IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2055 of 2011

The Oriental Insurance Co. Ltd.
Rep. by its Branch Manager
1st floor, Jambubala Complex
238 Arcot Road,
Vellore – 4. ...Appellant/ 2nd Respondent

Vs.

1. Sakunthala
2. C.Deepa
3. C.Subadha
4. C.Padmavathi
5. C.Ramsundar
6. V.Sudammal
   Annamalaihalli Village
   Hanumanthapuram Post
   Palacode Taluk. ...Respondents/ Petitioners

7. D. Thyagasundaram
   No.9 Nethaji Road
   Shenbakkam, Vellore. ...Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.12.2010 made in M.A.C.T.O.P No.1081 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Krishnagiri.

For Appellant : Mr. M. Krishnamoorthy

For Respondents: Mr. L. Mouli for R1 to R6
R-7 – set exparte

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J U D G M E N T

The Insurance Company has come up with this appeal challenging the quantum of compensation awarded by the Tribunal.

2. This is a case of fatal. In an accident which occurred on 11.05.2008, one Chandran sustained fatal injuries and died in the hospital. Hence, his wife, children and mother filed a Claim Petition before the Tribunal seeking a sum of Rs.30,00,000/- as compensation. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.9,41,000/- as compensation, under the following heads:

Heads	Amount
Loss of dependency	Rs.8,91,000.00
Funeral Expenses	Rs. 5,000.00
Loss of love and affection	Rs. 35,000.00
Loss of consortium	Rs. 10,000.00
Total	Rs.9,41,000.00

3.Learned counsel appearing for the appellant/ Insurance Company would mainly contend that the quantum of compensation awarded by the Tribunal is too high for the death of a man who is aged 57 years. Although he was working as a Stenographer in Government Co-operative Mills, he had only balance three years of service. Hence, the Tribunal has erred in fixing the income as Rs.11,000/- per month, since the deceased would be getting only pension after three years and would not be earning the same income as he was earning while in service. He would further contend that the Tribunal ought to have deducted 1/3rd towards his personal expenses, since two of his children are married and the other two are grown up children but has deducted only 1/4th [Rs.11,000 x 12 x ¾ x 9 = Rs.8,91,000/-]. Hence, he sought to reduce the award granted towards 'loss of dependency', awarded by the Tribunal.

4.On the other hand, learned counsel appearing for the respondents/claimants would submit that the deceased was working as a Stenographer in Government Sugar Mills and he was the only bread winner of the family. The Tribunal has awarded only a meagre compensation towards 'loss of love and affection' and ' loss of consortium'. It is further submitted that four of the dependents are daughters and the son is only a student and hence there is no other earning member in the family. Considering the facts and circumstances, the Tribunal has awarded the compensation, which is just and reasonable and sought for dismissal of the appeal.

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5. A perusal of the records would show that the deceased was aged 57 years, at the time of accident. The multiplier adopted by the Tribunal as '9' to the age of the deceased is correct in view of the ratio laid down by the Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121. However, as rightly pointed out by the learned counsel for the appellant/ Insurance Company, the deceased would have retired after three years and hence the Tribunal ought to have calculated the compensation towards 'loss of dependency' during service and after the period of superannuation, separately.

6. So, this Court is of the view that the 'loss of dependency' during the period of service for two years, should be calculated at Rs.10,000 x 12 x 2 x ¾ = Rs.1,80,000/-. After superannuation, for 7 years, by taking 50% of the salary, Rs.5000 x 12 x 7 x ¾ = Rs.3,15,000. Added together, Rs.4,95,000/- is granted by this Court towards 'loss of dependency' and thus multiplier need not applied. With regard to the other headings 'loss of love and affection' and 'loss of consortium' to the first claimant is very low, and the same requires enhancement. No amount has been granted towards transportation, though the deceased has been shifted from the Government Hospital, Krishnagiri to Bangalore for better treatment. Hence, by holding that the Tribunal has erred in awarding compensation under the above referred headings, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Revised Amount granted by this Court
1	Loss of dependency	Rs.8,91,000.00	Rs.4,95,000.00
2	Funeral & Transportation Expenses	Rs. 5,000.00	Rs. 25,000.00
3	Loss of love and affection	Rs. 35,000.00	Rs. 1,00,000.00
4	Loss of consortium	Rs. 10,000.00	Rs. 1,00,000.00
	Total	Rs.9,41,000.00	Rs.7,20,000.00

7. There is no serious objection in respect of the interest granted at 7.5% per annum.

8. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.7,20,000/- from Rs.9,41,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

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(iii) The appellant/Insurance Company is directed to deposit the entire award amount together with accrued interest, less the amount deposited if any, to the credit of M.A.C.T.O.P. No.1081 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri, within a period of twelve weeks weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay the apportioned share of compensation to the claimants in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company.No costs.

-s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

avr

To :
The Additional District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

+1 cc to Mr.L.Mouli Advocate sr.15555
+1 cc to Mr.M.Krishnamoorthy Advocate sr.15569

C.M.A.NO. 2055 of 2011
and
M.P. No.1 of 2011

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