

**(2013) 09 MAD CK 0283****Madras High Court****Case No:** Civil Miscellaneous Appeal No. 2259 of 2010

Hemalatha and Others

APPELLANT

Vs

S. Chandrasekaran and Another

RESPONDENT

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**Date of Decision:** Sept. 4, 2013**Citation:** (2013) 7 MLJ 360**Hon'ble Judges:** R. Subbiah, J; R. Banumathi, J**Bench:** Division Bench**Advocate:** R. Syed Mustafa, for the Appellant; M. Krishnamurthy, for the Respondent

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**Judgement**

R. Banumathi, J.

Being dissatisfied with the quantum of compensation of Rs. 13,48,000/- awarded by the Tribunal for the death of Selva in a road traffic accident on 19.4.2002, Claimants have preferred this appeal for enhancement. Brief facts are that on 19.4.2002 at about 3.30 P.M., deceased Selva was driving his Car bearing Registration No. TN-27 D 4966 from Coimbatore to Salem along with PW. 2-Ramadoss. When he was nearing Teen Engineering Works, Perumanallur, the lorry bearing Registration No. TN-37 Z 0829, belonging to the 1st Respondent and insured with the 2nd Respondent Insurance Company driven by its driver in a rash and negligent manner in the opposite direction, dashed against the Car. Due to the impact, Selva sustained grievous injuries and died on the spot and the car was damaged. At the time of accident, deceased Selva was aged 45 years and was doing Textile business and was earning Rs. 75,000/- per month. Regarding the accident, a Criminal Case was registered against the lorry driver in Crime No. 81 of 2002 under Sections 279 and 304(A) I.R.C. of Perumanallur Police Station. Alleging that the accident was due to rash and negligent driving of the lorry driver, Claimants who are wife and sons of deceased Selva have filed the Claim Petition claiming compensation of Rs. 50,00,000/-.

2. Resisting the Claim Petition, 2nd Respondent-Insurance Company filed counter contending that the accident occurred only due to the reckless act of the deceased

and the 2nd Respondent Insurance Company is not liable to pay compensation. 2nd Respondent-Insurance Company denied the age, monthly income of deceased and that the compensation claimed is highly excessive.

3. Before the Tribunal, 1st Claimant-Hemalatha examined herself as P.W. 1. Eye-witness-Ramadoss was examined as P.W. 2. Surveyor of 2nd Respondent Insurance Company, viz., D. Ravichandran was examined as P.W. 3 One Ravi, Auditor of the deceased was examined as P.W. 4. Exs. A1 to A38 were marked on the side of Claimants. On the side of 2nd Respondent Insurance Company, no oral and documentary evidence was adduced.

4. Upon consideration of evidence of P.W. 2-eye witness and referring to Ex. A1-FIR registered against the lorry driver, Tribunal held that the accident was due to rash and negligent driving of the lorry driver and that 2nd Respondent-Insurance Company is liable to pay compensation to Claimants. Insofar as quantum of compensation, considering the educational qualification and experience of the deceased in the Textile Trade and visited various countries and also working as Inspector in Textiles Committee for some time and then started the Export business, Tribunal had fixed the monthly income of the deceased at Rs. 12,000/-. Deducting one-third for personal expenses and adopting multiplier "13", Tribunal has calculated the loss of dependency at Rs. 12,48,000/-. Adding conventional damages, Tribunal has awarded total compensation of Rs. 13,48,000/- as under:-

Challenging the quantum of compensation awarded by the Tribunal, Claimants have preferred this appeal.

5. Mr. R. Syed Mustafa, learned counsel for Claimants has contended that Tribunal erred in rejecting Exs. A24 to A29 -- Income Tax Returns of the deceased which discloses the income of the deceased and without properly analysing Exs. A24 to A29, Tribunal has given a finding that the Income Tax Returns are only self assessment and do not disclose the actual income of the deceased. Learned counsel further submitted that the monthly income taken by the Tribunal is very low and prayed for enhancement of compensation.

6. Mr. M. Krishnamoorthy, learned counsel for 2nd Respondent Insurance Company by supporting the Award passed by the Tribunal submitted that since no other supporting document is filed by Claimants to prove the income of deceased, except Exs. A24 to A29 Income Tax Returns, Tribunal has rightly fixed the notional income of deceased and arrived at a reasonable compensation. Learned counsel for 2nd Respondent Insurance Company pointed out that Ex. A28 income tax Return shows that there was loss in the business of the deceased and prayed that the compensation awarded by the Tribunal is reasonable warranting no interference.

7. In her evidence, P.W. 1 has stated that her husband had studied Diploma in Textile Technology and was initially working in Madura Coats for two years and was getting salary of Rs. 2500/- per month. Thereafter, he was working as Inspector in

Textile Committee, which is a Government organisation for five years and was earning Rs. 4000/- per month and was also working as Inspector in Textile Committee in Delhi, Bombay and Madurai and thereafter, he resigned his job and started Export business. Ex. A7 is the course completed certificate issued by State Board of Technical Education and Training, Tamil Nadu. Ex. A8 is the Identity card issued by the Textiles Committee. In her evidence, P.W. 1 further stated that her husband was running the Export business for 17 years in the name of M/s. Wovens India. To prove that deceased Selva was running Export business in the name and style of M/s. Wovens India, P.W. 1 produced Ex. A9-Certificate issued by the Deputy Chief Controller of Imports and Exports, Government of India, Ministry of Commerce wherein the Export Code Number is mentioned as F. No. IEC/882/92-93. Ex. A10 is the Certificate of Registration issued by the Commercial Tax Officer, Gugai Circle in the name of R. Selva "Wovens India". In her evidence, P.W. 1 stated that at the time of accident her husband was also working as Partner in M/s. Hand Tex India, Karur. Exs. A18 and A19 are the Registration Certificate issued by the Directorate of Industries. In her evidence, P.W. 1 stated that through his Export business and partner in M/s. Hand Tex India, Karur, her husband was earning Rupees One lakh per month and he was an income tax assessee. Ex. A23 is the PAN Card of deceased. Exs. A24 to A29 are the Income Tax Returns for the years 1996-97 to 1999-2000.

8. The Auditor of deceased was examined as P.W. 4. In his evidence, P.W. 4 had spoken about the income derived from the business and filing of Income Tax Returns before Income Tax Authority on behalf of deceased. In his evidence, P.W. 4 stated that during assessment year 1999-2000, (Ex. A28) the total taxable income of deceased was assessed by the Department at Rs. 9,83,330/- by issuing Assessment Order and the tax payable was stated as Rs. 4,86,869/- and deceased had paid advance tax of Rs. 4,12,014/-.

9. Based on Exs. A24 to A29 Income Tax Returns and also the Income Tax Receipts for the year 1996-97 to 1999-2000, it is seen that the deceased was doing Export business and had a huge turn over and also earned huge income. Ex. A27 is the SARAL Form for the year 1999-2000. By perusal of Ex. A27, it is seen that deceased is said to have suffered loss of Rs. 1,91,895/-. By perusal of Ex. A28 Assessment Order (dated 26.3.2002), it is seen that deceased had put up a building of four floors and income from other source is stated as Rs. 11,08,777/-. Of course, deceased had stated that he had obtained a Bank loan. Date of accident is 19.4.2002. Even though Claimants have not produced any documents for the relevant period of accident to show that deceased was earning more than Rupees One lakh per month, having regard to the avocation of the deceased and income derived from the business as well, as from other source, as seen from Exs. A24 to A29-Income Tax Returns and also evidence of P.W. 4-Auditor of deceased, we are of the view that the notional income taken by Tribunal at Rs. 12,000/- is very low.

10. Learned counsel for Claimants submitted that deceased was earning income of more than Rs. 22 Lakhs to Rs. 25 Lakhs per annum and therefore, the income should have been fixed at least at Rs. 35,000/- to Rs. 50,000/- per month. By perusal of records, it is seen that the wife of deceased 1st Claimant-Hemalatha is the Proprietrix of M/s. R.R. Textiles, Salem. Claimants 2 and 3 are grown up sons of deceased. Even after the death of deceased, Claimants can carry on family business. Having regard to the income of deceased and nature of business and considering the submission of learned counsel for 2nd Respondent Insurance Company that Claimants themselves can carry on business, we are of the view that it will be reasonable to fix the income of the deceased at Rs. 16,500/- per month. Deducting one-third for personal expenses i.e. Rs. 5,500/- (Rs. 16,500/- Rs. 5,500 = Rs. 11,000/-), the monthly contribution to the family is calculated at Rs. 11,000/- per month i.e. Rs. 1,32,000/- per annum.

11. As pointed out earlier, accident occurred on 19.4.2002. As per Ex. A30 Passport and Ex. A32-Driving Licence, the date of birth of deceased was mentioned as 04.09.1954 and that deceased was aged 48 years at the time of accident. As per II Schedule to M.V. Act, for the age group 45-50, the proper multiplier to be adopted is "13", which the Tribunal has rightly adopted. Adopting multiplier "13", the total "loss of dependency" is calculated at Rs. 17,16,000/- (Rs. 1,32,000 x 13 = Rs. 17,16,000/-).

12. Insofar as conventional damages, Tribunal has awarded Rs. 10,000/- towards Loss of Consortium. At the time of accident, 1st claimant was aged 40 years and she had lost the love and affection of her husband for the rest of her life. Having regard to fact that 1st Claimant has lost her husband at the age of 40 years, compensation of Rs. 10,000/- awarded by the Tribunal for "loss of consortium" is enhanced to Rs. 50,000/-. Tribunal has not awarded any amount to Claimants 2 and 3 towards "loss of love and affection". Considering the age of Claimants 2 and 3 and that they have lost the love and affection of their father at their young age, we are of the view that it would appropriate to award a sum of Rs. 1,00,000/- for "loss of love and affection" to Claimants 2 and 3.

13. Tribunal has awarded Rs. 5,000/- towards "funeral expenses" and Rs. 10,000/- towards "loss of estate" and the same are maintained. Based upon the evidence, Tribunal has awarded Rs. 75,000/- for "damages suffered by Car" which the deceased was driving and the same is confirmed. Thus, total compensation of Rs. 13,48,000/- awarded by the Tribunal is enhanced to Rs. 19,56,000/- as under:-

Tribunal has awarded interest at the rate of 6% per annum and the same is maintained. The enhanced compensation of Rs. 19,56,000/- is to be apportioned amongst the Claimants 1 to 3 as

(i) 1st Claimant is entitled to Rs. 10,00,000/-;

(ii) 2nd Claimant is entitled to Rs. 4,78,000/-;

(iii) 3rd Claimant is entitled to Rs. 4,78,000/-.

In the result, the compensation of Rs. 13,48,000/- awarded by the Tribunal in M.C.O.P. No. 1442 of 2002 dated 25.01.2010 is enhanced to Rs. 19,56,000/- and the appeal is partly allowed.

It was stated before us that 2nd Respondent-Insurance Company has deposited the compensation awarded by Tribunal along with accrued interest. Claimants are permitted to withdraw their respective share of compensation lying in court deposit along with proportionate interest as apportioned, immediately after the receipt of copy of this judgment. 2nd Respondent-Insurance Company is directed to deposit the enhanced compensation of Rs. 6,08,000/- along with accrued interest at the rate of 6% per annum within a period of eight weeks from the date of Claim Petition till the date of deposit (excluding the period of default, i.e., from 08.9.2006 to 27.01.2008). On such deposit, Claimants are entitled to withdraw their respective share of enhanced compensation with proportionate interest as apportioned.

There is no order as to costs.