



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.36 of 2013

1.Sabeetha
2.Minor Suji
3.Minor Divya
4.Minor Jagadeesh
5.Mariammal ... Appellants/Claimants
(minors 2 to 4 represented by next friend
and Ist Respondent mother)

vs.

1.Thirunavukarasu
2.The Divisional Manager,
The United India Insurance Company
No.46, Katpadi Street,
Vellore. ... Respondents / Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the order and judgment dt.31.07.2006 in MCOP No.1107 of 2002 on the file of Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

For Appellants : Mr..F.Terry Chellaraja
For Respondents : Mr.C.R.Krishnamoorthy
for R2

JUDGMENT

The appeal has been preferred by the claimants against the quantum of Rs.3,52,000/- granted as compensation for the death of one Ezhumalai, aged 31 years, a mason stated to have been earning a sum of Rs.5,000/- per month, who died in the accident occurred on 16.08.2002.

2. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellants/claimants and Mr.C.K.Krishnamoorthy, learned counsel appearing for the second respondent/insurance company.



3. The tribunal, taking into consideration daily wage of Rs.100/- per day for a mason, calculated Rs.2500/- per month as the monthly income of the deceased. After deducting 1/3rd towards personal expenses and adopting multiplier 17, determined the loss of income at Rs.3,40,000/-. The said determination is on the lower side. Even in respect of an accident which occurred during 90's, the Honourable Apex Court, in the absence of any proof regarding income of the victim, in New India Assurance Company Limited V. Smt.Kalpna and Others reported in 2007 (1) Supreme 514 held that Rs.3000/- should be taken as "monthly income after deduction". When that is so, Rs.2,500/- determined by the tribunal as monthly income of the deceased is very low and therefore, following the aforesaid judgment of the Hon'ble Apex Court, this Court determines the monthly income of the deceased at Rs.4500/-.

4. Considering the size of the family which consists of five members, it is appropriate to deduct 1/4th towards personal expenses and the loss of income per month would be Rs.3,375/- (4500 less 1/4th). As rightly point out by Mr.C.R.Krishnamoorthy, learned counsel for the appellant, the appropriate multiplier to be adopted is 16 and not 17 as determined by the tribunal and the loss of income is arrived as follows -

$$\text{Rs.3375} \times 12 \times 16 = \text{Rs.6,48,000/-}$$

5. The amount of Rs.5,000/- awarded by the tribunal towards loss of consortium to the first appellant is too low and the same is enhanced to Rs.50,000/-. No amount was awarded to the minor children towards loss of love & affection and therefore a sum of Rs.50,000/- is awarded under this head. Similarly, Rs.2,000/- awarded towards funeral expenses and Rs.5,000/- towards transportation are too low and hence the same is enhanced to Rs.20,000/- in total. Thus, the award of Rs.3,52,000/- is enhanced to Rs.7,68,000/-, break-up as follows -

(1) Loss of income	...	Rs.6,48,000/-
(2) Loss of consortium	...	Rs. 50,000/-
(3) Loss of love & affection	Rs.	50,000/-
(4) Funeral expenses & Transporation	...	Rs. 20,000/-

Total	...	Rs.7,68,000/-
		=====

6. In the result, the Civil Miscellaneous Appeal is disposed of enhancing the compensation from Rs.3,52,000/-to Rs.7,68,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs. However, it is made clear that the appellants / claimants are not entitled to claim interest for the delay period of 825 days in filing the appeal.



7. The 2nd respondent/insurance company is directed to deposit the enhanced compensation alongwith interest at the rate of 7.5% from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants 1 & 5 are permitted to withdraw their share amount alongwith interest and cost, on the basis of ratio fixed by the tribunal. The share of the minor appellants / claimants 2 to 4 are directed to be deposited in any one of the Nationalised Bank under interest bearing fixed deposit, till they attain majority.

8. The learned counsel for the appellants/claimants is directed to pay the requisite court fee for the enhanced compensation within a period of ten days from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

rgr

To

1.Motor Accident Claims Tribunal,
Court of the District Judge,
Thiruvannamalai.

Copy to:The Section Officer, V.R.Section,High Court, Madras.

1 cc to Mr. C.R.Krishnamoorthy, Advocate Sr.No.26960

1 cc to M/s.M.Malar, Advocate Sr.No.27041

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ug(co)
pmk.26.6.2015