

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.No.2227 of 2017

1. R.Vijayalakshmi
2. Ramadevi
3. R.K.Sivanesan
4. R.K.Lalitha
5. S.Devabooshanam
6. A.Sambandam

... Appellants/Claimants

versus

1. B.Vijayalakshmi
2. The United India Insurance Co.Ltd.,  
Motor III Party Claims Office,  
No.38, Anna Salai, Chennai - 2. .... Respondents/Respondents  
(R1 remained ex parte before the  
Tribunal)

Prayer: Appeal filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree dated 30.01.2004 made in M.C.O.P.No.51 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court-III), Poonamallee.

For Appellants : Mr.J.Mahalingam

For R2 : Mr.J.Michael Viswasam

For R1 : exparte before the tribunal

JUDGMENT

S.R.Kumar, aged 50 years, a Postman, earning a sum of Rs.6,520/- p.m., died in an accident on 01.12.2002. In respect of the same, claim petition has been filed by the claimants, viz., wife, sons & daughters and parents of the deceased in M.C.O.P.No.51 of 2003 before the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court-III), Poonamallee.

2. As against the claim made, the Tribunal, on consideration of oral and documentary evidence, passed an award for a sum of Rs.5,31,600/- under the following break-up details:

|                    |   |               |
|--------------------|---|---------------|
| Loss of dependency | - | Rs.5,21,600/- |
| Cremation Expenses | - | Rs. 5,000/-   |
| Loss of consortium | - | Rs. 5,000/-   |
|                    |   | -----         |
| Total              | - | Rs.5,31,600/- |
|                    |   | -----         |

3. Challenging the award as inadequate, the claimants have filed this appeal.

4. The contention of the learned counsel for the appellant is that the Tribunal should have awarded at least a sum of Rs.9,00,000/-, which would be just and reasonable and the award of Rs.5,31,600/- is grossly inadequate. It is submitted that on various heads, the Tribunal has not awarded any compensation and the compensation awarded under the head funeral expenses and loss of consortium is on the lower side.

5. It is the further contention of the claimants that multiplier to be adopted is '13', whereas the Tribunal has wrongly adopted the multiplier of '10'. It is pointed out that the deceased was aged 50 years and, therefore, the correct multiplier to be adopted is only '13'.

6. Per contra, it is contended by the learned counsel appearing for the insurer that the compensation awarded by the Tribunal is just and reasonable and no interference is called for with the award passed by the Tribunal.

7. There is no dispute that the proper multiplier to be adopted is 13 and the Tribunal has adopted a wrong multiplier. Further, there is no dispute with regard to the income of the deceased. The salary certificate of the deceased has been filed, which shows that the deceased was earning a sum of Rs.6,520/- p.m.. Taking the salary at Rs.6,520/- and deducting  $\frac{1}{3}^{\text{rd}}$  towards personal expenses and adopting the proper multiplier of '13' the loss of dependency is assessed at Rs.6,78,080/- (Rs.6520 x 12 x 13 -  $\frac{1}{3}$ ).

8. The Tribunal has awarded Rs.5,000/- only under the head loss of consortium. The said compensation awarded is on the very lower side and definitely needs enhancement. Though it is the claim of appellants that an amount of Rs.1,00,000/- should be awarded under the head loss of consortium, however, this Court, considering the fact that the accident happened on 01.12.2002, awards an amount of Rs.50,000/- under the head loss of consortium.

9. No compensation has been awarded under the head love and affection. Definitely the claimants are entitled to compensation under the head loss of love and affection. The parents as well as the children, whatever be their age, have definitely lost the love and affection that they would be receiving from the deceased. Accordingly, this Court quantifies the compensation under the head loss of love and affection to the father and mother at Rs.25,000/- each and a consolidated sum of Rs.1,00,000/- is awarded towards compensation under the head love and affection to claimants 2, 3 and 4, viz., the children of the deceased.

10. Thus in all, the compensation payable to the claimants is enhanced to Rs.8,78,080/-, the breakup details of which is as under:

|                                                    |   |               |
|----------------------------------------------------|---|---------------|
| Loss of dependency                                 | - | Rs.6,78,080/- |
| Loss of consortium                                 | - | Rs. 50,000/-  |
| Loss of love and affection to claimants 5 and 6    | - | Rs. 50,000/-  |
| Loss of love and affection to claimants 2, 3 and 4 | - | Rs.1,00,000/- |
|                                                    |   | -----         |
| Total                                              | - | Rs.8,78,080/- |
|                                                    |   | -----         |

11. The learned counsel appearing for the second respondent/Insurance Company submits that the appeal has been kept pending for more than a decade and, therefore, the insurance company should not be fastened with the liability for paying interest for the period of 14 years. It is further submitted that the interest awarded at 9% is on the higher side and the same needs to be reduced to 6%.

12. It is seen from the records that the accident has occurred in the year 2002 and award was passed in the year 2004. The matter has been pending for more than 14 years. However, no material is available on record to fasten liability on one or other party. In such circumstances, this Court is of the considered opinion that interest at the rate of 7% p.a. from the date of claim petition till date of deposit would meet the ends of substantial justice to either of the party. Accordingly, interest is ordered at 7% p.a. from the date of petition till the date of deposit.

13. The Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.5,31,600/- to Rs.8,78,080/-, which is payable by Insurance Company along with interest at the rate of 7% p.a. from the date of petition till the date of deposit, excluding the interest for the default period. However, there shall be no order as to costs.

14. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the enhanced compensation amount of Rs.8,78,080/-, less the amount, if any, already deposited, along with interest at the rate of 7% p.a. from the date of petition till the date of deposit, excluding interest for the default period, 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, the Tribunal is directed to transfer the amount directly to the bank account of the claimants, as per the ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter.

15. It is represented that 6<sup>th</sup> claimant has died pending the appeal. It is made clear that the amount of compensation payable to the 6<sup>th</sup> claimant will be shared equally by the remaining claimants. The court fee due by the claimants shall be paid before obtaining copy of the Judgment.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal  
(Additional District Judge, Fast Track Court-III),  
Poonamallee.
2. The Section Officer,  
V.R.Section,  
Madras High Court, सत्यमेव जयते  
Chennai

+ 2 ccs to Mr.J. Mahalingam, Advocate Sr.57320

+ 1 cc to Mr. J.Michael Viswasam, Advocate Sr.57223

C.M.A.No.2227 of 2017

NM(CO)

EU(08/03/2018)