IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.12.2020
Judgment Delivered on : 12.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1769 of 2011

1. J.Thambu Ratti

2. J.Prabhu

3. J.Kaliammal (Minor)

4. J.Murugesan (Minor)
(Minors.3 & 4 rep. By Mother and
Natural Guardian, the first petitioner herein)

5. T.Vellathai (Expired)

... Appellants/Claimants

Vs.

1. M.Shankar

2. The Reliance General Insurance Co. Ltd.,
Heavitree Unit No.1,
Third Floor,
No.23, Spur Tank Road, Chetpet,
Chennai - 600 031. ...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1914 of 2007 dated 27.09.2010 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.A.Shanmugaraj
For Respondents : Mr.S.Arun Kumar for R2.
R1-Exparte

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 27.09.2010 passed in MCOP.No.1914 of 2007 by the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. The case in brief are as follows:

On 05.12.2005 at about 9.00 p.m., while the deceased was walking along the Mahabalipuram Road, the rider of the first respondent's motor cycle bearing Reg. No.TN-22-U-4450 rode the same in a rash and negligent manner, dashed the deceased, as a result of which, he caused fatal accident.

3. The learned counsel for the appellants submitted that the claimants side examined the eye witness to the accident who was also a co-worker of the deceased in the Salt Pan as P.W.2. The said eye witness had spoken about the wages that were paid to the deceased as well as to P.W.2 as worker in the Salt Pan @250/- per day. The same was not considered by the Tribunal. If it was Rs.250/- per day, then the monthly income would have been Rs.7500/-. The learned trial Judge without assigning proper reason had rejected it and instead took Rs.3000/- as monthly income and out of Rs.3000/- towards personal expenses, 1/5 of the income was reduced and therefore, what was assessed as loss of income was a meagre amount. Likewise, the compensation awarded towards love and affection and towards loss of consortium to the Widow/Wife were meagre amounts of Rs.10000/-. As per the reported rulings in the Hon'ble Supreme Court in Joginder Singh and another Vs. ICICI Lombard General Insurance Co. Ltd., reported in 2019 IV ACJ 2783 (SC), Rs.40,000/- could be fixed as loss of consortium and loss of love and affection. The learned trial Judge had ignored those rulings and fixed Rs.10000/- for the above headings. The quantum of compensation awarded by the Motor Accident Claims Tribunal is very low. Therefore, the appellants have come on appeal to claim higher compensation.

4. The learned counsel for the second respondent/Insurance Company had objected to the submissions of the learned Counsel for the appellants and he had submitted that the quantum fixed by the learned trial Judge is proper as per the then prevailing rates. The appeal is not maintainable and has to be dismissed. If at all, the Court feels to enhance the quantum, the Court may consider the reported rulings of Hon'ble Supreme Court and Hon'ble High Court.

5. The submissions of the learned counsel for the appellants is accepted in the light of the evidence let in by P.W.2 who was a witness to the accident as well as co-worker of the deceased. Salt pan workers are paid as per the wages arrived at between the Salt pan labour contractors and the labour union. Therefore, Rs.250/- is not a high amount paid to the Salt Pan workers. Without adducing any reason, rejecting the evidence of P.W.2 regarding wages by the learned trial Judge is not justified. The Tribunal ought to have given appropriate reasons to reject the claim of P.W.2. Therefore, the submissions of the learned counsel for the Appellants regarding the quantum is accepted by this Court.

6. The submissions of the learned counsel for the Insurance Company that the appeal is lacking in merit and has to be dismissed cannot be accepted in the light of the evidence of P.W.2.

7. If Rs.250/- is the minimum wage per day, for the entire month it would be Rs.7500/-. 1 to 5 were the claimants before the Motor Accidents Claims Tribunal, if 1/5 is deducted 7500x1/5=1500 will be the amount arrived towards personal expenses and (7500-1500)=Rs.6000/- will be the income contributed to the family by the deceased. At the time of death, the deceased was aged 50 or 55 years. Therefore, the multiplier is 12 and (Rs.6000x12x12) will be the loss of income to the family of the deceased. Therefore, the loss of income is Rs.8,64,000/-.

7(a). Mr.Shanmugaraj, learned counsel for the appellants relied on the following rulings to substantiate his submissions regarding the enhancement of the award amount for each of the headings.

1. National Insurance Co. Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC)

2. Magma General Insurance Co. Ltd., Vs. Nanu Ram and others reported in 2018 ACJ 2782(SC)

3. (i) United India Insurance Co. Ltd., Vs. Satinder Kaur @ Satwinder Kaur & ors. (ii) Satinder Kaur @ Satwinder Kaur & ors Vs. United India Insurance Co. Ltd., reported in 2020 (2) TNMAC 1 (SC)

4. Joginder Singh and another Vs. ICICI Lombard General Insurance Co. Ltd., reported in 2019 IV ACJ 2783 (SC)

5. Ibrahim Vs. Raju and others reported in (2011) 10 SCC 634

8. The fixation of income per month as Rs.3,000/- by the learned Tribunal was found unreasonable in the light of the evidence of the injured witness P.W.2 who was travelling along with the deceased and who was a co-worker of the deceased. He has in his evidence claimed Rs.250 wage per day in a Salt pan (Uppalam). The sum is accepted by this Court as such 250x30=7500.

9. On the date of filing of the claim petition, the mother of the deceased Vellathai was alive. Therefore, personal expenses will be 7500x1/5=1500 as per the ratio laid down by the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The amount towards personal expenses had to be deducted from the monthly income. The number of persons dependent on the deceased has to be taken into consideration to arrive at the figure towards deduction. Here, the dependants of the deceased are wife, children and mother. Therefore, the claimants are five in this petition i.e., 1/5x7500=1500, therefore Rs.6000/- will be the contribution of

deceased towards family expenses. Therefore, the annual contribution will be 6000x12=72000. The age of the deceased is to be considered for future prospects and for compensation under the headings loss of income towards family. As per Ex.P.3 death report and Ex.P.6 Postmortem certificate, the deceased Jaya was aged 50 years on the date of his death. As per the rulings reported in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the multiplier for the age of the deceased reckoned to calculate the loss of income upto 25, the multiplier is 18, 26 to 30 is 17, 31 to 35 is 16, 36 to 40 is 15, 41 to 45 is 14 and 46 to 50 is 13. Therefore, the multiplier is 13. Therefore, this Court enhanced a sum of Rs.9,36,000/- (72000x13=9,36,000) towards loss of income.

10. Also based on the same judgment, the quantum for future prospects does not arise. Only upto 40 years the future prospects can be taken into consideration. Thereby no award towards future prospects if the age of the deceased is 50 years and above. If the deceased age is less than 40 half of the monthly income is to be added to the future prospects. If the age of the deceased is 40 to 50 years, 30 % of last drawn pay has to be added towards the future prospects. Here, the deceased Jaya was aged 50 years, therefore, the question of future prospects does not arise.

11. Loss of consortium for the first appellant is Rs.40,000/-. The claimants 2 to 4 are children of the deceased Jaya and they are entitled to compensation for loss of love and affection and the children are teenaged children. Therefore, the same amount of Rs.40,000/- is awarded to each one of them under the headings loss of love and affection as per the rulings of the Hon'ble Supreme Court cited by the learned counsel for the appellants with regard to parental consortium reported in 2020 (2) TNMAC 1 (SC) ((i) United India Insurance Co. Ltd., Vs. Satinder Kaur @ Satwinder Kaur & ors. (ii) Satinder Kaur @ Satwinder Kaur & ors Vs. United India Insurance Co. Ltd.,). Rs.40000x4=160000 towards loss of Parental consortium /love and affection for the claimants 2 to 4. Since the mother of the deceased died during the pendency of the appeal no amount is awarded to her.

12. The Tribunal has not awarded any amount towards “Loss of Estate”. Hence, this Court awards a sum of Rs.15,000/- towards "Loss of Estate". The Tribunal has awarded a meagre amount towards “Funeral Expenses” and “Transport Charges”. Hence, the same are enhanced to Rs.15000/-.

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

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Dependency	3,51,000	9,36,000
2	Loss of Consortium	10,000	40,000
3	Loss of Love and Affection	10,000	1,60,000
4	For Funeral and Transport Charges	9,000	15,000
5	Loss of Estate	-	15,000
	Total	3,80,000	11,66,000

The amount is rounded up as Rs.11,60,000/-.

Accordingly, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the amount, which we have determined in this appeal, to the credit of M.C.O.P.No.1914 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai, with accrued interest at the rate of 7.5% per annum from the date the appeal was numbered(the claimant/appellants are not entitled to claim the interest for the period in which the memorandum of Appeal were returned for compliance of defects) till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, 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 deposit, the first claimant shall be entitled to withdraw a sum of Rs.4,10,000/- with accrued interest. The second claimant shall be entitled to withdraw a sum of Rs.2,50,000/- . The balance amount of Rs.5,00,000/- is directed to be deposited in a Nationalised Bank in the name of the respective minor children by the first Claimant, in equal proportion, with accrued interest. The interest thereof shall be withdrawn by the first Claimant once in three months and the same shall be utilised for the welfare of the minor children. The award amount allotted to the minor children of the deceased is to be withdrawn by the minors on attaining majority. The appellants are directed to pay appropriate Court fees within a period of two months, failing which, they are not entitled to claim interest on the award amount. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal/
   Chief Judge, Court of Small Causes, Chennai.

+1cc to Mr.S.Arun Kumar, Advocate SR.No. 8762

C.M.A.No.1769 of 2011

CP(CO)
A.SK(06.09.2021)