IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.No.2256 of 2017

1. M.Selvambaal
2. Minor Enian
3. Minor Suganya
4. Minor Sri Ram

(Minors are represented
by their mother 1^{st} appellant) ... Appellants/Claimants

versus

1. Sumathi.N

2. The Branch Manager
United India Insurance Co. Ltd.,
No.12A, Kovai Road,
Karur.

3. The Branch Manager,
Oriental Insurance Company Ltd.,
No.75, Krishnana Street,
Thiruvannamalai.

4. Gnandeepam

5. Gunaseelan

6. Manimegalai

7. Kalaiselvan

8. Gowtami

9. Ruth ... Respondents/Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree dated 06.12.2006 in M.C.O.P.No.401 of 1999 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

For Appellants	:	M/s.G.Rajan
For R-2	:	M/s.M.B.Gopalan
For R-3	:	M/s.M.Krishnamoorthi

JUDGMENT

The deceased, Mariappan, aged 35 years, a Revenue Inspector, died in an accident on 31.10.1998. The claimants, viz., wife and children filed claim petition before the the Motor Accident Claims Tribunal, District Court, Thiruvannamalai, in M.C.O.P.No.401 of 1999, claiming compensation of Rs.10,52,000/- originally, which was later amended to Rs.15,52,000/- (amended as per order in I.A.No.407 of 2005 dated 23.12.2005).

2. The Tribunal, on consideration of the oral and documentary evidence, passed an award for a sum of Rs.7,73,000/- as compensation under the following break-up details:

Loss of dependency	-	Rs.7,68,000/-
Loss of consortium	-	Rs. 5,000/-
Total	-	Rs.7,73,000/-

3. The learned counsel appearing for the appellants submit that when the salary certificate itself discloses the monthly salary received by the deceased at Rs.6,000/-, however, the Tribunal has not taken into consideration the future prospective increase in income due to promotion and other aspects. The Tribunal ought to have considered future prospective increase in income and calculated the loss of dependency and awarded a much higher amount. It is further submitted that no amount of compensation has been granted to the minor claimants under the head loss of love and affection. It is further submitted that the compensation awarded under the head loss of consortium is on the lower side. It is also submitted that no compensation has been awarded under the heads transport expenses and cremation expenses. It is therefore prayed that this Court may consider granting higher compensation.

4. This court gave its anxious consideration to the contentions advanced by the learned counsel for the parties and perused the materials available on record as also the order passed by the Tribunal.

5. A perusal of the order passed by the Tribunal reveals that while assessing loss of income, the Tribunal has considered

the salary certificate, which is marked as Ex.P3 and the oral evidence of the wife of the deceased (P.W.1). It is the deposition of P.W.1 that the deceased joined as Junior Assistant and got promoted as Revenue Inspector. Further, as per Ex.P-3, the salary of the deceased as on 31.10.1998 was Rs.5,972/-. It is the further evidence of P.W.1 that had the deceased been alive, he would have got promoted as Deputy Tahsildar in the year 2004 and within another six years he would have been promoted as Tahsildar and further as District Revenue Officer.

6. However, the Tribunal doubted the genuineness of the salary certificate, Ex.P-3 on the ground that the deduction part is not reflected in the salary certificate. However, while doubting the salary certificate, the Tribunal has given a finding that the deceased is left with further 22 years of service and, therefore, the possibility of the deceased getting promoted by three stages cannot be ruled out. The Tribunal, considering the possibility of increase in monthly salary by Rs.3,000/-, while fixing the monthly income of the deceased including future prospective increase in income at Rs.6,000/- p.m., quantified the annual income at Rs.72,000/-; deducting 1/3rd towards personal expenses and adopting the multiplier of '16', quantified the compensation towards loss of dependency at Rs.7,65,000/-.

7. From the above reasoning of the Tribunal, it is evident that the Tribunal has considered a flat increase in income. Though the Tribunal itself has accepted that the deceased would have got three promotions atleast, however, has given only a flat increase in income.

8. Whether the flat increase as given by the Tribunal on the basis of the evidence and findings rendered by the Tribunal is sustainable or not. A perusal of the evidence of P.W.1 reveals that had the deceased lived, he would have got promoted upto the level of District Revenue Officer. In such a scenario, though hypothetical, but which cannot be ruled out, the family members of the deceased would have benefited more from the income, which the deceased would have drawn on such promotions. Accordingly, this Court is of the considered view that the income along with the future prospective increase in income could safely be fixed at Rs.9,000/-. The Tribunal, however, has deducted personal expenses at 1/3rd, which should have been done only at ¼, the dependants being four in number. Accordingly, this Court, taking the age of the deceased at 36 and adopting the multiplier of 15, quantifies the compensation at Rs.12,15,000/= (Rs.9,000 x 12 – ¼ x 15).

9. It is further to be kept in mind that after the untimely death of the deceased, the first claimant, viz., wife of the

deceased would have been put to much hardship in bringing up the minor children. The stress and strain that the first claimant would have shouldered due to the death of the deceased has to be compensated. The 1st claimant had lost her companion and was left out in the world to take care of herself. However, the Tribunal, though has awarded compensation under the head loss of consortium, without understanding the difficulties that the 1st claimant would have faced, has awarded only a paltry sum of Rs.5,000/-, which this Court feels requires enhancement. Likewise, the minor claimants have been deprived of the love and affection and guidance, which they would have got from the deceased had he been alive. This court feels that compensation should also be awarded under the head love and affection. No compensation under the head transportation expenses and funeral expenses have been awarded, which should have been awarded. Therefore, this Court feels that the compensation requires enhancement and restructuring. According, this Court enhances the compensation under the head loss of consortium and awards compensation under the heads loss of love and affection, transport expenses and funeral expenses as below :-

Loss of dependency	-	Rs.12,15,000/-
Transport Expenses	-	Rs. 5,000/-
Cremation expenses	-	Rs. 10,000/-
Loss of consortium	-	Rs. 50,000/-
Loss of Love & Affection (Rs.50,000/- to each claimant)	-	Rs. 1,50,000/-
Total	-	Rs.14,30,000/-

10. Accordingly, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.7,73,000/- to Rs.14,30,000/-, payable by the second respondent, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the interest for default period. The appellants/claimants shall pay the requisite court fees on the enhanced amount, if not already paid, before receiving a copy of this judgment. No costs.

11. The 2nd respondent/Insurance Company is directed to pay the compensation of Rs.14,30,000/-, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the interest for default period, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the share of the claimants to their respective bank accounts through RTGS within a period of two weeks thereafter. The ratio of apportionment stands confirmed even on the compensation amount

enhanced by this Court above. The accident had happened in the year 1999, when the claimants 2 to 4 were minors. By now the said claimants would have attained majority. The claimants, who have attained majority by now, shall furnish the required proof of their attaining majority before the Tribunal and the Tribunal shall satisfy itself of their attaining majority before transferring the amount to their bank accounts.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To
1. The Motor Accident Claims Tribunal,
   District Court, Thiruvannamalai.

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

+ 1 cc to Mr.M.B. Gopalan, Advocate Sr.57136
+ 1 cc to Mr. M. Krishnamoorthy, Advocate Sr.57083
+ 1 cc to MR. G. Rajan, Advocate Sr.57085

C.M.A.No.2256 of 2017

SKV(CO)
EU(26.03.2018)