

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. 552 of 2011

1. Nachimuthu
2. Ravi
3. Ganesan
4. Karuppusamy

... Appellants/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
the 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.1589 of 2005 on the file of the Motor Accident Claims Tribunal cum 1st Additional District Court, Salem dated 20.8.2010.

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

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J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal in a sum of Rs.2,26,000/- for the death of one Mani in a road accident that occurred on 07.9.20015, the appellants, who are the husband and children 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 Mani. Alleging that the accident was due to rash and negligent driving of the lorry driver, the appellants, who are 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 Appellants-Claimants submitted that the Tribunal has awarded only a meagre sum of Rs.2,26,000/- towards compensation. The learned counsel further submitted that the deceased is aged about 52 years at the time of accident and her husband /first respondent was 58 years old. The learned counsel also submitted that the deceased was carrying on milk vending business and she was earning a sum of Rs.7,000/- p.m, but the Court below has taken only a sum of Rs.1,500/- p.m as income of the deceased without any basis. The learned counsel further submitted that the Court below has awarded only a sum of Rs.5,000/- towards consortium, which is also very less. 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 the question of dependency will not arise in this case as the first appellant is the husband of the deceased and aged about 55 years and the appellants 2 to 4, who are the children of the deceased, are also major at the time of accident. Therefore, considering the age of the husband and children, the Court below has rightly awarded compensation and hence, no interference is warranted in this appeal.

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

6. On careful consideration of the entire records, it is seen that the appellants 2 to 4 are above 30 years and hence, the question of dependency will not arise. Therefore, no

compensation shall be awarded to them under the said head. Insofar as the first appellant/ husband is concerned, admittedly he host his wife and till date he has not remarried. No doubt, he is aged about 55 years at the time of accident. He claims that his wife was earning Rs.7,000/- 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 appellants that even though the appellants/ claimants have 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. 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 into 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 and acknowledged by the Supreme Court in the latest 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 amount fixed by the Tribunal at Rs.1500/- p.m is not correct. The Court below ought to have awarded loss of dependency at the rate of Rs.2,500/-. Accordingly, a sum of Rs.2,500/- is fixed as income. Since the deceased was aged 52 years at the time of accident, I am inclined to fix multiplier 11. Accordingly, a sum of Rs.3,30,000/- (2500x12x11=Rs.3,30,000/-) is fixed towards loss of earning instead of Rs.1,98,000/- awarded by the Court below. Insofar as loss of consortium is concerned, the Court below has awarded only a meagre sum of Rs.5,000/-. Considering the fact that the appellant has lost his wife and he has not remarried till date, I am inclined to enhance the same to Rs.25,000/-. Accordingly, a sum of Rs.25,000/- is awarded under the head loss of consortium. The Tribunal has awarded a sum of Rs.20,000/- towards loss of love and affection, which is also very low. It

is needless to state that the death of the person cannot be equated in terms of money. Therefore, a sum of Rs.10,000/- each (totally Rs.40,000/-) is awarded under the head loss of love and affection. For funeral expenses, the Court below has awarded a sum of Rs.3,000/-, which is also very low. Therefore, the same is enhanced to Rs.10,000/-. For transportation, the Court below has not awarded any amount. Hence, a sum of Rs.5,000/- is awarded under the head transportation. In total, a sum of Rs.4,10,000/- 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 are directed to deposit the enhanced amount of Rs.4,10,000/-, less the amount already deposited, if any, as per the apportionment ordered by the Tribunal to the credit of MCOP No.1589 of 2005 on the file of the learned Motor Accident Claims Tribunal cum 1st Additional District Court, Salem, within a period of four 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 appellants/claimants are entitled to withdraw the entire compensation amount along with interest as per the apportionment fixed by the Court below, 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.56989

+1 cc to Mr.D.Baskaran Advocate sr.56989

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