

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1466 of 2016

and

C.M.P.No.11268 of 2016 & C.M.P.No.13837 of 2017

The Oriental Insurance Co.Ltd.,
No.4, Esplanade, Chennai-600 108. ...Appellant/
2nd Respondent in the
Tribunal

/Vs/

1.Devaki
2.Kumudha
3.Madhavan
4.Bhuvaneswari
5.Kesavan
6.Adikesavan

...Respondents 1 to 6/
Claimants 1 to 6 and 1st
Respondent in the Tribunal

7.S.TWOS LOGISTICS PVT LTD
No.34, Bajanaikoil Street,
Vepampattu. ...Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.02.2016 made in M.C.O.P.No.2708 of 2014 on the file of the Motor Accident Claims Tribunal, Chennai (In the II Court of Small Causes, Chennai).

For Appellant : Mr.R.Sivakumar
For Respondent : Mr.S.Ravikumar
Nos.1 to 6

JUDGMENT

The deceased Sambandan, aged 59, a Milk vendor, earning a sum of Rs.500/- per day, died in an accident on 17.03.2014. The legal representatives of the deceased, viz., wife, two married daughters and three major sons, totalling six in number, have filed the claim petition claiming a sum of Rs.30,00,000/- as compensation.

2. As against the claim made, the tribunal has passed an award for a sum of Rs.12,18,600/- under the following break-up details;

Loss of dependency	: Rs. 9,93,600 . 00
Loss of love and affection:	Rs. 1,00,000 . 00
Funeral Expenses	: Rs. 25,000 . 00
Loss of estate	: Rs. 50,000 . 00
Loss of Consortium	: Rs. 50,000 . 00

Total	: Rs.12,18,600 . 00

3. This award is assailed on the following grounds:

The tribunal has deducted one-fifth of the amount from the total income of the deceased towards his personal and living expenses while calculating loss of dependency. The learned counsel appearing of the appellant would contend that, One-fifth deduction should not have been made towards personal expenses and one-fourth deduction should have been made, as the necessity of maintaining the family could not have been burden some of the deceased (as there are major claimants, who are leading an independent life and not depending upon the income of the deceased.

4. A perusal of the claim petition would go to show that the claimants are aged 55, 38, 36, 34, 32 and 31 respectively. Therefore, the contention that the personal expenses have to be deducted at 1/4th is right.

5. So far as the monthly income is concerned, the learned counsel for the appellant submitted that fixing the monthly income at Rs.6,500/- alone would be reasonable and not Rs.10,000/-. As the age is the determining factor to decide what would be the monthly income and when the deceased was 59 years old, he could have earned only a sum of Rs.6,500/- and cannot be expected to earn more. If the monthly income is fixed at Rs.6500/- and multiplier of 9 is adopted, loss of income is arrived at Rs.5,26,500/- (Rs.6,500/- - $\frac{1}{4}$ x 12 x 9 = Rs. 5,26,500/-).

6. Loss of love and affection must be awarded to each of the claimants and it has been awarded at the rate of Rs.20,000/- per claimant, which is on a lower side. Loss of love and affection to claimants 2 to 6 is awarded at Rs.50,000/- each. The award under other heads are confirmed. Thus, the compensation stands reduced by Rs.3,17,100/-.

7. The over all reduction of compensation is at Rs.3,17,100/-. Thus, the insurance company is liable to pay only a sum of Rs.9,01,500/-. This appeal is allowed to the

extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

8. It is represented that as per order of this Court dated 19.07.2016, 50% of the award amount with proportionate accrued interest and costs as determined by the tribunal, has already been deposited before the tribunal. The balance amount as payable as per the award passed by this Court, shall be deposited by the Insurance Company, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants/respondents 1 to 6, as per the ratio of proportion fixed by the tribunal, through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms/kv
To

1. The Motor Accident Claims Tribunal,
Chennai (In the II Court of Small Causes, Chennai).

copy to

The Section Officer, VR Section,
High Court, Madras. (+2 copies)

+1 cc to Mr.S.Ravikumar Advocate sr 63744
+1 cc to Mr.R.Sivakumar Advocate sr 63467

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