

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2249 of 2017

1. Renuka
2. Minor. Kaviya Sri
3. Minor. Gokul  
Minors, Rep. by their mother Renuka
4. Rangaraju ... Appellants / claimants

..vs..

1. M.Sudhakar
2. The New India Assurance Company Ltd.,  
Branch Office, KVR Complex,  
3rd Floor, 80 Feet Road,  
Sengunthapuram, Karur 639 002 .... Respondents  
(R-1 set exparte before the Tribunal, hence  
notice may be dispensed with in this Appeal)

Appeal filed under Section 173 of Motor Vehicles Act 1988,  
against the Judgment and Decree, dated 15.04.2016 made in  
M.C.O.P.No.546 of 2014 on the file of the Motor Accident Claims  
Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellants : Mr. Ma.P.Thangavel  
For Respondents : M/s. R.T.Sundari, for R-2  
R1-Exparte

J U D G M E N T

The wife (aged 31), minor children (aged 8 and 6 respectively), father (aged 50), as claimants, have filed the claim petition in M.C.O.P.No.546 of 2014 before the Principal District Court, Namakkal, claiming compensation in respect of death of Kumar.

2. Kumar, deceased, aged 35, lorry driver, possessing Heavy Motor Vehicles Driving Licence, earning more than Rs.15,000/- per month, died in an accident on 20.02.2014. The claimants claimed a sum of Rs.40,00,000/- as compensation and in respect of the same, the Claims Tribunal has awarded a sum of Rs.13,69,000/- under the following breakup details:-

|                                                      |   |                 |
|------------------------------------------------------|---|-----------------|
| Loss of dependency<br>(Rs.6,000/- x 12 x 16 (-) 1/4) | - | Rs. 8,64,000.00 |
| Loss of love and affection for<br>four persons       | - | Rs. 4,00,000.00 |
| Loss of consortium to wife                           | - | Rs. 1,00,000.00 |
| Transportation charges                               | - | Rs. 5,000.00    |
|                                                      |   | -----           |
|                                                      |   | Rs.13,69,000.00 |
|                                                      |   | -----           |

3. The claimants / appellants herein have challenged the award, as inadequate and disproportionate to the monthly income earned by the deceased.

4. The learned counsel appearing for the claimants / appellants herein submitted that the monthly income in respect of the driver of the Heavy Goods Vehicle has to be taken as Rs.12,000/- per month or at least, Rs.10,000/- per month and in support of the same, the following two decisions of the Hon'ble Apex court are relied upon:-

- (i) 2014 (2) TN MAC 680 (SC) (Kala Devi and Others v. Bhagwan Das Chauhan and others);
- (ii) 2016 (1) TN MAC 289 (SC) (Jaya Biswal and Others v. Branch Manager, IFFCO Tokio General Insurance Co. Ltd., and others).

5. In the former case, the Hon'ble Supreme Court has quoted the provisions of the Minimum Wages Act, in the state of Himachal Pradesh, and considering the facts and circumstances, the gross income was taken only at Rs.9,000/- per month. In the latter case, it was a case of the deceased driver, who was driving a truck having National permit and the deceased was often driving the vehicle outside the State; considering that factual aspect, the Supreme Court has taken the monthly income on the higher side.

6. But, whereas, the case on hand, is a case, where, there is no proof for actual income earned by the deceased, still, considering the fact that the deceased was possessing driving licence to drive the Heavy Motor Vehicles and also the deceased was under a liability to maintain two minor children, aged 8 and 6 as well as his aged father and his wife and in order to support his family consisting of four members, the deceased / driver should have been earning a considerable amount towards maintaining his family. However the Minimum Wages payable for the relevant year has not been produced. Therefore, the monthly income is fixed at Rs.8,000/- and awarding 50% towards future prospective increase in income and deducting 1/4th towards the

personal expenses, the monthly contribution is taken at Rs.9,000/- (Rs.8,000/- + Rs.4,000/- : Rs.12,000/- (-) Rs.3,000 (1/4th)). Adopting the multiplier of 16, the compensation for loss of income would be Rs.17,28,000/- (Rs.9,000/- x 12 x 16). Awarding a sum of Rs.1,00,000/- to each of the claimants 2 to 4 towards loss of love and affection, totalling to Rs.3,00,000/- under that head, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards transport expenses and Rs.1,00,000/- towards loss of consoriturum, the total amount of compensation is quantified at Rs.21,63,000/-.

7. In the result, the Civil Miscellaneous Appeal is partly-allowed, by enhancing the quantum of compensation from Rs.13,69,000/- to Rs.21,63,000/-, which is payable with interest at 7.5% per annum, from the date of petition till the date of deposit. No costs.

8. The Insurance Company / second respondent shall deposit the enhanced amount of compensation, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first claimant / wife is entitled to a sum of Rs.12,00,000/-, the second and third claimants / children are entitled to a sum of Rs.4,00,000/- each, (totalling Rs.8,00,000/-) and the fourth claimant / father is entitled to a sum of Rs.1,63,000/-, with proportionate interests. The Tribunal shall transfer the respective compensation amount to the Savings Bank Accounts of the major claimants and the share of the minor claimants shall be in fixed deposit, in anyone of the Nationalized Banks, till they attain majority and the interest accrued thereon shall be withdrawn by the guardian of the Minor Claimants, once in three months, directly from the Bank. The claimants / appellants herein is not entitled to any interest for the default period. The claimants shall pay the necessary court fee for the enhanced compensation before receiving the copy of this judgment.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Chief Judicial Magistrate  
Motor Accident Claims Tribunal Court, Namakkal.

2. The Section Officer, V.R.Section,  
Madras High Court, Chennai 104

+1 cc to Mr.Ma.P.Thangavel Advocate sr 64886

+1 M/s.S.R.Sumathy Advocate sr 64829 dated 26/06/2018

C.M.A.No.2249 of 2017

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aa26/03/2018



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