

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

C.M.A.No.1862 of 2017

1.Lakshmi
2.Minor R.Panner Selvam
3.Minor R.Naveen ... Appellants/Claimants
(Minors rep. by their mother and next friend
1st appellant Lakshmi)

Vs.

1.S.Selvaraj
2.Royal Sundaram Alliance Insurance Company Ltd.,
No.3, Khader Nawaz Khan Road,
II Floor, Chennai - 600 006. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.07.2013 made in M.C.O.P.No.4736 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.D.Senthil Kumar

For R2 सत्यमेव जयते : Ms.Ratna Thara

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal, vide its award dated 31.07.2013 made in M.C.O.P.No.4736 of 2011, the appellants / claimants have filed the present appeal seeking enhancement of the same.

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

On 03.02.2011, at about 17.00 hours, the deceased Rajendiran was travelling along with his friends Vijayan and Farukdeen in the Car bearing Reg.No.TN-22-AX-8067 on the Trichy

- Chennai National Highway. At that time, the lorry bearing Registration No.TN 54 X 5477 (previous Registration No.KA 01 B 2291), belonging to the first respondent and insured with the second respondent Insurance Company, driven by its driver in a rash and negligent manner, came on the service lane endangering public safety and dashed against the deceased's Car, as a result of which, the deceased and his friends sustained multiple injuries. Immediately, they were rushed to the Government Hospital, Ulandurpet. However, the deceased Rajendiran and his friend Vijayan succumbed to the injuries on the same day. Stating that the accident had occurred only due to the carelessness and negligence on the part of the driver of the lorry, the wife and daughters of the deceased Rajendiran, filed a claim petition seeking compensation of Rs.16,10,000/-.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the 1st respondent and directed the respondents to jointly and severally, pay a sum of Rs.5,15,400/- with interest at the rate of 7.5% per annum from the date of petition, as compensation to the appellants. Aggrieved over the same, the appellants / claimants have come up with this appeal.

4.The learned counsel appearing for the appellants contended that the deceased was aged 43 years at the time of accident and was earning a sum of Rs.12,500/- per month by working as a Liaisoning Officer for TTH Projects, Chennai. To prove the same, the appellants have examined P.W.3/Ganesh Raja, Manager and marked Ex.P12/Salary Certificate. The Tribunal, without considering the same, has fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased in arriving at the loss of dependency. It is also submitted that the amounts awarded by the Tribunal under other heads are meagre and hence, the same requires enhancement substantially.

5.Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company contended that the compensation awarded by the Tribunal under various heads are on the higher side, especially the dependency compensation awarded without adopting split multiplier.

6.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record carefully.

7.This is the claimants' appeal seeking enhancement of the compensation awarded by the Tribunal and hence, there is no requirement for this Court to go into the findings rendered by

the Tribunal as regards the negligence and liability fastened on the respondents.

8. In *Sarla Verma v. Delhi Transport Corporation* [(2009) 6 SCC 121] the Apex Court laid down the principles governing determination of quantum of compensation in the case of death in a motor accident. The Apex Court held that the compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by following the well settled steps, namely, ascertaining the multiplicand (annual contribution to the family), the multiplier and calculation of loss of dependency by multiplying the multiplicand by such multiplier.

9. In *National Insurance Company Ltd. v. Pranay Sethi* [(2017) 16 SCC 680], a Constitution Bench of the Apex Court held that Section 168 of the Motor Vehicles Act, 1988 deals with the concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the Tribunal is quite wide, yet it is obligatory on the part of the Tribunal to be guided by the expression, i.e., just compensation.

10. In the case on hand, while calculating the loss of dependency, the Tribunal has fixed the monthly income of the deceased at Rs.4,500/- notionally, in the absence of any proof such as Company Registration Certificate, list of employees, Attendance Register, Pay Disbursement Register, Central and State Sales Tax Fee Receipt, except a certificate in a letter pad. Thereafter, the Tribunal has added 15% enhancement towards future prospects and deducted 1/3rd of the amount towards personal expenses of the deceased. Thereafter, relying upon Ex.P3/post-mortem certificate, Ex.P4/Inquest report and

Ex.P6/death certificate, the Tribunal has taken the age of the deceased as 52 years and adopted the multiplier of 11 as per the decision of the Supreme Court in Sarla Verma case (supra) and arrived at the loss of dependency at Rs.4,55,400/-. Since the accident occurred in the year 2011, this Court is of the considered view that fixing a sum of Rs.6,000/- as monthly income, instead of Rs.4,500/- would be appropriate. If 15% amount towards future prospects is added, it works out to Rs.6,900/-, which is taken into consideration, while calculating the compensation for loss of dependency.

11.It is specifically contended by the learned counsel for the second respondent insurance company that considering the age and avocation of the deceased, a split multiplier should have been adopted by the Tribunal. However, there is nothing on record to substantiate the same. Further, there was no discussion by the Tribunal, with regard to the issue of split multiplier. It appears that the said issue was not raised before the Tribunal. Be that as it may, in the enhancement appeal, it is not appropriate to adopt the split multiplier. The Apex Court in the judgment in Puttamma and Others v. K.L.Narayana Reddy and another [2014 1 TNMAC 481 (SC)] categorically held that "in absence of any specific reason and evidence on record, the Tribunal or the Court should not apply Split Multiplier in routine course and should apply Multiplier as per decision of this Court in the case of Sarla Verma (supra), as affirmed in the case of Reshma Kumari and Others v. Madan Mohan and another [2013(9) SCC 65]." Applying the same, the contention so made by the learned counsel for the second respondent insurance company cannot be countenanced by this Court. In view of the same, after deducting 1/3rd towards personal expenses and applying the multiplier of 11, the compensation towards loss of dependency works to Rs.6,07,200/- [Rs.6,900/- x 12 x 11 x 2/3] and is accordingly, modified.

12.Further, it would be appropriate to enhance the amounts awarded by the Tribunal towards loss of love and affection to Rs.30,000/- and is accordingly, modified. That apart, as per the decision of the Supreme Court in Pranay Sethi case (supra), the appellants are entitled to Rs.70,000/- under conventional heads and hence, the compensation awarded by the Tribunal towards loss of consortium, loss of estate and funeral expenses are enhanced to Rs.40,000/-, Rs.15,000/- and Rs.10,000/- respectively, besides confirming the award of Rs.5,000/- towards transport expenses. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of dependency	6,07,200/-
Loss of love and affection	30,000/-
Loss of consortium	40,000/-
Loss of estate	15,000/-
Transport expenses	5,000/-
Funeral expenses	10,000/-

TOTAL....	7,07,200/- =====

(Rounded off to Rs.7,07,200/-).

Thus, the appellants/claimants are entitled to the modified compensation of Rs.7,07,200/- with interest at the rate of 7.5% per annum from the date of petition. It is made clear that the appellants/claimants are not entitled for interest for the period of delay in filing this appeal, in respect of the enhanced amount of compensation. It is also made clear that the appellants / claimants have to pay the appropriate Court fee in order to receive the awarded amount.

13.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The respondents are directed to deposit the modified amount of compensation now determined by this Court as above, jointly and severally, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The appellants 2 and 3 would have attained majority by now. Hence, on such deposit being made, all the claimants are permitted to withdraw their respective shares, as per the ratio apportioned by the Tribunal, on making proper application.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

mtl

To

1.The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

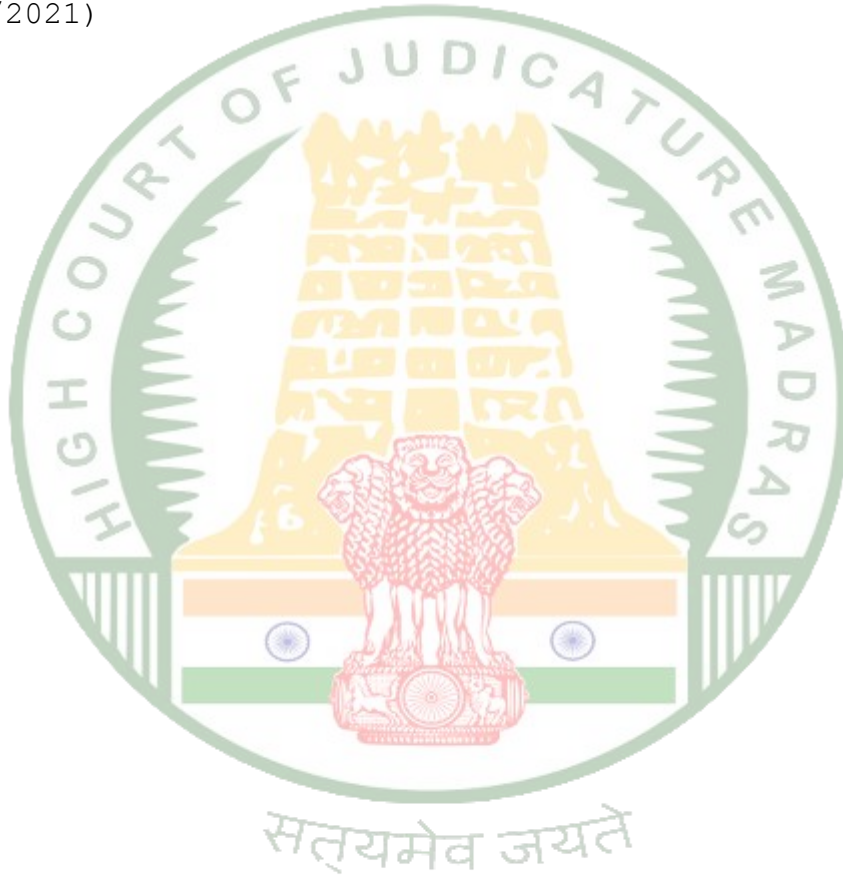
Copy To

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.D.Senthil Kumar, Advocate SR.No.30566

C.M.A.No.1862 of 2017

SSI (CO)
GMY (17/06/2021)



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