



CMA.No.561 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.561 of 2018
and
C.M.P.No.21566 of 2017

1.Mrs. A.Devika

2. Minor Rosan
(minor rep. by his guardian and next friend A.Devika)

3.Mrs. Elsi

... Appellants/ Petitioners

Vs

1. D.Suresh Kumar

[R.1 remained exparte his presence may be dispensed with]

2. The United India Insurance Co. Ltd.

No.48, Arcot Road,
Salikiramam,
Chennai- 600093.

... Respondents / Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21/03/2016 and made in M.A.C.T.O.P.No.1070 of 2013 on the file of the Motor Accident Claim Tribunal, III Addl. Dist. Judge, Thiruvallur at Poonamallee.



CMA.No.561 of 2018

For Petitioner : M/s.A.Subadra
For Respondents : M/s. R.Vijayakamala [R2]
: Ex parte [R.1]

JUDGEMENT

This appeal is filed by the claimants/petitioners, seeking enhancement of the award passed by the Motor Accidents Claim Tribunal, III Additional District Judge, Thiruvallur at Poonamallee. in MCOP.No.1070 of 2013. The facts, in brief, are herein below narrated and the parties are referred to in the same array as before the Tribunal.

2. The petitioners are the legal representatives of one Alan Kingsly Prabakaran who had died in a road accident on 28.09.2013, the 1st petitioner is his wife, the 2nd petitioner is his son and the 3rd petitioner is the mother of late Alan Kingsly Prabakaran. It is the case of the petitioners that Alan Kingsly Prabakaran was aged about 42 years and working as a civil engineer in a private company earning a monthly income of Rs.30,000/-. On 28.09.2013 at about 23:15 hours, Alan Kingsly Prabakaran was walking on the CTH Road, near Thinnaur, at that time, the first respondent's motorcycle bearing Registration No.TN. 10 AJ 6607, which was travelling in the same



direction in a rash and negligent manner endangering public safety, hit Alan Kingsly Prabakaran. By reason of the hit he had sustained severe head injuries and died on the spot. The petitioners had claimed a compensation of a sum of Rs.50,00,000/-.

3. The 1st respondent/ owner of the motorcycle remained ex parte and it was the 2nd respondent/ insurance company which had contested the claim. They had contented that the accident had occurred only because the deceased had suddenly crossed the road in an inebriated condition and therefore, the deceased was the tortfeasor himself and hence his legal heirs cannot be compensated. They had also contended that the compensation sought for was very high.

4. The Tribunal below after considering the evidence on record and the arguments held that the accident had occurred only on account of the negligence of the rider of the 1st respondent motorcycle and had proceeded to award a compensation of a sum of Rs.29,21,000/- to the petitioners. Though the petitioners had filed Ex.P.8, Salary certificate for the period 2009 till 2013 wherein the gross salary for the month of September 2013



was a sum of Rs.34,347/-, however, the Tribunal has only considered a net salary of Rs.22,050/- for awarding the compensation.

5. The petitioners are aggrieved by the fact that the entire salary of the deceased had not been taken into consideration while awarding the compensation. The salary certificate Ex.P.8 has been filed through P.W.3, the Manager of the company in which the deceased was working. A perusal of the same would show that on 13.09.2013, the last salary drawn was a sum of Rs.34,347/-. Applying the principles of *Sarla Verma's* case reported in 2009 (2) TN MAC 1 *Sarla Verma and Others Vs. Delhi Transport Corporation and Another* only 10% of the income tax payable can be deducted from the gross salary.

6. M/s. R.Vijayakamala, learned counsel for the insurance company on the other hand would submit that the Tribunal below has granted a sum of Rs.1,00,000/- to the 1st petitioner towards loss of consortium as against the sum of Rs.40,000 and likewise a sum of Rs.1,50,000/- has been awarded under the head of loss of love and affection to the petitioners 2 and 3 which has to be reduced to a sum of Rs.80,000/-.The funeral expenses



CMA.No.561 of 2018

have also been excessively granted at the sum of Rs.25,000/- instead of a sum of Rs.15,000/-

7. Heard the learned counsels.

8. Admittedly, the last drawn salary of the deceased was a sum of Rs.34,347/- out of the said amount applying the ratio of the *Sarla Verma's Judgemnt* (supra), 10% has to be deducted towards income tax therefore the income that has to be taken into consideration is a sum of Rs.30,912/-, to this 25% of the notional income has to be added towards future prospects. Therefore the monthly income available would be a sum of Rs.38,640/- and the annual income would be a sum of Rs.4,63,680/- after deducting 1/3 towards personal expenses, the family would be receiving an annual income of Rs.3,09,120/-. Considering the age of the deceased the appropriate multiplier is '14', therefore the loss of income to the family is a sum of Rs.43,27,680/-. A sum of Rs.40,000/- has to be granted to the 1st petitioner under the head of loss of consortium instead of the sum of Rs.1,00,000/-, likewise a sum of Rs.80,000/- has to be given under the head of loss of love and affection to petitioners 2 and 3 instead of the sum of Rs.1,50,000/-.



CMA.No.561 of 2018

Funeral expenses has to be reduced to a sum of Rs.15,000/- and another sum of Rs.15,000 has to be granted under the head of loss of estate.

Therefore, the total compensation awarded is Rs.44,77,680/-.

9. Therefore, the reworked compensation would be as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Income	26,46,000	43,27,680/-	Enhanced
2.	Loss of love and affection and pain and suffering to the 1st petitioner	1,00,000/-	40,000/-	Reduced
3.	Loss of love and affection and pain and suffering to the 1st & 2nd petitioners	1,50,000/-	80,000/-	Reduced
4.	Funeral Expenses	25,000/-	15,000/-	Reduced
5.	Loss of estate	--	15,000/-	Granted
	TOTAL	29,21,000/-	44,77,680/-	enhanced by Rs.15,56,680/-

9. Therefore, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.44,77,680/- from Rs.29,21,000/- together with interest @ 7.5 % per annum from the date of



CMA.No.561 of 2018

petition till the date of deposit. In all other respects the award of the Tribunal

is confirmed. The 2nd respondent/insurance company is directed to deposit the said amount (Rs.44,77,680 /-) to the credit of M.A.C.T.O.P.No. 1070 of 2013 on the file of the Motor Accidents Claim Tribunal, III Additional District Judge, Thiruvallur at Poonamallee together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the petitioners are permitted to withdraw their respective shares as apportioned by the Tribunal below. Since the 2nd petitioner being minor in M.C.O.P.No.1070 of 2013, his respective share of award amount as apportioned by the Tribunal shall be deposited in an interest bearing fixed deposit in any Nationalized bank till he attains majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the guardian/1st claimant once in 3 months directly from the bank. If the minor has attained the age of majority, it is open to him to file a formal petition before the Tribunal to get his share of apportionment. The claimants/petitioners shall pay the Court fee for the enhanced amount, if payable. The Tribunal shall not disburse of the amount



CMA.No.561 of 2018

till such time as the certified copy showing proof of entire payment of Court fee has been produced. No costs. Consequently, the connected miscellaneous petitions is closed.

16.08.2022

Index : Yes/No
Internet: Yes/No
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To

1. The Motor Accidents Claims Tribunal,
III Addl. Dist. Judge, Thiruvallur at Poonamallee.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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CMA.No.561 of 2018

P.T. ASHA, J,

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CMA.No.561 of 2018

16.08.2022