

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2008

C O R A M

THE HONOURABLE Mr.JUSTICE R.SUDHAKAR

C.M.A.No.614 of 1998

1. Jamuna Rani
2. Minor Revathi
3. Minor Raghu
Minors 2 and 3 are represented by their next friend and mother Viz., first appellant ... Appellants/Petitioners

Vs

1. Kaliyamurthi
2. The Tamil Nadu State Transport Corporation Limited, Kumbakonam
3. Mumtaj Begum ... Respondents
(R3 impleaded vide order of this Court dated 21.6.2000 in C.M.P.No.14926/98, First respondent given up)

Civil Miscellaneous Appeal against the order dated 22.10.1997 in M.A.C.T.O.P.No.38 of 1997 on the file of the Motor Accidents Claims Tribunal, Pondicherry at Karaikkal.

For Appellants : Mr.T.Sunsindran
For Respondents : Mr. N.Anand for R2
Mr. R.Thirugnanam for R3

J U D G M E N T

The Claimants have filed this appeal seeking enhancement of compensation.

2. It is a case of death. The accident in this case happened on 26.03.1997. The deceased Selvam was riding a motorcycle near T.R.Pattinam Main Road Bridge. He was hit by the CRC bus owned by the second respondent Transport Corporation. In that accident, he suffered grievous injuries and died. His wife Jamunarani and his children have filed claim petition claiming compensation for a sum of Rs. 15,00,000/- stating that the deceased Selvam was earning as a

commission agent in sea foods and merchant is sea foods business and he was earning a sum of Rs. 1,000/- per day.

3. The second respondent resisted the claim before the Tribunal. The wife of the deceased was examined as P.W.1 and one Deivasagayam was examined as P.W.2. Exs. A1 to A20 were marked in support of the claimants. No oral or documentary evidence was let in on behalf of the respondents.

4. After considering the oral and documentary evidence, the Tribunal came to a conclusion that the death of the deceased Selvam was due to rash and negligent driving on the part of the driver of the bus and consequently, liability was fixed on the Transport Corporation.

5. As far as the compensation is concerned, the same was dealt with by the Tribunal from paragraph 16 onwards. The claimants relied upon Exs.A10 to A20 to state that the daily income of the deceased was Rs.10,000/- per month. The Tribunal held that the claimants have not shown enough materials to substantiate the daily business turnover of Rs.10,000/- in order to earn Rs. 1,000/- as daily income.

6. As per Ex.A9, at the time of accident, the deceased selvam was aged about 30 years. The Tribunal after considering the same, fixed the income of the deceased at Rs.150/- per day and calculated the annual income of the deceased at Rs. 54,000/-. The Tribunal adopted multiplier 17 and fixed the total loss at Rs.9,18,000/-. After deducting 1/3 towards personal expenses of the deceased, the Tribunal determined a sum of Rs.6,12,000/- as loss of income to the family of the deceased. In addition to the above, the Tribunal granted Rs.2000/- for funeral expenses, Rs.5,000/- for loss of consortium to the wife and Rs.2,500/- towards loss of estate. Totally, the Tribunal awarded Rs.6,21,500/- as compensation with interest at the rate of 12%. The respondent Transport Corporation has accepted the Award and deposited the amount.

7. Pending appeal, One Mumtaj Begum, filed application to implead herself as dependent of the deceased and the same was ordered by this Court on 21.6.2000. It is also on record that the said Mumtaj Begum was travelling along with the deceased. It is also on record that the third respondent Mumtaj Begum and the appellants herein have filed memo of compromise which reads as follows:

"The appellants and the third respondent in the above appeal have settled their dispute and the appellants have no objection for the third respondent to withdraw a sum of Rs.50,000/- (Rupees fifty thousand only) with accrued interest on Rs.50,000/- from and out of a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) deposited by the second respondent towards her claim in the above appeal.

2.The appellants are permitted to withdraw the balance amount of Rs.1,00,000/- (Rupees one lakh only) with accrued interest thereon out of the amount deposited by the second respondent.

3. The third respondent shall not claim any further amount in case the quantum of compensation fixed by the Tribunal is enhanced by this Hon'ble Court

4. There shall be no costs in the above appeal".

8. Mr.R.Thirugnanam, learned counsel appearing for the third respondent confirmed that the said amount of Rs.50,000/- has been withdrawn by the third respondent and she has no further claim.

9. Insofar as the appeal is concerned, the appellant seeks enhancement of compensation. In the absence of a specific record to show that the actual income per day, the Tribunal was justified in fixing the income at Rs.150/- per day keeping in mind the date of accident, which happened on 26.3.1997 and, therefore, the loss of pecuniary benefits determined by the Tribunal is justified.

10. As rightly pleaded by the learned counsel for the appellants, the first appellant wife and her two minor children are entitled for appropriate compensation for loss of consortium and for loss of love and affection respectively. No amount has been granted to the children for loss of love and affection on the death of their father. In such view of the matter Wife, first respondent will be entitled to further sum of Rs.5,000/- towards loss of consortium. Two minor children are entitled to Rs.10,000/- each towards loss of love and affection on the death of the father.

11. In the result, the appeal is allowed as follows:

1. The award of the Tribunal is enhanced to Rs.6,46,500/- from Rs.6,21,500/-.

2. The enhanced amount of Rs.25,000/- shall bear interest at 7.5% from the date of claim till deposit.

3. Counsel for second respondent seeks eight weeks time to deposit the enhanced amount and the same is allowed.

4. On such deposit, the claimants are entitled to withdraw the amount as follows:

i. Wife - Rs.5,000/- with proportionate interest.

ii.Children - Rs.10,000/- each with proportionate interest.

5. There will be no order as to costs.

6. The compromise memo filed by the appellants and the third respondent is recorded as above and the same shall form part of the decree.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Motor Accidents Claims Tribunal,
Pondicherry at Karaikkal.
2. The Section Officer, VR Section,
High Court, Madras.

C.M.A..No.614 of 2008

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SRA(24/11/2008)

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