



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08-01-2021

Coram :

The Honourable Mr. Justice R. Subbiah
and

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

C.M.A. No. 1641 of 2020

1. V. Ambiga

Wife of S.R. Vanavaramban

2. S.R. Vanavaramban

.. Appellants/Claimants

Versus

1. K. Dhananjayan

2. Royal Sundaram General Insurance Co., Ltd.,

Legal Department

Subramaniam Building

2nd Floor, No.1, Club House Road

Anna Salai,

Chennai - 600 002

.. Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Order dated 06.11.2019 made in M.C.O.P. No. 369 of 2018 on the file of Motor Accident Claims Tribunal, Chennai (Chief Judge, Court of Small Causes at Chennai)

For Appellants : Mr. K. Suryanarayanan

For Respondent : Mr. N. Vijayaraghavan for R2

JUDGMENT

R. SUBBIAH, J

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Chennai, in and by award dated 06.11.2019 made in MCOP No. 369 of 2018, the present appeal has been filed by the appellants, who are the claimants before the Tribunal, for enhancement of compensation amount.

2. The appellants/claimants are the parents of the deceased V. Jayanthan. It is the case of the appellants/claimants before the Tribunal that on 12.12.2017, at about 18.45 hours, the deceased was riding the motor cycle bearing Registration No. TN 02 AU 1478 to K.G. Signature, Service Road, East Side By-pass Road, Nolambur, Chennai - 600



095. At that time, the car owned by the first respondent herein bearing Registration No. TN 13 A 4183 came from the opposite direction, driven by its driver in a rash and negligent manner and dashed against the motor cycle. In the impact, the deceased sustained grievous injuries and died on the spot. According to the claimants, the deceased was aged 29 years at the time of accident and was working as a Rank II Officer, Navig-8, Ship Management Service Limited, Mumbai and earning a sum of Rs.4,00,000/- per month. Therefore, the claimants have filed the claim petition before the Tribunal against the owner of the car as well as its insurer, claiming a sum of Rs.10 crores as compensation for the death of their son.

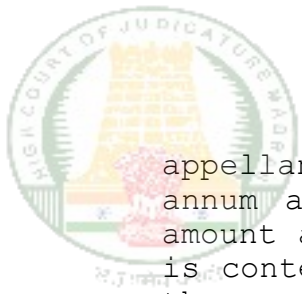
3. The second respondent-Insurance Company filed a counter statement before the Tribunal denying the various allegations made by the claimants in the claim petition with respect to the age, occupation and income of the deceased and prayed for dismissal of the claim petition.

4. In order to prove the averments made in the claim petition, on the side of the claimants, second claimant/father of the deceased was examined as PW1 besides examining one T. Murthy, an eye witness to the occurrence, as PW2. That apart, three other witnesses were examined to prove the employment and income earned by the deceased, as PWs 3 to 5. The claimants have also marked Exs. P1 to P28 on their side. On the side of the Insurance Company, no witness was examined but one document was marked as Ex.R1, during the cross-examination of PW1. The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident was a result of rash and negligent driving of the driver of the car bearing Registration No. TN 13 A 4183 owned by the first respondent and insured with the second respondent/Insurance Company. By coming to such a conclusion, the Tribunal passed an award for a sum of Rs.71,95,000/- in favour of the claimants. The breakup of the award amount is as follows:-

Loss of dependency	Rs.71,40,000.00
Towards funeral expenses	Rs. 15,000.00
Loss of love and affection	Rs. 40,000.00
	Rs.71,95,000.00

5. As against the award passed by the Tribunal, the Insurance Company has not filed any appeal. This appeal has been filed by the claimants seeking for enhancement of compensation.

6. Now, it is the submission of the learned counsel for the appellants that the Tribunal, while calculating the compensation under the head of loss of dependency, had taken only a sum of Rs.70,000/- as monthly income inspite of the fact that the claimants have filed documentary proof to show that the deceased was earning a sum of Rs.4,00,000/- per month, which resulted in awarding an inadequate compensation of Rs.71,40,000/-. Therefore, the learned counsel for the



appellants would submit that atleast a sum of Rs.4,00,000/- per annum as monthly income has to be taken and consequently the amount awarded by the Tribunal has to be enhanced. Further, it is contended that in order to prove the income of the deceased, three witnesses were examined before the Tribunal as PWs 3 to 5 and through them, documents were marked. Therefore, he would contend that the Tribunal is not justified in taking only a sum of Rs.70,000/- per month as income of the deceased and he prayed for enhancement of the compensation awarded in favour of the appellants.

7. Per contra, the learned counsel for the second respondent/Insurance Company would vehemently contend that though the appellants claimed that the deceased was earning Rs.4 lakhs per month, as a Rank II Officer, Navig-8, Ship management service limited, Mumbai PW3 has spoken about the nature of employment of the deceased and his salary. PW3 has categorically stated in his evidence that all the jobs in the ship are only contractual in nature. The owner of the ship is a private party and he used to employ the workers only on contract basis. PW4, who was an authorised representative of Navig-8, Ship management service limited, Mumbai has deposed that the deceased was employed with their company from 12.11.2016 to 24.04.2017 on a contractual basis. He has also stated that the deceased was paid salary in US Dollars and he was conferred with NRI Status and therefore, the statement under Form 16 was not applicable to him. PW5 also deposed that employees in the ship will be employed only on contract basis. Thus, from the deposition of PWs 3 to 5, it is clear that the income of Rs.4 lakhs said to have been received by the deceased will not form the basis for computation of loss of dependency inasmuch as such income is not permanent. Under such circumstances, the question of fixing the monthly income of the deceased at Rs.4 lakhs and making calculation for compensation of loss of dependency on that basis is unwarranted. On the other hand, the Tribunal by considering the bank statement of the deceased has come to the conclusion that for the past 9 years from 2008 to 2017, a sum of Rs.79,75,995/- has been credited into the account of the deceased. Based on such income, the Tribunal rightly has taken note of a sum of Rs.70,000/- per month as income of the deceased to compute the loss of dependency. Therefore, according to the learned counsel for the second respondent/Insurance Company, the Tribunal has rightly rejected the claim of the claimants to fix the monthly income of the deceased at Rs.4 lakhs. On the other hand, the Tribunal, by taking note of the average income of the deceased at Rs.8.50 lakhs per annum, had fixed a sum of Rs.70,000/- per month. Thereafter, by applying multiplier of '17' and deducting 50% towards personal expenses, awarded Rs.71,40,000/- towards loss of dependency. Such a calculation made by the Tribunal is proper over which, interference by this Court is not warranted. The learned counsel for the second respondent/ Insurance Company therefore prayed for dismissal of the appeal.



8. We have heard the counsel for both sides and perused the materials placed on records. The main grievance of the appellants in this appeal is that though they have examined three witnesses before the Tribunal and proved that the deceased was earning Rs.4 lakhs per month, the Tribunal had taken the monthly income of the deceased as Rs.70,000 per month based on the amount credited into the account maintained. According to the appellants, the reliance placed by the Tribunal on the statement of bank account to conclude that the monthly income of the deceased was only Rs.70,000/- is not proper. Therefore, the appellants prayed for fixing Rs.4 lakhs per month as the monthly income of the deceased and consequently to enhance the compensation amount awarded by the Tribunal.

9. We are not inclined to accept this submission of the counsel for the appellants. Invariably, all the witnesses examined by the appellants have stated that the job of the deceased was contractual in nature and it is not permanent or continuous one. It is also the evidence of the witnesses that the income of the deceased was not permanent and it was fluctuating every year. It is also an admitted fact that 8 months prior to the accident, the deceased was not employed and for this period, he had not received any income in the form of salary. When that be so, we are not inclined to fix a sum of Rs.4 lakhs as monthly income of the deceased. At the same time, on perusal of the bank statement and the amount credited into the bank account of the deceased, it is evident that from the year 2012-2013 to 2017-2018, the highest amount received by the deceased towards yearly income, on an average, was Rs.10,93,498/-. This is not disputed by the learned counsel for the second respondent/Insurance Company. Therefore, this sum of Rs.10,93,498/- can safely be construed as the basis for calculating loss of dependency of the deceased. Or in other words, this sum of Rs.10,93,498/- has to be taken as the yearly income of the deceased.

10. When the emoluments received by the deceased in a given year exceeds Rs.10 lakhs, then the deceased is liable to pay income tax. Therefore, out of this sum of Rs.10,93,498/- 20% is deducted towards income tax. If 20% is deducted, then the net yearly income of the deceased will be (Rs.10,93,498 - Rs.2,18,700/-) Rs.8,74,798/-. Out of this amount, 40% has to be added towards future prospects of the deceased and it will come to Rs.3,49,919/-. Thus, the total loss of income of the deceased was (Rs.8,74,798/- + Rs.3,49,919/-) Rs.12,24,717/-. As the deceased died as a bachelor, 50% of Rs.12,24,717/- has to be deducted towards personal expenses. After deduction of 50% towards personal expenses, the loss of dependency of the deceased will be (Rs.12,24,717/2) Rs.6,12,358/-. The multiplier to be applied in this case is '17'. Applying multiplier '17', the loss of dependency to be awarded to the appellants will be (Rs.6,12,358/- X 17) Rs.1,04,10,096/-.



11. It is seen from the award passed by the Tribunal that the sum of Rs.40,000/- awarded towards loss of love and affection to the parents and Rs.15,000/- towards funeral expenses are meagre and they are required to be enhanced. Similarly, the Tribunal has not awarded any amount towards loss of estate to the appellants. Therefore, the award passed by the Tribunal is required to be modified. Accordingly, the amount awarded by the Tribunal is modified as mentioned below:-

Loss of dependency	Rs.1,04,10,096.00
Towards funeral expenses	Rs. ,000.00
Loss of love and affection	Rs. 80,000.00
Loss of Estate	Rs. 15,000.00

	Rs.1,05,30,096.00
Rounded off to	Rs.1,05,30,100.00

In the result, the Civil Miscellaneous Appeal filed by the Appellants is partly allowed by modifying the Order dated 06.11.2019 made in M.C.O.P. No. 369 of 2018 on the file of Motor Accident Claims Tribunal, Chennai (Chief Judge, Court of Small Causes at Chennai). The amount awarded by the Tribunal in favour of the appellants is hereby enhanced from Rs.71,95,000/- to Rs.1,05,30,100/- (Rupees One Crore Five Lakhs Thirty Thousand and One Hundred Only). The amount which we have determined in this appeal shall be deposited by the second respondent-Insurance Company to the credit of M.C.O.P. No. 369 of 2018 on the file of Motor Accident Claims Tribunal, Chennai (Chief Judge, Court of Small Causes at Chennai) within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants shall withdraw the entire compensation amount with accrued interest in equal proportion. The appellants are also directed to pay the court fee proportionate to the amount enhanced in this appeal. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rsh

To

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

2. The Section Officer
Vernacular Records Section
High Court, Madras

+1cc to Mr.K. Suryanarayanan, Advocate SR.No. 1071

<https://hcservices.ecourts.gov.in/hcservices/>

C.M.A. No. 1641 of 2020

A.SK(15.09.2021)