

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.07.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.2162 of 2010

1.S.Kavitha Devi
2.Kalimuthu @ Pattu
3.Minor S.Manikandan
4.Minor S.Madankumar
Minors rep. by their Mother
S.Kavitha Devi ... Appellants/Petitioners

Vs.

1.M/s.United India Insurance Co. Ltd.,
261, J.N.Street
Pondicherry
2.M/s.National Insurance Co. Ltd.,
Motor 3rd Party Claims Cell
751, Mount Road (Opp. TVS)
Chennai - 2 ... Respondents/Defendants

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.04.2010 and made in M.C.O.P.No.4679 of 2004 on the file of the Motor Accident Claims Tribunal (Chief Judge, the Court of Small Causes), Chennai.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.J.Chandran
for R1

JUDGMENT

The appellants, having not been satisfied with the award of the Tribunal dated 15.04.2016 and made in M.C.O.P.No.4679 of 2004, have preferred this appeal seeking enhancement of compensation.

2. It is manifested from the records that the appellants 1 to 4, being the wife, mother and children of the deceased one Sethumani, had moved the Claims Tribunal with the claim petition in M.C.O.P.No.4679 of 2004 claiming totally a sum of Rs.7,00,000/- for the death of the said Sethumani. The respondents have contested the claim by filing their respective counter statements. However, the Tribunal based on the evidences available on record had proceeded to award a sum of Rs.4,30,000/- under various heads as detailed hereunder:

Considering the monthly income of the deceased at Rs.3,000/- and after applying the multiplier of 15 as the deceased was aged about 38, the Tribunal had quantified the compensation to the extent of Rs.4,05,000/- towards the pecuniary loss of the family. Apart from this, the Tribunal had also awarded a sum of Rs.10,000/- towards loss of consortium, another sum of Rs.10,000/- towards the loss of love and affection to petitioners 2 to 4 and a sum of Rs.5,000/- towards funeral and transport expenses. The Tribunal had totally awarded a sum of Rs.4,30,000/- directing the respondents 1 and 2 to pay this amount with interest at the rate of 7.5% per annum from the date of the claim petition till date of realization.

3. Mr. N. Manoharan, learned counsel appearing for the appellants has submitted that the monthly income fixed by the Tribunal at Rs.3,000/- was absolutely very low and it was not clear as to on what basis Rs.3,000/- was determined as his monthly income. He has also drawn the attention of this Court to Ex.P6-Salary Certificate of the deceased Sethumani. On a perusal of Ex.P6, it is revealed that the deceased was working under PW2 as a driver and he was paid Rs.5,000/- per month as salary. This aspect has not been considered by the Tribunal. Even as per the latest pronouncement of the Apex Court, a man above the age of 38 would have definitely earned not less than Rs.4,500/- per month. Hence, considering the prevailing trend, a sum of Rs.4,500/- is determined as the monthly income of the deceased. Since the deceased was aged about 38 years at the time of the occurrence, the multiplier of 15 would be appropriate. Since the dependants/claimants are four in number, $1/4^{th}$ deduction towards the personal and living expenses of the deceased would be reasonable and accordingly, after giving $1/4^{th}$ deduction, $3/4^{th}$ remainder would be Rs.40,500/-. Applying the multiplier of 15, the pecuniary loss of the family is calculated at Rs.6,07,500/-. Apart from this, it is pertinent to note that the Tribunal had awarded only a sum of Rs.10,000/- to the first claimant towards loss of consortium. It is also significant to note that the first claimant was aged about 27 at the time of

death of her husband. Hence, this Court finds that this amount can be enhanced to Rs.1,00,000/-. Accordingly, a sum of Rs.1,00,000/- is award towards loss of consortium. Further, the Tribunal had awarded totally a sum of Rs.10,000/- towards loss of love and affection to respondents 2 to 4. It seems to be very lesser and therefore, this Court is of the view that a sum of Rs.10,000/- can be awarded to each of the petitioners 2 to 4 towards loss of love and affection. Accordingly, a sum of Rs.10,000/- each is awarded under the head loss of love and affection to the petitioners 2 to 4 (totalling to Rs.30,000/-). That apart, this Court is also of the view that a sum of Rs.5,000/- awarded for funeral and transport expenses is very meager, and hence, a sum of Rs.15,000/- is awarded under the head funeral expenses and another sum of Rs.5,000/- is awarded under the head Transport expenses. For better understanding, the compensation awarded under different heads are reproduced hereunder:

Loss of Income of the family	: Rs.6,07,500/-
(Rs.4500/-*12)*1/4*15)	
Loss of Consortium	: Rs.1,00,000/-
Loss of Love and Affection for Petitioner 1 to 3	
(Rs.10,000/- each)	: Rs. 30,000/-
Funeral Expenses	: Rs. 15,000/-
Transportation	: Rs. 5,000/-
Total	----- Rs.7,57,500/- -----

In view of the above facts, this Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is enhanced to Rs.7,57,500/- from Rs.4,30,000/-. Out of the compensation amount of Rs.7,57,500/-, the first appellant is entitled to get Rs.2,57,500/-, the second appellant is entitled to get Rs.1,50,000/- and appellants 3 and 4 are entitled to get Rs.1,75,000/- each. Respondents-2 is directed to pay the enhanced amount of compensation, less the amount already deposited, if any along with interest at the rate of Rs.7.5% from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first and second appellants are permitted to withdraw their share along with the accrued proportionate interest and cost. Insofar as the shares of the appellants 3 and 4 are concerned, it shall be invested in any one of the nationalized bank under the interest earning

scheme until they attains majority. The first appellant, being their mother, is entitled to withdraw the accrued interest on the minor's shares once in three months for the welfare of the minor. The appellants are directed to pay requisite court fee for the enhanced amount. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gpa
To

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

+ 1 cc to Mr. N. Manokaran, Advocate SR.38931

C.M.A.No.2162 of 2010

GJII(CO)
EU(03/10/2017)



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