
   (First Additional District and Sessions Court), Vellore.

2. The Section Officer,
   V.R.Section,
   High Court, Madras.

C.M.A.No.1592 of 2019

KS(CO)
GN(23/03/2021)