

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1265 of 2016
and C.M.P.No.9610 of 2016

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.F-6, Visitors Road, Block-2,
Neyveli - 607 801. ... Appellant /Respondent-2

versus

1. Shankar
- 2.Minor Kavina
(Rep by her father and natural guardian shankar)
... Respondents 1 and 2/
Petitioners 1 and 2
3. Amrithavali
... Respondent No.3/
Respondent No.1

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.11.2015 passed in M.C.O.P.No.29 of 2014 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Neyveli.

For Appellant : Mr.G.Udhayasankar

For R1 and R2 : Mr.Suryanarayanan
for Mr.M.Selvam

For R2 : Minor rep by R1

For R3 : Exparte

JUDGMENT

The deceased Keerthika, aged 3 years, a Pre-K.G. Student died in an accident along with her mother on 02.07.2014. The father and the sister have filed a claim petition claiming a sum of Rs.10,00,000/- as compensation. The Tribunal has passed an award for a sum of Rs.8,80,000/- as compensation and challenging the award as excessive, the Insurance company has preferred this appeal.

1.1. While calculating the loss of dependency, fixing monthly income at Rs.5,000/-, deducting 1/3rd towards personal expenses and adopting multiplier of 18, the loss of dependency has been quantified at Rs.7,19,928/- rounded to Rs.7,20,000/-. Awarding a sum of Rs.1,25,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss to estate, the total compensation has been quantified at Rs.8,80,000/-. The award is passed in favour of the father and not in favour of the sister of the deceased.

1.2. The claimants have not filed any appeal as against the dismissal of the claim against the sister. Challenging the quantum of compensation, the Insurance Company alone has filed the appeal.

2. The main contention of the learned counsel for the appellant is that monthly income ought not to have been taken at Rs.5,000/-, especially, when the deceased was not earning, having been aged only 3 years.

3. The method adopted by the Tribunal cannot be faulted with as that is the procedure contemplated in the second schedule of the Motor Vehicles Act. The Hon'ble Supreme Court has already pointed out that the amount of notional income fixed in the year 1994 ought to have been revised, but it has not been done by the legislature. Therefore, considering the escalation in the cost of living and reduction in the value of money, the notional income has to be taken at a higher level. However, in case of a child, aged only three years, the loss to the father, who lost not only the child, but also his wife, would present too many difficulties for him. The father should bear the double loss at the same time. The second claimant would have lost the companionship of the sister, but, would not be in a position to express the same. The father would be in a difficult position to make the child understand the loss of the mother and sister at the same time. Getting another child is an impossibility considering the loss of the wife in the same accident. The cumulative circumstances must be taken together while assessing the quantum of compensation.

3.1. Considering the stated circumstances, the award passed cannot be said to be unreasonable and therefore, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 19.11.2015 passed in M.C.O.P.No.29 of 2014 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Neyveli.

4. The Insurance Company is directed to deposit the entire award amount, less the amount already deposited if any, along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, within a period of six weeks from the

date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Motor Accident Claims Tribunal
(Subordinate Judge),
Neyveli.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to M/S.M.Selvam, Advocate Sr. 72288

+1cc to M/S.Udayasankar, Advocate Sr. 72416

C.M.A.No.1265 of 2016

MP (CO)
VR(11/10/2017)

सत्यमेव जयते

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