IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.3560 of 2019
and
Cross Obj.No.41 of 2021

C.M.A.No.3560 of 2019

1. V.Saritha Vetrivel
2. V.Isai Nila - Minor
3. V.Harshitha - Minor ...appellants

[Minor petitioners 2 and 3 are rep. by their mother Natural guardian V.Saritha Vetrivel, the 1st petitioner]

Vs.

1. K.Ramakrishnan
(the first respondent was set exparte in Trial Court)
2. The New India Assurance Co. Ltd.,
Regina Mansion, 4th Floor,
No.45, Moore Street, Chennai 600 001.
3. R.Pappammal
4. S.Ramasamy (Died)
...respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment in MCOP.No.3812 of 2014 on the file of the Chief Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai.

For Appellants	:	Mr.C.Richard Suresh Kumar
For Respondents		
for R1	:	Notice dispensed with vide order of this Court, dated 16.02.2023
for R2	:	Mr.J.Chandran assisted by Ms.R.Janani
for R3	:	Mr.Srinath Sridevan, Senior Counsel assisted by Ms.Aishwarya S.Nathan

<u>Cross Obj.No.41 of 2021</u>

1. R.Pappammal
2. S.Ramasamy(Died) ...Cross Objectors

vs

1. K.Ramakrishnan
2. The New India Assurance Co. Ltd.,
   Regina Mansion, 4th Floor,
   No.45, Moore Street, Chennai 600 001.
3. V.Saritha Vetrivel
4. V.Isai Nila - Minor
5. V.Harshitha - Minor

[Minors rep. by their mother and natural guardian V.Saritha Vetrivel] ...Respondents

Prayer: Cross Objection filed under Order XLI, Rule 22 of the Code of Civil Procedure, against the award dated 28.11.2018 made in MCOP.No.3812 of 2014 on the file of the Chief Judge Court of Small Causes, Chennai.

For I cross-objector	:	Mr.Srinath Sridevan, Senior Counsel assisted by Ms.Aishwarya S.Nathan
For Respondents		
for R1	:	Notice dispensed with vide order of this Court, dated 16.02.2023
for R2	:	Mr.J.Chandran assisted by Ms.R.Janani
for RR3 to 5	:	Mr.C.Richard Suresh Kumar

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBRAMANIAN, J]

The claimants in MCOP.No.3812 of 2014 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai have filed the appeal seeking enhancement of the compensation granted at Rs.84,00,000/- for the death of one Vetrivel in a motor accident that occurred on 28.12.2013 at 10.10 a.m. and the Cross Objections has been filed by the parents of the deceased.

2. According to the claimants, while the said Vetrivel was riding the Motorcycle bearing Registration No.TN-03-H-4246 on the proper side of the Ennore High Road from South to North direction, the Tanker Lorry bearing Registration No.TN-04-AL-8312 was driven rash and negligently by its driver overtook the Motorcycle on the left and dashed against the Motorcycle. As a result of the accident, the deceased fell down from the two wheeler and was crushed to death by the right rear wheel of the Tanker Lorry. Attributing the negligence on the part of the Lorry Driver as the cause of the accident and claiming that the deceased was doing flourishing business in Iron and Steel and earning Rs.8,05,361/- per annum, the claimants sought for a compensation of Rs.3,00,00,000/-.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested and there was some negligence on the part of the rider of the two wheeler/deceased. It was also contended that the income projected at Rs.8,05,361/- per annum is highly exaggerated, resulting in inflated claim. The Tribunal found negligence on the part of the Lorry driver and held that he was the cause of the accident.

The said finding has been accepted by the Insurance company and the same is not the subject matter of challenge in the appeal before us.

4. The Tribunal took the monthly income of the deceased at Rs.40,000/-, added 40% towards future prospectus, deducted ¼ towards personal expenses, applied multiplier of 16 and arrived at the total pecuniary loss at Rs.80,64,000/-. It added a sum of Rs.15,000/- each towards Loss of Estate and Funeral Expenses, Rs.40,000/- towards Loss of Consortium and Rs.2,66,000/- towards Loss of Love and Affection. Thus, the Tribunal arrived at the total compensation of Rs.84,00,000/-. It apportioned the compensation between the claimants, who are the wife and children of the deceased and the respondents 3 and 4, who are the parents of the deceased.

5. Aggrieved by the quantum of compensation, the claimants viz., wife and children of the deceased are on appeal. The parents of the deceased have filed cross objection seeking enhancement.

6. We have heard Mr.C.Richard Suresh Kumar, learned counsel for the appellants, Mr.J.Chandran, learned counsel for the Insurance Company and Mr.Srinath Sridevan, learned Senior Counsel for Mr.K.Harishankar for the Cross Objectors. The first respondent, who is the owner of the Lorry had remained ex-parte before the Tribunal and hence notice to him, in this appeal, is dispensed with.

7. The learned counsel for the appellants/claimants as well as the Cross Objectors would in unison contend that fixation of the income at Rs.40,000/- per month by the Tribunal is flawed. Having accepted the income tax returns which were admittedly filed prior to the death of the assessee, viz., Vetrivel, the Tribunal ought not to have reduced the income to Rs.40,000/- on the assumption that the business would not do well.

8. It is the further contention that the adoption of multiplier 16 by the Tribunal is again wrong since the multiplier suggested by the Hon'ble Supreme Court in ***Sarala Varma and others vs. Delhi Transport***

Corporation and another [(2009) 6 SCC 121] for 30 year old person is 17 and not 16.

9. The learned counsel for the Insurance Company would contend that the deceased being a business man, the Tribunal was right in adopting the notional income. He would further point out that the since claimants did not produced the driving licence, which would be the best proof of the age of the deceased, the Tribunal was right in fixing the age between 31 and 35 years.

10. We have considered the rival submissions. As regards the fixation of the age, the Tribunal has found that the charge sheet Ex.P3, postmortem certificate Ex.P4 and the death certificate Ex.P5, show the age of the deceased as 30 years. There is no other contra evidence and there is no variance between those 3 documents, which depict the age of the deceased. In such circumstances, we are unable to accept the reasoning of the Tribunal to fix the age between 31 and 35 only on the ground that the driving licence has not been produced.

11. The Motor Accident Claims Tribunal is not a Civil Court or a Criminal Court, it is a Tribunal, which is meant for the purpose of assessment of compensation for the death or bodily injury caused to the victims of road accidents. Strict rules of evidence should not be applied and proof beyond doubt should not be expected. Hence, if some evidence is available to show that the age of the deceased was 30, The Tribunal cannot fix a different age merely on the ground of some better evidence available has not been produced. We are therefore unable to accept the fixation of the age at 31 to 35 and the consequential adoption of 16 as multiplier. We therefore conclude that the proper multiplier would be 17.

12. As regards the quantum of compensation, the Tribunal has found that both Exs.P8 and P9 relate to the business of the deceased and they were filed before the death of the assessee. Ex.P9, which is the income tax returns for the assessment year 2013-14/financial year 2012-13 and the same would show that the assessed net income was Rs.7,33,260/-. The income for the previous year was shown as Rs.6,26,470/-. The claimants have therefore demonstrated that there is an increase of one lakh and seven thousand in the income in a period of one year. Therefore, the Tribunal

ought to have adopted the income that was reflected by Ex.P9. If we go by Ex.P9, the monthly income of the deceased would be Rs.61,105/-. In the absence of any reason to disbelieve Ex.P9, which is an authentic document, the Tribunal, in our considered opinion ought not to have reduced the income as reflected by Ex.P9. There is yet another reason, which impels us to conclude that the income returns filed during the life time of the deceased must be accepted on the face of it, as no person would show a higher income and pay higher tax expecting some untoward incident would happen in future. Normally income tax returns show much lesser income than the actual in case of non salaried persons. We are therefore convinced that the Tribunal fell in error in adopting the monthly income at Rs.40,000/-. As we have pointed out the monthly income as reflected in Ex.P9 as Rs.61,105/-. We take the monthly income at Rs.60,000/-. If we take the monthly income of the deceased at Rs.60,000/-, apply 40% increase as suggested by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]*** and adopt the multiplier of 17, the total loss of Dependency would be Rs.1,28,52,000/- [(60,000 + 40%) x 12 x 17 x 3/4]. The Tribunal has awarded Rs.15,000/- each for the Loss of Estate and Funeral Expenses and

Rs.40,000/- towards Loss of Consortium. We confirm the award under those heads. The award towards Loss of Love and Affection at Rs.2,66,000/- is on the higher side. We have to adopt the fixation made by the Hon'ble Supreme Court in ***Pranay Sethi (referred to above).*** Therefore, the compensation towards Loss of Love and Affection would be only at Rs.1,60,000/- at Rs.40,000/- each for 2 children and the parents. The total compensation therefore would be Rs.1,30,82,000/-.

13. It is stated that the father of the deceased, who is the fourth respondent in the appeal, is no more and the Insurance Company had deposited the entire amount as awarded by the Tribunal and the major claimants have withdrawn their respective shares as apportioned by the Tribunal. The enhanced compensation works out to Rs.46,82,000/- and the same is apportioned as follows:

> The third respondent/mother of the deceased will take Rs.4,82,000/- with proportionate interest at 7.5% per annum from the date of the claim petition till the date of deposit. The remaining Rs.42,00,000/-, is apportioned equally at Rs.14,00,000/- each between the wife and the 2 minor children.

They will also be entitled to proportionate interest at 7.5%. The Insurance Company is granted 12 weeks time to deposit the enhanced compensation. On such deposit, the major claimants, viz., mother and wife of the deceased are permitted to withdraw their share of compensation. The share of the minors shall be kept in fixed deposit in a National Bank till they attain majority and the fixed deposit shall be with an auto renewal clause. Considering the fact that the mother of the minors has been awarded with Rs.39,00,000/- [Rs.25,00,000/- + Rs.14,00,000/-], we are not permitting her to withdraw the interest from the fixed deposit.

14. We find that the claimants have restricted the claim to a further sum of Rs.30,00,000/- lakhs over and above what has been awarded by the Tribunal and paid Court fee on that in the appeal. Normally, we should direct them to pay the Court fee on the excess enhancement amounting to Rs.16,82,000/-, but we find that the cross objectors have paid Court fee for a sum of Rs.20,00,000/-. Therefore, the claimants and the cross objectors put together have paid Court fee for Rs.50,00,000/- and we have enhanced

the compensation only by Rs.46,82,000/-. Therefore, we do not see any need to direct payment of further Court fee. Accordingly, both the Appeal and Cross Objection are partly allowed. No costs.

(R.S.M.J.,) (K.G.T.J.,)
16.02.2023

Index : No
Speaking order: Yes
pvs

To
1. The Chief Judge, Court of Small Causes,
   Motor Accidents Claims Tribunal, Chennai
2. The Section Officer,
   VR Section High Court, Madras.

R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

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