

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.310 of 2014

1.Selvi
2.Minor K.Sathiya
3.Minor K.Elavarasi
(Minors 2 and 3 are rep. by their mother and
next friend the first appellant)
4.Chinnappan ... Appellants/Petitioners

Vs.

1.M.Mani
2.Royal Sundaram Alliance Insurance Company Ltd.,
No.36, Krishnarao Tank Road,
T.V.S. Co- operative Store Building,
Madurai-1. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 20.04.2012 made in M.C.O.P.No.941 of 2010 on the file of Motor Accident Claims Tribunal, (Principal District Judge), Dharmapuri.

For Appellants : Mr.S.Sathiaseelan

For Respondents : Mr.M.B.Raghavan for R-2

JUDGMENT

This appeal has been preferred by the claimants, aggrieved over the quantum of Rs.5,34,000/- awarded by the Tribunal, for the death of one Kuppusamy, aged about 44 years, said to be earning a sum of Rs.7,500/- per month, doing agriculture as well as milk business, in the accident, which occurred on 27.10.2010.

2. Heard Mr.S.Sathiaseelan, learned counsel appearing for the appellants/claimants and Mr.M.B.Raghavan, learned counsel appearing for the 2nd respondent Insurance company. The only question to be decided with regard to the quantum of compensation as the appellants/claimants alone has come before this Court.

3. Though many authorities have been cited by both the parties in support of their contentions that the amount determined by the Tribunal is on the lower side as per the contention of the learned

counsel appearing for the appellants/claimants and reasonable amount was correctly fixed by the Tribunal as per the contention of the learned counsel appearing for the second respondent Insurance Company, this Court is not inclined to go into the details of the judgments.

4. The deceased was said to be doing agricultural work as well as milk business. There is no proof to show that he was doing both the business and earning a sum of Rs.7,500/-, except Ex.P10 sale seed and the evidence of P.W.3. Admittedly, the accident occurred on 27.10.2010. In the absence of any material evidence with regard to the income, in view of the judgment of the Hon'ble Supreme Court in SYED SADIQ Vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD., reported in 2014(1) TN MAC 459 (SC), wherein, for a vegetable vendor, the monthly income was determined at Rs.6,500/- and added future prospects 50% and arrived at Rs.9750/- with regard to the accident which occurred in 2008 and considering the accident occurred in this case in 2010, this Court is inclined to follow the said judgment. Therefore, the monthly income of the deceased is fixed at Rs.6,500/-. As the deceased was aged about 44 years, as per the Judgment of the Hon'ble Supreme Court in RAJESH AND OTHERS Vs. RAJBIR SINGH AND OTHERS reported in [2013 (9) SCC 54], 30% is added towards future prospects and the monthly income is arrived as follows:-

$$6500/- + 30\% = 8666/-$$

5. As the size of the family is 4, $1/4^{\text{th}}$ is required to be deducted towards personal expenses of the deceased. Accordingly, the loss of income would be $\text{Rs.}6,500 + 30\% - 1/4^{\text{th}} = 6494.50$. As the age of the deceased was 45, the appropriate multiplier is 14 and the loss of income is determined as follows:-

$$6500/- + 30\% - 1/4^{\text{th}} \times 12 \times 14 = 10,91,916.$$

6. A sum of Rs.5,000/- alone was awarded towards loss of consortium to the first appellant/wife, who was aged about 34 years at the time of accident. The widow has to undergo psychological agony and pain, because of loss of companionships of the husband throughout her life and she has to be compensated. Therefore, following the Judgment of the Hon'ble Supreme Court in RAJESH (supra), a sum of Rs.1,00,000/- is awarded towards loss of consortium.

7. The 2nd and 3rd appellants are minor children and 4th appellant is the mother of the deceased and therefore a sum of Rs.5,000/- each awarded towards loss of love and affection is too low and the same is enhanced to Rs.75,000/-. Further, a sum of Rs.10,000/- awarded towards funeral expenses and transportation is too low, as per the Judgment of the Hon'ble Supreme Court in RAJESH (supra), a sum of Rs.25,000/- is awarded towards funeral expenses and Rs.10,000/- is awarded towards transportation.

8. The award of Rs.5,34,000/- is enhanced to Rs.13,01,916/- rounded to Rs.13,00,000/- along with interest at the rate of 7.5% p.a.

9. The second respondent Insurance Company is directed to deposit the entire award amount, minus the amount already deposited if any, along with interest at the rate of 7.5% p.a. and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants 1 and 4 are permitted to withdraw their respective share of the award amount, as per the ratio fixed by the Tribunal, within a period of two weeks thereafter. As far as the minors' shares are concerned, the same shall be deposited in an interest bearing Fixed Deposit in any one of the Nationalized Bank, till they attain majority, within a week after the deposit of the award amount. The 1st claimant is permitted to withdraw interest accruing on such deposit once in three months. The appellants are directed to pay the additional Court fee as per the order of this Court for enhancement, within a period of two weeks before this Court.

10. In the result, the civil miscellaneous appeal is allowed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

Copy to:

1.The Section Officer,
V.R.Section,
High Court, Madras.

2.The A.E.Section,
High Court, Madras.

+1 cc to Mr.S.Sathiaseelan, Advocate, SR.17365

+1 cc to Mr.N.Vijayaraghavan, Advocate, SR.17512.

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