

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA
C.M.A.No.2013 of 2017

1.Mala
2.S.Gopi
3.S.Parthiban (Minor)
(Minor petitioner is represented
by his mother the first petitioner)
4.Rosammal ...Appellants/Petitioners

Versus

1.Lingam Agencies,
10/255, T.H.Road, New Washermenpet,
Chennai - 21.
2.New India Assurance Company Limited,
45, Moore Street,
Chennai - 1.Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 59 of 1988 to set aside the Judgment and Decree dated 30.01.2010 passed in M.C.O.P.No.4939 of 2006 on the file of the Learned Motor Accident Claims Tribunal cum Chief Judge, Small Causes Court, Chennai and enhance the award amount.

For Appellants : Mr.S.Ravikumar
For Respondents: Mr.J.Chandran

JUDGMENT

The deceased Swaminathan, aged 38 years, a driver by profession, earning a sum of Rs.6,000/- per month, died in an accident that took place on 28.06.2006. On his death, the wife, sons and mother of the deceased, have filed the claim petition before the Motor Accidents Claims Tribunal, Chennai in O.P. No.4939 of 2006 claiming a sum of Rs.10,00,000/- as compensation. The Tribunal on consideration of evidence and materials placed before it, has awarded a sum of Rs.6,26,000/-, the breakup of which is as under :-

	Rs.
Pecuniary loss calculated (3000 x 12 x 16):	5,76,000/-
Loss of consortium	: 15,000/-,
Loss of love and affection to P2 to P4, (10,000/- x 3)	: 30,000/-
Transport to hospital and funeral expenses	: 5,000/-

Total

6,26,000/-

2. Contending that the compensation amount awarded by the Tribunal is grossly inadequate, the claimants have preferred this appeal.

3. The learned counsel for the appellants submit that the third claimant was a minor at the time of filing the petition, however, the Tribunal awarded a meagre sum of Rs.10,000/- to each of the claimants (p2 to P4) towards loss of love and affection. Further, the deceased was aged 38 years and the first claimant was aged only 30 years. Taking note of the above the Tribunal ought to have awarded higher amount towards loss of consortium. Further it is submitted that the Tribunal has not awarded any amount at all towards future prospective increase in the income of the deceased.

4. The learned counsel appearing for the respondent submits that the accident occurred in the year 2006 and the pecuniary loss fixed by the Tribunal by taking Rs.3,000/- as monthly salary is reasonable and it does not require any enhancement.

5. It is seen from the order passed that while quantifying the compensation, the Tribunal while fixed the monthly income of the deceased at Rs.4500/- deducting 1/3rd towards personal expenses has fixed the contribution to the family at Rs.3,000/- and adopting the multiplier of 16, has quantified the loss of earning at Rs.5,76,000/=. However, this Court feels that the contribution of the deceased to the family fixed at Rs.3,000/- should be enhanced to Rs.3,375/-, considering the avocation of the deceased as also the number of members in the family whom the deceased has to take care of. Accordingly, this Court fixes the monthly contribution of the deceased to the family at Rs.3,375/= and adopting the multiplier of 16, quantifies the compensation towards loss of earning at Rs.6,48,000/= (Rs.3375 X 12 X 16).

6. Insofar as the compensation awarded under the heads loss of consortium and loss of love and affection are concerned, taking into consideration the age of the deceased, which is fixed at 38 years and also the age of the spouse at 30 years and the age of the children, who are said to be minors, the amount of Rs.15,000/= towards consortium to the spouse and Rs.10,000/- each to the children and mother is on the very lower side. Considering the age of the deceased and the loss suffered by the family due to the untimely death of the deceased, this Court awards compensation in a sum of Rs.50,000/= towards loss of consortium to the wife and Rs.50,000/= each towards loss of love and affection to the children and mother (Rs.50,000 X 3 = 1,50,000/-), which is a reasonable, fair and just compensation.

7. Accordingly, the appeal is allowed in part and the award passed by the Tribunal is enhanced from Rs.6,26,000/= to Rs.8,53,000/= as per the breakup mentioned below:-

Pecuniary loss	:	Rs.6,48,000.00
Loss of consortium to 1 st claimant	:	Rs. 50,000.00
Loss of love and affection to claimants 2 to 4	:	Rs.1,50,000.00
Transportation and funeral expenses	:	Rs. 5,000.00

		Rs.8,53,000.00

8. The learned counsel for the respondent/Insurance Company submits that even though the award was passed in the year 2010, the appeal was filed in the year 2016 along with an application to condone the delay in filing the appeal and while condoning the delay on 14.06.2017, this Court has ordered to condone the delay subject to waiver of interest for the period between the date of passing of award and the filing of the appeal. In such view of the matter, this Court clarifies that the award will not carry interest for the period of delay in filing of the appeal.

9. In the result, the Civil Miscellaneous Appeal is allowed enhancing the quantum of compensation from Rs.6,26,000/- to Rs.8,53,000/- with interest at 6% 6% per annum from the date of filing the petition before the Tribunal. However, it is made clear that the claimants are not entitled for interest for the period of delay in filing this appeal as per the order dated 14.06.2017 passed in CMP No. 8829 of 2016. However, in the circumstances of the case, there shall be no order as to costs.

10. The appellant/Insurance company is directed to deposit the award amount together with interest and costs, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, claimants 1, 2 and 4 are permitted to withdraw 50% of the same and the remaining amount is directed to be deposited in a fixed deposit for a period of five years. It is also made clear that the compensation payable to the minor/3rd claimant is directed to be deposited in an interest bearing fixed deposit in a nationalised bank and the 1st claimant, viz., the mother is permitted to withdraw the interest accrued on the said deposit once in three months, till he attains majority.

Sd/--
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

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

2. The Section Officer,
V.R. Section,
High Court, Madras - 104.(2 copies)

+1cc to Mr.S.Ravikumar, Advocate Sr.no.48896

+1cc to Mr.J.Chandran, Advocate Sr.no.49230

BR(CO)
sm:20.3.2018

CMA No.2013 of 2017



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