

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.03.2020

Judgment Delivered on : 04.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.Nos.3375 of 2017 and 3709 of 2019
and
C.M.P.No.21255 of 2019

1. G.Palaniswame
2. Minor R.P.Naveen Balaji
3. Minor R.P.Harshini
(Minors 2 and 3 Appellants
rep. by first appellant G.Palaniswame)
.. Appellant in C.M.A.No.3375 of 2017

The New India Assurance Company Limited,
Branch Office: 1st Floor,
Kumaran Shopping Complex,
Kumaran Road, Tiruppur-641 001
Divisional Office: 170100 Thane, Pinak Galaxy,
Opposite to Big Bazaar, Kapurbawdi Junction,
Munpada Thane, Maharashtra 400 607.
.. Appellant in C.M.A.No.3709 of 2019

Vs.

1. Jawaharlal B.Patel
2. The New India Assurance Co. Ltd.,
Branch Office: 1st Floor, Kumaran Shopping Complex,
Kumaran Road, Tiruppur-641 601.
Divisional Office:
170100 Thane : Pinak Galaxy,
Opp. to Big Bazaar,
Kapurbawdi Junction,
Manpada Thane,
Maharashtra-400 607.

3. Bajaj Allianz General Insurance Company Ltd.,
Branch Office:
D.No.11, People's Park,
Govt. Arts College Road,
Coimbatore-641 018.

.. Respondents in C.M.A.No.3375 of 2017

1. G.Palaniswame
2. Minor R.P.Naveen Balaji
3. Minor R.P.Harshini
(2nd and 3rd respondents minors,
rep. by their next friend and guardian
father G.Palaniswame)
4. Jawaharlal B.Patel
5. Bajaj Allianz General Insurance Company Ltd.,
Branch Office D.No.11, People's Park,
Govt. Arts College Road,
Coimbatore-641 018.

.. Respondents in C.M.A.No.3709 of 2019

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 11.07.2017 made in M.C.O.P.No.100 of 2013 on the file of the Motor Accidents Claims Tribunal (I Addl. District Judge), Tiruppur.

For appellants in C.M.A.No.3375 of 2017
and for respondents 1 to 3 in C.M.A.No.3709 of 2019:

Mr.AR.L.Sundaresan, Senior Counsel for
Mr.K.Govi Ganesan

For respondent No.2 in C.M.A.No.3375 of 2017
and for appellant in C.M.A.No.3709 of 2019:

Mr.S.Dhakshinamoorthy

For respondent No.3 in C.M.A.No.3375 of 2017
and for respondent No.5 in C.M.A.No.3709 of 2019:

Mr.J.Michael Visuvasam

For respondent No.1 in C.M.A.No.3375 of 2017
and for respondent No.4 in C.M.A.No.3709 of 2019:

Set ex-parte before the Tribunal

COMMON JUDGMENT

R.SUBBIAH, J

Challenging the quantum of compensation awarded by the Tribunal, by order dated 11.07.2017 in a motor accident claim petition in M.C.O.P.100 of 2013 on the file of the Motor Accidents Claims Tribunal (I Addl. District Court), Tiruppur,

the New India Assurance Company Limited, Tiruppur, has filed C.M.A.No.3709 of 2019.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal in respect of the very same motor accident, the claimants have also preferred appeal in C.M.A.No.3375 of 2017, seeking for enhancement of compensation.

3. Since the issue involved in both these appeals, is one and the same, they are being disposed of by this common judgment. As only the aspect of quantum of compensation is questioned, we are not traversing into the other aspects of the award of the Tribunal.

4. For the sake of convenience, the parties are herein referred to as per their ranking in C.M.A.No.3709 of 2019, i.e. the New India Assurance Company Limited, will be referred to as the appellant and the claimants will be referred to as respondents 1 to 3.

5. The case of the respondents 1 to 3/claimants before the Tribunal is as follows:

(a) The claimants are the husband and two minor children of the deceased Radhamani. On 23.08.2012 at about 11.30 a.m., when the deceased Radhamani and her sister Venmathi were travelling in a car bearing Registration No.TN-38-BJ-3355 at Neelambur to Madukkari bye-pass road, Oddarpalayam of Lins Garden, a Tanker lorry, bearing Registration No.MH-04-CA-3418 came from the opposite direction so swiftly, in a rash and negligent manner and dashed against the car and thus caused the accident. Due to the said accident, the deceased Radhamani sustained grievous injuries all over the body. Immediately, she was taken to Coimbatore Medical College Hospital, Coimbatore, where she died. The accident occurred only due to the rash and negligent driving by the driver of the said Tanker lorry.

(b) The deceased was running several businesses, i.e. Proprietrix of M/s.Subha Ganesh, Industrial Estate and two other concerns and partner of M/s.Pooja Promotions and 3 other concerns. She was an income tax assessee. Her annual income for 2008-2009 was Rs.11,94,976/-, for the year 2009-2010 was Rs.9,52,254/-, for the year 2010-2011 was Rs.9,18,258/- and for the year 2011-2012 was around Rs.12,00,000/-. Thus, based on the income earned by the deceased, the claimants made a claim of Rs.1,45,00,000/- as compensation.

6. The case of the claimants was opposed by the Insurance Companies before the Tribunal, who are respondents 2 and 3 in C.M.A.No.3375 of 2017.

7. In order to prove the claim, on the side of the claimants, P.Ws.1 to 5 were examined and Exs.P-1 to P-27 were marked. On the side of the Insurance Company, R.Ws.1 and 2 were examined and Exs.R-1 and R-2 were marked. On the basis of the oral and documentary evidence, the Tribunal awarded compensation under the following heads:

Sl.No	Particulars	Amount (in Rs.)
1	Loss of dependency	85,74,600
2	Loss of consortium to the 1st claimant	50,000
3	Loss of love and affection for claimants	50,000
4	Loss of care and guidance for minors	1,00,000
5	Funeral expenses	25,000
6	Transport expenses	10,000
	Total compensation	88,09,600

8. The Tribunal arrived at the loss of dependency at Rs.85,74,600/- based on the Income Tax Returns of the deceased- assessee. Further, the Tribunal awarded the compensation under other heads as tabulated above and granted total compensation at Rs.88,09,600/- with interest at 7.5% per annum from the date of claim petition till the date of deposit.

9. Mainly questioning the sum of Rs.85,74,600/- awarded by the Tribunal under the head 'loss of dependency', the New India Assurance Company has filed C.M.A.No.3709 of 2019. Seeking enhancement of compensation, the claimants have preferred C.M.A.No.3375 of 2017.

10. It is the submission of the learned counsel appearing for the appellant-Insurance Company that the deceased was doing real estate business and was buying and selling lands and earning income. He further submitted that even after the death of the deceased, her husband (first claimant) can carry on the same business. While so, the Tribunal ought not to have fixed a sum of Rs.5,71,640/- as the total actual annual income of the deceased, based on the Income Tax Returns. Therefore, the amount awarded by the Tribunal under the head "loss of dependency" needs modification.

11. Countering the above submissions, the learned Senior Counsel appearing for the respondents 1 to 3/claimants submitted that the Tribunal calculated the compensation as though the deceased was possessing lands by doing real estate business. On the other hand, she was buying and selling the lands and earning income. She was doing the business independently. Therefore, it is incorrect to state that after the demise of the deceased, her husband can carry on the businesses of the deceased.

12. The learned Senior Counsel appearing for the respondents 1 to 3/claimants further submitted that the deceased was also possessing agricultural lands and earning income. On her death, there is loss of income from agriculture. Therefore, by taking

into consideration the loss of income from the agriculture, the amount awarded under the head "loss of dependency" may be enhanced.

13. Keeping the above submissions made by the learned counsel on either side, we have considered the same and carefully perused the entire materials available on record.

14. On a perusal of the order of the Tribunal, we find that the deceased was a partner in four concerns and proprietrix of three concerns. The Tribunal, based on the Income Tax Returns, arrived at the income of the deceased for the assessment year 2007-2008 at Rs.6,91,846/-, for 2008-2009 at Rs.2,03,419/- and for 2009-2010 at Rs.10,04,631/-. The total income of the deceased was fixed at Rs.18,99,896/-. The average annual income of the deceased was Rs.6,33,298.66, which was rounded off to Rs.6,33,300/-. Thereafter, after deducting the income tax at Rs.61,600/- based on the tax deduction during financial year 2012-13, the total actual income of the deceased was arrived at by the Tribunal at Rs.5,71,640/-. By adding 50% towards future prospects, i.e. Rs.2,85,820/-, her annual income was assessed at Rs.8,57,460/- ($5,71,640 + 2,85,820$). Thereafter, by deducting 1/3 towards personal expenses of the deceased, i.e. Rs.2,85,820/-, finally, the annual loss of contribution to the family of the deceased was assessed at Rs.5,71,640/-. Since the age of the deceased on the date of accident was 38 years, the Tribunal adopted the multiplier '15' and ultimately, granted a sum of Rs.85,74,600/- ($5,71,640 \times 15$) as total loss of dependency.

15. In fact, the Insurance Company has not disputed the income earned by the deceased. On the other hand, it is their submission that the husband of the deceased being the first claimant before the Tribunal, can look after the businesses and agricultural income of the deceased. Therefore, there is no loss of income to the claimants. Under such circumstances, the Tribunal ought not to have adopted the above approach in arriving at the loss of dependency.

16. We find, as contended by the learned Senior Counsel appearing for the respondents 1 to 3/claimants that the evidence on record would show that the deceased was buying and selling the lands. It is not as though the lands were available with the family and only if the lands are available with the family, the respondents 1 to 3/claimants can carry on business. In such circumstances, we do not find any error in the calculation made by the Tribunal based on the Income Tax Returns of the deceased.

17. However, considering the factual aspects of the matter, instead of fixing Rs.6,33,300/- as the average annual income of the deceased, fixing a sum of Rs.6,00,000/- as average annual income of the deceased, would meet the ends of justice to award appropriate compensation. Further, instead of adopting 50% towards future prospects, 40% could be adopted towards future prospects. If so, the loss of dependency is thus arrived as

follows:

Calculation particulars	Amount in Rs.
Gross annual income of the deceased	6,00,000
Less: Tax (based on the income tax calculation for the assessment year 2013-2014) : Upto Rs.2,00,000/- - Nil Tax 2,00,000 - 5,00,000 = 10% = 30,000 5,00,000 - 10,00,000 = 20% = 20,000 (upto 6,00,000)	50,000
----- Total tax 50,000	
	5,50,000
Add: 40% towards future prospects	2,20,000
	7,70,000
Less: 1/3 towards personal expenses	2,56,667
	5,13,333
Multiplier 15 for age of the deceased 38 years, 5,13,333 x 15	76,99,995
Loss of dependency (rounded off)	77,00,000

18. So far as the case of the claimants is concerned, we are of the opinion that agricultural income of the deceased is always available with the family and the land possessed by the deceased, will remain with the claimants. In this regard, it is useful to refer a decision of a Division Bench of this Court reported in MANU/TN/3487/2010 (National Insurance Company Limited Vs. Sujatha Rajalakshmi and others), wherein it was held as follows:

"8. In our considered opinion, the said piece of evidence of P.W.1 undoubtedly goes to prove that the P.W.1 was earning more income by continuing the business of his father. Under such circumstances, we do not hesitate to hold that there is no loss of income to the family of the Respondents 1 to 3/claimants on account of the death of the victim, since the source of income would continue to exist even after the death of the victim. In this regard, reference could be placed in the judgments relied upon by the learned Counsel

appearing for the Appellant. In M.G.Bros Lorry Service, Madras and another Vs. S.Andalammal and others, reported in MANU/TN/0518/1981 : 1982 ACJ 408, it has been held as follows:

".... The income from agriculture, house property and from the investments cannot be taken into account for determining the loss of income, for, those are sources which still continued to exist even after the death of Sanjeevi Mudaliar. Therefore, there cannot be said to be any loss from those three sources."

9. In State of Haryana Vs. Jasbir Kaur reported in MANU/SC/0549/2003 : AIR 2003 SC 3696, the Hon'ble Supreme Court has held as follows:

"... The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source."

Therefore, the question of awarding compensation under the head "loss of agricultural income" does not arise in this case.

19. So far as the compensation awarded by the Tribunal under the other heads are concerned, the same are hereby confirmed. Thus, the claimants are entitled to compensation as awarded by the Tribunal, except the above modification under the head "loss of dependency", as follows:

Sl.No	Particulars	Amount (in Rs.)
.		
1	Loss of dependency	77,00,000
2	Loss of consortium to the 1st claimant	50,000
3	Loss of love and affection for claimants	50,000
4	Loss of care and guidance for minor	1,00,000
5	Funeral expenses	25,000

Sl.No	Particulars	Amount (in Rs.)
6	Transport expenses	10,000
	Total compensation	79,35,000

20. Thus, the claimants are entitled to total compensation at Rs.79,35,000/- (Rupees seventy nine lakhs and thirty five thousand only) with interest at 7.5% per annum from the date of claim petition till the date of deposit. The abovesaid compensation, if any, remaining to be deposited, shall be deposited by the Insurance Company within a period of six weeks from the date of receipt of a copy of this judgment. The Insurance Company is entitled to withdraw the excess amount of compensation, if any deposited. The share of compensation between the claimants shall be done as per the ratio apportioned by the Tribunal. On such deposit being made by the Insurance Company, the first claimant is permitted to withdraw her share in accordance with law. Further, as far as the share of minor claimants are concerned, the same shall be deposited in the Bank with withdrawal of interest by the guardian, as observed by the Tribunal. In all other respects, the order of the Tribunal is confirmed.

21. For the reasons stated above, the appeal filed by the claimants in C.M.A.No.3375 of 2017 is dismissed and the appeal filed by the Insurance Company in C.M.A.No.3709 of 2019 is partly allowed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

CS

To

1. The Presiding Officer,
Motor Accidents Claims Tribunal,
(I Additional District Judge), Tiruppur.

Copy To
The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.Nos.3375 of 2017
and 3709 of 2019

PP(CO)
GMY(11/11/2020)