

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HON'BLE DR.JUSTICE.S.VIMALA

Civil Miscellaneous Appeal No.2059 of 2017

1. E.Vijayalakshmi @ Vijaya
2. E.Sathiya Sree (Minor)
Second Appellant Rep. by her mother
and natural guardian, E.Vijayalakshmi
... Appellants / claimants

Vs

1. Kannan
2. United India Insurance Co. Ltd.,
Silingi Building, New No.134, Old No.4-45,
Greams Road, Chennai - 600 006 ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the decree and Judgment, dated 31.07.2015 made in MCOP No.4581 of 2013 on the file of Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellants : Ms. Ramya

For Respondents : Mr. G.Udhaya Sankar, for R-2

JUDGMENT

The wife, (aged 30) as the first claimant, and the minor daughter (aged 7) as the second claimant have filed a claim petition for compensation in respect of the death of one P.Elango, aged 35.

2. The deceased P.Elango suffered for two-and-half months on account of the injuries sustained in the accident and only, thereafter, he died on 08.03.2013. The date of the accident was on 23.12.2012 and the date of death was on 08.03.2013. In between, he had been taking treatment at the Institute of Nephrology at Government General Hospital, Madras, for the period from 23.12.2012 to 06.03.2013, for more than period of seventy days.

3. The investigation has revealed that the deceased had frontal multiple contusion, frontal temporal contusion and on account of the same, de-compressive craniotomy has been done. He has developed bed sore also and despite best treatment given, after discharge on 06.03.2013, he died on 08.03.2013.

4. It is relevant to point out that the Insurance Company has also not taken the defence that the death was not account

of the injuries sustained. However, the deceased had died after seventy days of treatment as inpatient and died immediately after discharge, i.e., within two days. Therefore, the death must be only on account of the injuries sustained in the accident and the discharge certificate issued by the Government General Hospital, Institute of Neurology, would go to show that the injuries sustained should have been the contributory cause for the death.

5. The quantum of compensation is under challenge by the claimants / appellants. The breakup details of the award passed by the Tribunal is as follows:-

Monthly income of the deceased	-	Rs.	6,000.00
After deducting 1/3rd amount towards the personal expenses of the deceased	-	Rs.	4,000.00

Pecuniary loss is calculated as			
Rs.4,000/- x 12 x 15	-	Rs.	7,20,000.00
Loss of consortium	-	Rs.	50,000.00
Medical expenses	-	Rs.	10,000.00
Loss of love and affection to the			
Petitioners 1 and 2	-	Rs.	75,000.00
Funeral expenses	-	Rs.	15,000.00

			Rs.8,70,000.00

6. A perusal of the award passed by the Claims Tribunal would go to show that the monthly income of the deceased has been taken at Rs.6,000/- and after deducting 1/3rd towards the personal expenses and by adopting the multiplier of '15', the loss of dependency has been calculated at Rs.7,20,000/-. The loss of consortium has been awarded at Rs.50,000/-, loss of love and affection to P-2 has been awarded at Rs.75,000/-, funeral expenses has been awarded at Rs.15,000/- and thus, the total amount has been quantified at Rs.8,70,000/-.

7. A further perusal of the details of the award would go to show that the medical expenses have been awarded only at Rs.10,000/-, where there is an evidence to show that the deceased had been taking treatment, as inpatient, for a period of two-and-half months.

8. The learned counsel for the appellants would point out that even though the deceased has been taking treatment continuously as inpatient for two-and-half months, the cost of attendant and pain and sufferings have not been awarded.

8.1. This contention is well founded and for a period of at least two months, the cost of attendant should have been awarded at Rs.20,000/- and pain and sufferings at Rs.50,000/-. Therefore, the awards under those heads are passed accordingly.

9. So far as the income of the deceased is concerned, the Tribunal has taken the income at Rs.6,000/- and the learned counsel for the appellants would point out that, even as per the Syed Sadiq's case, where the monthly income for an agriculturist has been taken at Rs.6,500/-. If that yardstick is adopted and awarding 30% towards the future prospective increase in income and deducting 1/3rd towards the personal expenses, the loss of income would be Rs.10,14,120/- (Rs.6,500/- + 30% - 1/3rd x 12 x 15). The loss of consortium is awarded at Rs.1,00,000/- having regard to the age of the first claimant as 30; loss of love and affection awarded to the second claimant is enhanced from Rs.75,000/- to Rs.1,00,000/-; funeral expenses is enhanced from Rs.15,000/- to Rs.25,000/-; the transportation awarded at Rs.25,000/- would be bifurcated and Rs.10,000/- is awarded towards the transportation and Rs.15,000/- will go to the head of medical expenses. Thus, the total amount of compensation to be awarded is quantified at Rs.13,24,120/-.

10. In the result, the Appeal is partly-allowed, enhancing the quantum of compensation from Rs.8,70,000/- to Rs.13,24,120/-, which is payable along with interest at 7.5% per annum, from the date of petition till the date of deposit. Out of the said amount, the first appellant is entitled to Rs.8,00,000/-, with proportionate interest and the second appellant is entitled to Rs.5,24,120/- along with proportionate interest.

10. The second respondent / Insurance Company shall deposit the entire amount of compensation, less the amount already deposited, as determined by this Court, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transmit the compensation amount payable to the account of the first claimant / first appellant, along with proportionate interest thereon, through RTGS and the share of the minor second claimant / second appellant shall be kept in a Fixed Deposit, in any one of the Nationalized Banks, till she minor attains majority. The interest accrued on the Fixed Deposit shall be withdrawn by the first claimant / first appellant, once in three months, under direct intimation to the Tribunal, and the same shall be utilized for the welfare of the minor. The claimants are not entitled to any interest for the default period. No costs. Necessary court fee, if any, shall be paid by the claimants / appellants before receiving the copy of this judgment.

Sd/-

Assistant Registrar(CS III)

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To

1. Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

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

+1cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.55114

+1cc to Mr.G.Udayasankar, Advocate SR.No.54943

C.M.A.2059 of 2017

PA(CO)

sm:27.12.2017



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