

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.10.2015

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

C.M.A. No. 551 of 2011

D. Arumugam

... Appellant/Petitioner

Vs

1. H.Mohamed Sulthan
2. United India Insurance Company Ltd.,
171/E, RKS Complex, Nehruji Road
Villupuram - 605 602.
3. K.Rajagopal
4. National Insurance Company Ltd.,
11/289, Ramakrishna Road, Salem - 7 ... Respondents /
Respondents

(R1 & R3 were set exparte before tribunal,
hence notice may be dispensed with)

Prayer : Appeal filed under Section 173 of the Motor Vehicles Act 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No.1588 of 2005 on the file of the Motor Accident Claims Tribunal cum 1st Additional District Court, Salem dated 20.8.2010.

For Appellant	:	Mr.C.Kulanthaivel
For R2	:	No Appearance
For R4	:	Mr.D.Bhaskaran
For R1 and R3	:	Given up

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal in a sum of Rs.1,00,000/- for the death of one Viji @ Vijaya Gandhi in a road accident that occurred on 07.9.20015, the appellant, who is the husband of the deceased has come up with the above Civil Miscellaneous appeal seeking enhancement of the compensation.

2. Brief facts, which are necessary for disposal of this Appeal are as follows:-

(i) On 07.9.2005, while the deceased along with others were going towards Palani from Minnampalli, Salem district in a van bearing registration No.TN 27 R 1575 at about 2.30 a.m. near Vinayaga Mission Dental Hospital on Salem - Sankari Main road, a lorry bearing Registration No.TN 28 Y 5335 came on the opposite direction and both the vehicles had collision, which resulted in death of three persons including the deceased, namely, Viji @ Vijaya Gandhi. Alleging that the accident was due to rash and negligent driving of the lorry driver, the appellant, who is the claimant, filed a claim petition before the Tribunal claiming compensation in a sum of Rs.10,00,000/-.

(ii) The Tribunal, on considering the oral and documentary evidence, has awarded a sum of Rs.1,00,000/-, which is under challenge in this appeal seeking enhancement of the compensation.

2. Both sides did not dispute the liability and they restricted their arguments only with regard to the quantum awarded.

3. The learned counsel for the Appellant-Claimant submitted that the Tribunal has awarded only a consolidated amount without taking into consideration the age of the wife. The learned counsel further submitted that the deceased was aged about 23 years at the time of accident and her husband was 35 years old. The learned counsel also submitted that the deceased was working as silk weaver and was earning a sum of Rs.5,000/- p.m. It is submitted that though the claimant claimed a sum of Rs.10,00,000/- the Court below has awarded only a consolidated amount of Rs.1,00,000/- which is not correct. It is further submitted that till date, the appellant is not remarried. It is also submitted that the dependency cannot be equated in terms of money. Therefore, it is submitted by the learned counsel that the appeal may be allowed.

4. The learned counsel for the fourth respondent / Insurance company would contend that as the claimant is the husband of the deceased, the question of dependency will not arise and hence, the Court below has rightly granted the consolidated amount of Rs.1,00,000/-.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. On a careful consideration of the entire records, it is seen that the deceased is the wife of the appellant herein and she died at the age of 23 years. The claimant/ appellant was 32 years at the time of accident. The appellant claims that his wife was earning Rs.5,000/- p.m. However, no specific document has been produced by him to substantiate the same. But on a careful perusal of the entire evidence, it is clear that

the deceased was working. It is the submission of the learned counsel for the appellant that even though the claimant has not produced any records to prove that his wife was working, as per the decision of the Hon'ble Supreme Court in ARUN KUMAR AGARWAL AND ANOTHER v. NATIONAL INSURANCE COMPANY AND OTHERS (2010 (3) TNLJ 385 (Civil), even for a house wife, compensation should be given because she takes care of the entire house and the value of the house wife cannot be equated in terms of money. Even if the Court comes to the conclusion that there was no documentary evidence that the deceased was working, yet even as a house wife, she should be granted compensation.

7. In this case, the appellant/claimant has lost his wife at the prime age. It is the admitted fact that till date the appellant is not remarried. Therefore, even assuming for a moment that she is a house wife and not a earning member, definitely her contribution as wife should be taken in to consideration. In fact, this fact has been very clearly established in the decision of the Division Bench of this Court reported in NATIONAL INSURANCE CO.LTD. v. MINOR DEEPIKA, REP.BY HER GUARDIAN AND NEXT FRIEND RANGANATHAN AND OTHERS (2009 (6) MLJ 1005), wherein the Division Bench has categorically held that "the value of house wife cannot be equated in terms of money". Further the said decision of the Division Bench has been appreciated by the Hon'ble Supreme Court in the decision in ARUN KUMAR AGRAWAL AND ANOTHER V. NATIONAL INSURANCE COMPANY AND OTHERS (2010 (3) TNLJ 385), wherein they have also categorically discussed the above judgment in regard to the quantum to be arrived at and the multiplier to be adopted.

8. Therefore, I am of the view that the consolidated amount granted by the Tribunal is not correct. The Court below ought to have awarded loss of earning at the rate of Rs.6,000/-. Considering the submission made by the learned counsel for the respondents that 50% has to be reduced towards loss of earning as dependency cannot be claimed by the husband, I am inclined to deduct 1/2 instead of 1/4 towards personal expenses. Accordingly, a sum of Rs.3,000/- is fixed as income of the deceased. Since the deceased was aged about 23 years at the time of accident, I am inclined to fix multiplier 16. Accordingly, a sum of Rs.5,76,000/- (Rs.3,000x12x16=Rs.5,76,000/-) is fixed towards loss of earning. Insofar as loss of consortium is concerned, the appellant has lost his wife at the prime age and he has not remarried till date. Therefore, a sum of Rs.50,000/- is awarded towards loss of consortium. For funeral expenses and transportation, a sum of Rs.10,000/- each is awarded. Therefore, totally a sum of Rs.6,46,000/- is awarded towards compensation. The award will carry interest at the rate of 7.5% from the date of petition as ordered by the Court below.

9. In the result, the appeal is partly allowed. No costs. The respondents 2 and 4 are directed to deposit the enhanced amount of Rs.6,46,000/-, less the amount already deposited, if any, to the credit of MCOP No.1588 of 2005 on the file of the learned Motor Accident Claims Tribunal cum 1st Additional District Court, Salem, within a period of eight weeks from the date of receipt of a copy of this order along with interest at the rate of 7.5% from the date of petition. It is needless to state that on such deposit being made, the appellant/claimant is entitled to withdraw the entire compensation amount along with interest, less the amount already withdrawn, if any, on making out a proper application before the court below.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
I Additional District Court, Salem

+1 cc to Mr.C.Kulanthaivel Advocate sr.56990

+1 cc to Mr.D.Baskaran Advocate sr.57261

C.M.A. NO.551 of 2011

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