IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18.08.2020
JUDGMENT DELIVERED ON : 25.09.2020
CORAM

THE HONOURABLE Mr.JUSTICE R.SUBBIAH
AND
THE HONOURABLE Mr.JUSTICE C.SARAVANAN

C.M.A. No.2096 of 2018
(Heard through video-conferencing)

S.Santhiya
W/o. Late Saravanan,
Residing at Old No.26,
New No.10, Pazhaia Maniyakara Street,
Nelikuppam, Cudddalore District. .. Appellant/Petitioner

Versus

1.T.Shanmugam,
S/o.Thandavamurthy,
N.Moolakuppam, C.N.Palayam,
Cuddalore.

2.The United India Insurance Co. Ltd.,
13-A, Nethaji Road, Manchakuppam, Cuddalore.
Now at: Sillingi Building, New no.134,
Old No.40-45, Greams Road,
Chennai 600 006.

3.K.Thambusamy Reddiyar,
S/o. Kesva Reddiyar

4.T.Muthulakshmi
W/o.K.Thambusamy Reddiyar
Both are residing at No.30/21,
Rajeswari Street, Kamaraj Nagar,
Sulaimedu, Chennai 94. .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 for enhancement of compensation against the judgment and decree dated 10.11.2017 in MCOP.No.4439 of 2016 in the Court of the Chief Judge, MCOP Tribunal, Chennai.

For appellant	:	Mr/s.Ramya V. Rao
For respondents		
for RR1 & 4	:	No Appearance
for R2	:	Mr.A.Thiraviyanathan
for R3	:	Mr.V.Karthikeyan

J U D G M E N T

R.SUBBIAH, J

Not being satisfied with the quantum of compensation awarded by the Chief Judge, Motor Accident Claims Tribunal, Chennai, in MCOP.No.4439 of 2016, dated 10.11.2017, this appeal has been filed by the claimant for enhancement of the compensation amount.

2. The appellant herein married the deceased Saravanan on 29.01.2012 at Chennai and on the very third day of the marriage, i.e., on 31.01.2012, the said Saravanan died in a road accident at Cuddalore. According to the appellant / claimant, on 31.01.2012 around 12 noon, while the deceased Saravanan was proceeding in a two-wheeler bearing Registration No.TN 31 D 8304 from North to South direction near Cuddalore Sub Jail, a Tripper Lorry bearing Registration No.TN 32 D 7264, which is owned by the first respondent, came in a rash and negligent manner and hit the rear side of the two wheeler. In the said accident, the deceased fell down and sustained injuries and died on the spot.

3. The case of the appellant was resisted by the second respondent / Insurance Company by filing a detailed counter statement.

4. The appellant, who is the wife of the deceased, along with the parents of the deceased, who are the respondents 3 and 4 herein, filed MCOP No.463 of 2012, on the file of the Motor Accident Claims Tribunal, Poonamallee. While so, the appellant herein also separately filed another claim petition in MCOP No.1933 of 2012 before the Motor Accident Claims Tribunal at Cuddalore. Subsequently, both the claim petitions, viz., MCOP No.463 of 2012, MCOP No.1933 of 2012 were transferred to the Court of the Chief Judge, Court of Small Causes, Chennai (Motor Accident Claims Tribunal), pursuant to the order passed by this Court in CRP.No.1405 of 2014 dated 21.12.2015. On transfer, both the said MCOPs were re-numbered as MCOP No.4465 of 2016 and MCOP No.4439 of 2016, respectively. Both the claim petitions were tried jointly by the Chief Judge, Motor Accident Claims Tribunal, Chennai and a common award was passed for a sum of Rs.19,34,136/-. Since the appellant herein, who is the wife of the deceased, re-married one Prasad on 20.11.2013, the Tribunal apportioned compensation amount at 30% to the appellant and the remaining 70% to the respondents 3 and 4 herein.

5. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S. No.	Head under which the amount is awarded by the Tribunal	Amount in Rs.
1	Income	Rs.10000/- per month
2	40% of (i) above to be added as future prospects	Rs.10000 + 4000 = Rs.14000/- per month
3	1/3rd f (ii) deducted as personal expenses of the deceased	Rs.14000 - 4666 = Rs.9334/-
4	Loss of pecuniary benefits for a period of 17 years	Rs.9334/- x 12 x 17 = Rs.19,04,136/-
5	Loss of Estate	Rs.15,000/-
6	Funeral Expenses	Rs.15,000/-
	Total Compensation Awarded	Rs.19,34,136/-

6. The present appeal has been filed by the wife of the deceased, questioning the quantum of compensation awarded by the Tribunal, stating that the amount awarded by the Tribunal is inadequate. Hence, we are not dealing with the negligence aspect.

7. So far as the quantum of compensation is concerned, it is the case of the claimant that the deceased Saravanan completed Civil Engineering and started his own construction company. He engaged in the business of designing and constructing buildings either by himself or under joint venture or by doing a contract work and earned a monthly income of Rs.2,00,000/-.

8. The learned counsel for the appellant submitted that in order to prove the income of the deceased, Income Tax Returns were filed as Exs.P8 to P10 for the assessments years 2009-10, 2010-11 and 2011-12. The Tribunal has rejected the said documents on the reasoning that the appellant had not produced any proof to show that the deceased had paid Income Tax for the above said assessment years. Thus, the Tribunal, on its own accord, fixed a nominal sum of Rs.10,000/- as monthly income of the deceased, which resulted in awarding an inadequate compensation. The learned counsel for the appellant further submitted that, based on the Income Tax Returns, the Tribunal ought to have fixed at least a sum of Rs.25,000/- as the monthly income of the deceased and made a calculation on that basis to award a just and proper compensation.

9. The learned counsel appearing for the respondents 3 and 4 / parents of the deceased submitted that since the appellant has re-married, she is not entitled for equal share in the compensation amount on par with the parents of the deceased Saravanan. Since the appellant got re-married to one Prasad on 20.11.2013, she lost her status of widow and she is no more dependent of the deceased Saravanan. Hence, in the enhanced compensation, the appellant is entitled for only 30%. The learned counsel further submitted that since the husband of the the appellant herein died within 2 days from the date of marriage, she is not entitled for compensation under the head “Loss of Love and Affection”.

10. Further, the learned counsel appearing for the respondents 3 and 4 submitted that the respondents 3 and 4 spent some amount to bring the deceased body from Cuddalore to Chennai and last rites were also conducted by them. Hence, the respondents 3 and 4 are entitled to claim under the heads "Transportation Charges" and "Funeral Expenses".

11. The learned counsel for the respondents 3 and 4 further submitted that while fixing loss of monthly income, the last filed IT return should only be taken into consideration. If the last year alone is taken into consideration, the annual income of the deceased works out to Rs.4,20,000/- and by adding 40% towards future prospects, the amount awarded by the Tribunal has to be enhanced.

12. Per contra, learned counsel for the second respondent / Insurance Company made submissions supporting the award passed by the Tribunal and prayed to dismiss this appeal.

13. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

14. It is the submission of the learned counsel for the respondents 3 and 4 that for the purpose of making calculation under the head "Loss of Income", the last year's Income Tax Return only has to be taken into consideration and not the average of the previous three years. But we are not willing to accept the said submission, since in the recent judgments of the Supreme Court in the cases of Sangita Aria and others vs. Oriental Insurance Company reported and others, reported in 2020 SCC Online SC 513 and Malarvizhi and others vs. United India Insurance Company Limited and another, reported in (2020) 4 SCC 228, has taken only the average of three years of Income Tax Returns. Hence, we are of the opinion that based on the average income of the three years, the amount under the head "Loss of Income" has to be re-calculated.

15. It is seen from the Income Tax Returns / Exs.P8 to P10 that the annual income of the deceased for the financial year 2008-2009 is Rs.1,90,329/-, for 2009-2010 is Rs.3,05,099/- and for 2010-2011 is Rs.3,99,391/-. By taking average of the annual income for the above said period of three years, the amount works out to Rs.2,98,273/- and the same is rounded off to Rs.3,00,000/-. If 40% of the same is added towards future prospects, the total annual income works out to Rs.4,20,000/-.

16. The income tax slab rates for the assessment year 2011-2012 are as follows:

Income		Percentage of tax
Upto 1,60,000	-	No tax
1,60,000 - 5,00,000	-	10%
5,00,000 - 8,00,000	-	20%
Above 8,00,000	-	30%

The income tax deduction in the case of the deceased is as follows:

Income		Percentage of tax		Amount of Tax
Upto 1,60,000	-	No tax	-	0
1,60,000 - 4,20,000	-	10%	-	26,000
		Total		26,000

Therefore, the total tax payable is Rs.26,000/-. Thus, the actual annual income is Rs.3,94,000/- (Rs.4,20,000/- - Rs.26,000/-). If 1/3rd of the amount is deducted towards personal expenses, the amount comes to Rs.2,62,667/- (Rs.3,94,000 /- - Rs.1,31,333/-). Considering the age of the deceased being 27 at the time of the accident, if multiplier "17" is adopted, the total "Loss of Income" works out to Rs.44,65,339/-.

17. Further, we find that the Tribunal has not awarded any amount under the head "Loss of Love and Affection" to the respondents 3 and 4 / parents of the deceased. Hence, a sum of Rs.50,000/- is awarded under the head "Loss of Love and Affection" to the respondents 3 and 4 as they have lost their son at their advanced age.

18. Further, since the respondents 3 and 4 brought the the body of deceased from Cuddalore to Chennai, they are entitled for Rs.25,000/- under the head "Transportation Charges". Accordingly, Rs.25,000/- is awarded under the head "Transportation Charges".

19. The amount awarded by the Tribunal at Rs.15,000/- towards Funeral Expenses, appears to be on the lower side, and as such, the same is hereby enhanced to Rs.25,000/-.

20. The amount awarded by the Tribunal at Rs.15,000/- towards "Loss of Estate" being just and reasonable, is hereby confirmed.

21. Thus, 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	Pecuniary Loss / Loss of Income	19,04,136	44,65,339
2	Loss of Estate	15,000	15,000
3	Funeral Expenses	15,000	25,000
4	Loss of Love and Affection	-	50,000
5	Transportation Charges	-	25,000
	Total	19,34,136	45,80,339 (rounded of to 45,80,400)

Out of the enhanced compensation awarded by this Court at Rs.44,65,339/-, under the head "Pecuniary Loss / Loss of Income", the appellant / wife is entitled to 30% of the amount and the respondents 3 and 4 / parents of the deceased are entitled to 70%. Further, the respondents 3 and 4 are entitled for the amounts awarded under all the other heads.

22. Thus, the total sum of Rs.19,34,136/- awarded by the Tribunal towards compensation, is hereby enhanced to Rs.45,80,400/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The appellant and the respondents 3 & 4 shall pay the necessary Court fee of their respective share, if any, on the enhanced compensation. The Insurance Company is directed to deposit the total compensation before the Tribunal, after adjusting the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant and the respondents 3 and 4 herein are permitted to withdraw the amount of their respective share as indicated above.

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

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pvs

To
1. The Chief Judge,
MCOP Tribunal, Chennai

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

+1 CC to Mr.A.N. Viswanatha Rao, Advocate sr 31532.
+1 CC to Mr.A.Thiraviyanathan, Advocate sr 31662.

C.M.A. No.2096 of 2018

SAI(CO)
SP(16/10/2020)