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C.M.A.No.431 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.431 of 2017

- 1.Valli
- 2.Minor S.Pushpaganapathy,
Rep by his mother/first appellant
- 3.K.Adhimal

...Appellants

Vs

- 1.K.Saravana Velu
- 2.Iffco Tokyo General Insurance Co. Ltd.,
No.28 (Old No.195), North Usman Road,
T.Nagar, Chennai 600 017.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount with interest at the rate of 18% per annum and costs.

For Appellant : Mr.C.Munusamy

For Respondents : Mr.L.Micheal Visvasam for R2
Notice not ready for R1



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JUDGMENT

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The Civil Miscellaneous Appeal was filed to enhance the award amount with interest at the rate of 18% per annum

2. The learned counsel appearing for the appellant would submit that the as per the Ex.P6, the deceased, who died due to the accident occurred on 25.12.2010, was working as Gangman Mazdoor at the office of Tamil Nadu Highways Department and at the time of death, he was about 35 years old and he was drawing a salary of Rs.11,256/-. With regard to the same, a documentary evidence was produced before the Tribunal and the same was marked as Ex.P6. Further, it appears that he was paying a sum of Rs.4,575/- towards the home loan along with GPF and the said amount was deducted by the Tribunal while awarding the compensation. According to the learned counsel for the appellant, the said amount has to be included and thereafter only the compensation should be awarded.

3. He would further contend that the compensation awarded under the head “love and affection” to the second and third respondents herein is on the



lower side and the Tribunal had awarded the funeral expenses only to a sum of Rs.5,000/- and no amount was awarded for loss of estate and transportation.

Hence, this appeal.

4. On the other hand, the learned counsel appearing for the insurance company/second respondent had strongly objected the submissions made by the learned counsel for the appellant and further, questioned about the veracity of Ex.P6. He would further submit that since Ex.P6 is not supported by evidences, the employment of the deceased as Gangman Mazdoor at the office of Tamil Nadu Highways Department is doubtful. Hence, he prays for the dismissal of this petition.

5. In reply, the learned counsel appearing for the appellant would request this Court to fix the notional income and award compensation based on the Ex.P6 and with regard to all other heads, he requests this Court to award compensation as per the law laid down in the judgement in ***Sarla Verma & others vs. Delhi Transport Corporation & another*** reported in ***2009 (2) TNMAC 1 SC***.



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6. I had given due consideration to the submissions made by the learned counsel for the appellant as well as the respondent.

7. As per Ex.P6, the deceased was receiving a sum of Rs.11,256/- as salary and the same was proved by the document, which was produced and marked through PW1 as Ex.P6. Further, PW1 had categorically stated that her husband as working as Gangman Mazdoor at the office of Tamil Nadu Highways Department at the time of death and PF contribution and loan repayment was also made by him and hence, it is an admitted fact. Therefore, I do not find any error in the order passed by the Court below with regard to the consideration of Ex.P6. However, the Tribunal ought not to have deducted a sum of Rs.4,575/-, which was contributed towards the PF and home loan by the deceased. Since these are all the income of the deceased, the same has to be considered by the Trial Court while awarding compensation.

8. In view of the above, this Court is inclined to take the income of the deceased as a sum of Rs.11,256/- at the time of accident. Since there are three



dependents in the family of deceased, towards his personal expenses $\frac{1}{3}^{\text{rd}}$ of the amount has to be deducted i.e., Rs.3,752/-. After deducting the said amount, the loss of income for the dependents would come around a sum of Rs.7,504/- (Rs.11,256 – Rs.3,752). Further, the Court below had not included the future prosperous as per the law laid down in *Sarla* case. Therefore, in the present case, this Court is inclined to include 40% towards future prosperous. By adding 40%, the loss of income per month would be a sum of Rs.10,505/-. In the present case, the multiplier applicable is '16' and hence, the loss of income for the dependents of the deceased will be calculated as follows:

$$\text{Rs.}10505 \times 12 \times 16 = \text{Rs.}20,16,960/-.$$

9. Further, the Tribunal had awarded a sum of Rs.20,000/- towards loss of love and affection to the second and third appellants, who were son and mother of the deceased and Rs.10,000 towards loss of consortium to the first appellant, who is the wife of the deceased. However, as per the law laid down in *Sarla* case, they are entitled for a sum of Rs.40,000/- each and hence, the loss of love and affection would come around Rs.1,20,000/- (Rs.40,000*3).



WEB COPY 10. That apart, this Court is inclined to award a sum of Rs.15,000/- towards funeral expenses, a sum of Rs.15,000/- towards loss of estate and a sum of Rs.10,000/- towards transportation. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Loss of income	7,04,000	20,16,960
2	Loss of consortium (to wife of the deceased)	10,000	40,000
3	Loss of love and affection (to the mother and son of the deceased)	20,000	80,000
4	Funeral expenses	5,000	15,000
5	Loss of estate	0	15,000
6	Transportation	0	10,000
	Total	7,39,000	21,76,960

11. The modified amount of a sum of Rs.21,76,960/- is rounded off to a sum of Rs.21,77,000/-. Accordingly, the compensation awarded by the Tribunal is hereby increased from Rs.7,39,000/- to Rs.21,77,000/-. In all other aspects, the award of the Tribunal stands confirmed.



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12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,39,000/- is hereby enhanced to Rs.21,77,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant is permitted to withdraw her share i.e a sum of Rs.14,00,000/-, of the award amount, along with interest and costs, less the amount if any, already withdrawn and the 3rd appellant is permitted to withdraw her share i.e., a sum of Rs.3,77,000/-, of the award amount, along with interest and costs, less the amount if any, already withdrawn. The share of the minor 2nd appellant i.e a sum of Rs.4,00,000/- is directed to be deposited in any one of the Nationalised Bank till he attains majority. The 1st appellant being the mother of the minor is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The Tribunal is directed to transfer the



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share of the 1st and 3rd appellants by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application made by the 1st and 3rd appellants for withdrawal, whichever is earlier. No costs.

13. On perusal, it appears that there was a delay in filing the petition for a period of 253 days. Therefore, it is made clear that the appellants are not entitled for the interest at the rate of 7.5% for the said delayed period of 253 days.

06.07.2023

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order
nsa

To:

The Motor Accident Claims Tribunal,
Special District Court, Villupuram.



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KRISHNAN RAMASAMY,J.

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