

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2015

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

C.M.A.No.923 of 2006
and
CMP.No.3631 of 2006

The Superintending Engineer
Tamil Nadu Electricity Board
Periyar Electricity
Distribution Circle,
Erode.

...Appellant/1st Respondent

Vs

1. Mrs. Velumani
2. Minor Karthiga
3. Minor Kavitha
4. Minor Boopathy
5. Mrs. Palaniammal
6. Mr.Rayan

...Respondents 1 to 6/Claimants

7. The New India Ass.CO.Ltd
Parimalam Complex
11, E.V.N. Road
Erode.

...7th Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under section 173 of M.V. Act, 1988 against the judgment and decree dated 29.10.2004 passed by the learned Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.5, Tiruppur at Coimbatore in MCOP No.377 of 2003.

For Appellant : Mr.K.Padmanabhan

For R1 to R6 : Mr.S.S.Swaminathan

J U D G M E N T

The Tamil Nadu Electricity Board, Erode is the appellant

2. In respect of the death of one Sadasivam in a road accident that took place on 25.11.2002, the respondents herein went before the Tribunal claiming compensation in a sum of Rs.5,00,000/-. The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.11,23,800/- with interest at the rate of 9% per annum from the date of petition till the date of deposit. Liability is admitted. Questioning the quantum, the present appeal has been filed.

3. The learned counsel appearing for the appellant would contend that though the claim was Rs.5,00,000/-, the Court below has awarded a sum of Rs.11,23,800/-, which is not fair. The learned counsel for the appellant would further contend that they are also aggrieved of the quantum determined by the Tribunal towards loss of income. The learned counsel would also contend that the 17 multiplier adopted by the Tribunal is not correct and proper.

4. The learned counsel for the respondents/claimants would vehemently contend that the claimants have produced the salary certificate and the same has been proved by the examination of P.W.3. Therefore, the Court below has rightly adopted multiplier 17 and awarded a sum of Rs.10,60,800/- towards loss of dependency. The learned counsel for the claimants would further contend that the Court below, after taking into consideration the fact that the wife of the deceased is aged only 32 years at the time of the accident and that she has to look after the aged parents of the deceased as well as three minor children and it is very difficult for her to manage the entire family with the meagre amount, has rightly awarded the compensation. Accordingly, the learned counsel for the claimants would pray for dismissal of the appeal.

5. Heard both sides and perused the records.

6. It is seen that the first claimant is a widow, claimants 2 to 4 are the minor children of the deceased and the claimants 5 and 6 are the aged parents of the deceased. The accident and the age of the deceased is admitted. Liability is also admitted. The main ground raised by the appellant in this appeal is that though the claimant themselves have restricted the claim to a sum of Rs.5,00,000/-, the Court below has awarded a sum of Rs.11,23,800/- which is not fair and reasonable.

7. On a careful perusal of the judgment passed by the Court below, it is seen that the court below had awarded a total compensation of Rs.11,23,800/- under the following heads:

1. Loss of dependency	Rs. 10,60,800/-
2. Loss of consortium	Rs. 10,000/-
3. Loss of love and affection (children)	Rs. 40,000/-
4. Loss of love and affection (Parents)	Rs. 10,000/-
5. Funeral Expenses	Rs. 3,000/-
6. Total	----- Rs. 11,23,800/- -----

8. It is the evidence of P.W.1, wife of the deceased, that her husband was running a cycle work shop and was working as a partner in Supervising Mill at Avinasi Rayampalayam and was earning a sum of Rs.5,200/- per month. The claimants have also produced the salary certificate and the same has been proved by examining P.W.3. Insofar as the future prospectus is concerned, the claimants have not produced any document and even P.W.3 does not say anything about the deceased future prospectus.

9. Though it is argued, that the amount arrived at by the Tribunal is excessive, it should be noted that at the time of accident, the deceased was aged only 32 years and he was hale and healthy. However, it is not clear as to how the Tribunal is justified in arriving the income of the deceased at the rate of Rs.7,800/- per month when especially the claimants have produced salary certificate stating that the deceased was earning Rs.5,200/- per month. It is further to be noted that after fixing so, the Tribunal has adopted 17 multiplier and deducted 1/4th towards his personal expenses and arrived at a sum of Rs.10,60,800/- as his contribution to the family and awarded the same towards loss of dependency, which is very high. Considering the salary certificate produced by the claimants and also considering the facts circumstances of the case, this Court is inclined to fix his monthly income at Rs.5,200/- and after deducting 1/4th towards his personal expenses, his monthly contribution to the family is fixed at Rs.3,900/-. Since the deceased was 32 years at the time of accident, correct multiplier would be 16. Hence, applying the same, loss of income is fixed as follows:

$$\text{Rs.3,900} \times 12 \times 16 = \text{Rs.7,48,800/-}$$

Accordingly, a sum of Rs.7,48,800/- is awarded under the head loss of dependency.

10. Further, a sum of Rs.10,000/- is awarded towards loss of consortium, which is very meagre. Since the wife of the deceased is aged only about 30 years at the time of accident, the same is enhanced to Rs.60,000/-. Similarly, the Tribunal

has awarded a sum of Rs.40,000/- under the head loss of love and affection to the three minor children, which is also very low. Therefore, a sum of Rs.20,000/- each (Rs.20,000x 3=Rs.60,000/-) is awarded under the head loss of love and affection of the children. Similarly, a sum of Rs.10,000/- awarded under the head loss of love and affection of the parents is enhanced to Rs.20,000/-. The Tribunal has awarded meagre sum of Rs.3,000/- towards funeral expenses. Therefore, the same is also enhanced to Rs.11,000/-. Accordingly, the compensation awarded by the Court below is modified as follows:

Loss of dependency	Rs.7,48,800/-
Loss of consortium	Rs. 60,000/-
Loss of love and affection (children)	Rs. 60,000/-
Loss of love and affection (Parents)	Rs. 20,000/-
Funeral expenses	Rs. 11,000/-
Total	Rs. 8,99,800/- rounded off to Rs.9,00,000/-

Accordingly, a sum of Rs.9,00,000/-[Rupees nine lakhs only] is awarded as compensation to the claimants. Even though the claimants have restricted their claim to Rs.5,00,000/- nothing prevented the Court to grant more compensation depending upon the facts and circumstances of the case.

11. Hence, the appellant-Electricity Board is directed to deposit the entire modified amount, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. The award will carry interest at the rate of 9% from the date of petition as ordered by the Court below. On such deposit being made, the claimants are entitled to withdraw the entire compensation amount along with interest on making out a proper application before the court below as per the proportion made out by the Court below, less the amount already withdrawn, if any. The minors' share along with accrued interest shall be deposited in a fixed Deposit in any one of the nationalised bank till they attain majority. It is made clear that if the minor claimants have become major, they are also entitled to withdraw their share. It is also made clear that if the appellant already deposited the entire award amount, they are at liberty to withdraw the excess amount along with accrued interest.

12. With the above modification, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
Additional District Judge
Fast Track Court No.5,
Tiruppur at Coimbatore.

1 CC to Mr.K.Padmanabhan, Advocate SR 57374

1 CC to Mr.S.S.Swaminathan, Advocate SR 56758

Copy to

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

C.M.A.No.923 of 2006

SV [CO]
PSI 05.11.2015

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