

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.1263 of 2015

1.B.Kavitha
2.Dhakshnamoorthy (Minor)
3.Parthipan (Minor)
(Appellants 2 & 3 minors are rep. by their mother
and next friend B.Kavitha,
the first appellant herein) ...Appellants/Claimants

Versus

(*)
The General Manager,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Kancheepuram ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act of 1988, against the Judgement and decree dated 09.03.2012 passed in M.C.O.P.No.3219 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants :Mr.R.Thirugnanam
For RR2 :Mr.K.J.Sivakumar

JUDGMENT

Having not been satisfied with the award of the Tribunal to the extent of Rs.7,38,000/-, the appellants/claimants being the wife and two minor children of the deceased have approached this Court with this Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act 1988, seeking enhancement of compensation.

2.Heard Mr.R.Thirugnanam, learned counsel appearing for the appellants and Mr. K.J.Sivakumar, learned counsel appearing for the respondent.

3.As it is revealed from the records, the respondents/claimants had moved the Motor Accident Claims Tribunal(Chief Judge, Court of Small Causes), Chennai, with a claim petition in MCOP No.3219 of 2007, claiming a sum of Rs.15,33,000/- for the death of the deceased viz., husband of the first claimant/first appellant and the father of the claimants/appellants 2 & 3, in a road traffic accident, said to have been taken place on 07.01.2007 at about 5.30 p.m., at P.H.Road near Vanagaram Kumar Theatre, involving a Motorcycle bearing registration No.TN-01-H-0244 belonging to the deceased and a passenger Bus bearing Registration No.TN-32N-1654 belonging to the first respondent Transport Corporation.

4.Since, the quantum of the award is only challenged, the other facts with reference to negligence need not be traversed.

5.According to the claimants the age of the deceased was 25 years at the time of accident but the Tribunal had determined his age at 21 years.

6.As per the claim petition, the deceased was working as a collection Agent for IDBI Bank and as such he was earning a sum of Rs.7000/- per month. But the Tribunal had determined his monthly income @ Rs.4500/- as he belonged to the category of unorganised sector.

7.As it is seen from para 14 of the award, out of Rs.4500/-, the Tribunal had given reduction to 1/3rd towards the personal and living expenses of the deceased and 2/3rd remainder would be Rs.3000/-. Since the deceased was aged about 21 years, when the accident was taken place as per the second schedule of Section 163(A) of the Motor Vehicles Act 1988, the Tribunal had selected '18' as the multiplier. Accordingly, the pecuniary loss of the family of the deceased was calculated @ Rs.6,48,000/- (Rs.3000X12X18=6,48,000/-). Besides this amount, the Tribunal has also awarded compensation on various heads as detailed herein. Since the first appellant/ claimant was aged about 19 years at the time of death of her husband, the Tribunal had awarded a sum of Rs.30,000/- towards loss of consortium. Under the head of loss of love and affection, a sum of Rs.20,000/- each, was awarded to the claimants 2 and 3. Under the head of funeral expenses a sum of Rs.10,000/- was awarded and an another sum of Rs.10,000 was awarded towards the loss of expectation of life. In total, the Tribunal had awarded a sum of Rs.7,38,000/-

8.Mr.R.Thirugnanam, learned counsel appearing for the appellants/claimants, has submitted that the calculation of the Tribunal towards the pecuniary loss of the family as well as in respect of other heads were too low and therefore, he has submitted that as fore stated since the deceased was aged about 21 years at the time of accident, the multiplier of 18 might be the proper one and the monthly income of the deceased could be determined @ Rs.4,500/- and by adding 50% towards future prospects, the total amount comes to Rs.6750/-. Out of this amount, after deducting 1/3rd, the 2/3rd remainder would be Rs.4500/- and accordingly, a sum of Rs.9,72,000/- was calculated towards the pecuniary loss of the family. Secondly, with reference to the award of compensation towards loss of consortium is concerned, since the first claimant being the widow of the deceased was aged about 19 years, she has claimed a sum of Rs.1,00,000/- as compensation. Insofar as loss of love and affection is concerned, the learned counsel has submitted that a sum of Rs.1,00,000/- could be awarded, each Rs.50,000/-, for which he has placed reliance upon the following decisions of the Apex Court.

(i) Kalpanaraj and Others Vs. Tamil Nadu State Transport Corporation Ltd., 2014(1) TN MAC 708(SC). In this case the Hon'ble Justice V.Gopala Gowda., while speaking on behalf of the Division Bench of the Apex Court has observed that towards loss of love and affection a sum of Rs.1,00,000/- could be awarded under each head and secondly he has also observed that towards the loss of consortium a sum of Rs.1,00,000/- could be awarded. Insofar as other head i.e., towards loss of expectation of life is concerned, his Lordship has observed that since the deceased was aged about 46 years, the claimants are being his wife and two minor children, a sum of Rs.1,00,000/- could be awarded. The same ratio has been adopted by his Lordship in the case of Chanderi Devi & Another Vs. Jaspal Singh & Others, 2015(2) TN MAC 16(SC).

9. In another case in Hema Eamaswami Vs. K.M.Valarance Panjani and Others., (1981) 1 MLJ 182, a Division Bench of this Court in paragraph No. 14, has observed as under:

"Apart from this, the claimants are entitled to a compensation under the head 'loss of expectation of life'. The deceased, who was the only earning member and head of the family and on whom the entire family relied for support, had died and therefore, the loss is all the more greater.

We therefore, award a sum of Rs.15,000/- as compensation for loss of expectation of life. Thus, the total compensation comes to Rs.1,50,000/-. However, the other claimants not having appealed and the fourth claimant alone having come, before us in appeal, we increased the sum of Rs.50,000/- awarded as compensation to the appellant to Rs.75,000/- taking into account the over all increase in the compensation from Rs.1,00,000/- to 1,50,000/-. The benefit of the increase in compensation will not be available to the other claimants as they have not filed the appeal. The appellant will therefore be entitled to a sum of Rs.75,000/- as compensation from the second respondent. Thus, the appeal, is partly allowed to the extent indicated above. No costs.

10. On coming to the instant case on hand, as submitted by Mr.R.Thirugnanam, learned counsel appearing for the appellants, since the age of the first claimant (wife of the deceased) was about 19 years at the time of accident, based on the above cited decisions, this Court finds that she is entitled to get a sum of Rs.1,00,000/- towards loss of consortium. The claimants 2 & 3 are minors and therefore a sum of Rs.50,000/- each, may be awarded towards loss of love and affection and towards funeral expenses a sum of Rs.25,000/- may be granted instead of Rs.10,000/- and under the head of loss of expectation of life, a sum of Rs.50,000/- may be awarded. Totally, it comes to Rs.12,47,000/-.

11. Therefore, the award of the Tribunal to the extent of Rs.7,38,000/- is enhanced to Rs.12,47,000/-. Accordingly, the Civil Miscellaneous Appeal is allowed. The respondent/Transport corporation is directed to pay the enhanced compensation amount alongwith interest @ 7.5% per annum from the date of claim petition within a period of six weeks from the date of receipt of a copy of this order.

12. On such deposit being made, the minor claimants/appellants 2 & 3 are each entitled to get a sum of Rs.3,00,000/-. The first appellant/ claimant being the wife of the deceased is entitled to get a sum of Rs.6,47,000/-. The share of the minor claimants/appellants shall have to be

invested in any one of the Nationalised Bank in a fixed deposit scheme. The first appellant/claimant being the mother of the minors is entitled to withdraw the interest accrued on the minors share for the welfare of the minors once in six months. No costs.

Sd/-
Assistant Registrar(CS-V)
Dated;21/03/2017

(*)1st Respondent deleted
as per order of this Court
dated 21/04/2017 made
in CMA 1263 of 2015.

Sd/-
Assistant Registrar(CS-V)
Dated:26/04/2017

//True Copy//

Sub Assistant Registrar

dn
To

The Motor Accident Claims Tribunal,
(Chief Judge, Court of Small Causes),
Chennai.

To be substituted to the
order already despatched
on 23.03.2017

+lcc to Mr.K.J. Sivakumar, Advocate, S.R.No.42453
+lcc to Mr.R. Thirugnanam, Advocate, S.R.No.42397

vd(CO)
md(22/03/2017)
srg 27/04/2017

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