

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2659 of 2017

1. R.Parimaladevi
2. A.Ramakkal
3. A.Appanaicker
4. Minor. Pavithra
5. Minor. Arun
(Minors rep. by mother / Guardian
Parimaladevi) ... Appellants / claimants

..vs..

1. Shanmugasundaram
2. Saminathan
3. United India Insurance Company Ltd.,
No.3 Giriram Buildings,
Main Road, Gobichettipalayam
(R-1 & R-2 remained exparte before the
Tribunal, hence notice is dispensed with
to them) ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree, dated 16.06.2014 made in M.C.O.P.No.105 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Bhavani at Erode District.

For Appellants : Mr. Ma.P.Thangavel
For Respondents : Mr. T.Ravichandran, for R-3

J U D G M E N T

In respect of a fatal accident that took place on 29.01.2009, where the Legal Representatives lost the deceased, A.Rathinasamy, a claim petition has been filed, claiming a sum of Rs.12,00,000/-, as compensation.

2. The deceased A.Rathinasamy was aged 29 and as a lorry owner and a Brick-kiln broker was earning a sum of Rs.10,000/- per month. The deceased was originally admitted at Government Hospital, Anthiyur, and later, referred to Lotus Hospital, Erode, where he died at about 02.40 am on 30.01.2009.

3. The first claimant is the wife, the second claimant is the mother, the third claimant is the father, the fourth claimant is the daughter and the fifth claimant is the son. The fourth and fifth claimants were minors, at the time of accident.

4. The Tribunal has quantified the compensation at Rs.6,90,000/-, based upon the following parameters.

Loss of income (Rs.4,500/- (-) 1/3rd : 3,000/- x 12 x 17)	-	Rs.6,12,000/-
Loss of consortium for wife	-	Rs. 25,000/-
Love & affection (for Minor son/ Minor daughter / mother)	-	Rs. 30,000/-
Love and affection for father	-	Rs. 5,000/-
Funeral expenses	-	Rs. 5,000/-
Medical Bills	-	Rs. 28,000/-
Transportation	-	Rs. 5,000/-

		Rs.6,90,000/-

5. The medical expenses, while the deceased was alive, has been estimated at Rs.29,000/- and the award has been passed for a sum of Rs.28,000/-, over which there is no dispute.

6. The main dispute is, with regard to the compensation fixed based on the income of the deceased. The Tribunal, while quantifying the compensation, has taken the monthly income of the deceased at Rs.4,500/- and deducting 1/3rd towards the personal expenses, has taken the loss of dependency at Rs.6,12,000/-, by adopting the multiplier of 17.

7. The learned counsel appearing for the appellants / claimants would submit that the monthly income should have been fixed at least at Rs.10,000/- per month and fixing of income at Rs.4,500/- is at a lower range.

8. The learned counsel appearing for the third respondent / Insurance Company would submit that, in a case of an Agriculturist, during the relevant period of time, the monthly income has been taken only at Rs.6,500/- and in support of the same, the learned counsel relied upon the decision reported in (2014) 2 SCC 735 (Syed Sadiq v. United India Insurance Company Limited).

9. Therefore, considering the decision referred to supra, in this case also, it would be appropriate to take the monthly income at Rs.6,500/- and adding 50% towards future prospective increase in income, deducting 1/4th towards the personal

expenses and adopting the multiplier of 17, the loss of dependency would be Rs.14,91,750/- (Rs.6,500/- + Rs.3,250/- : 9,750/- x 12 x 17 (-) 1/4).

9.1. The personal expenses should have been deducted only at 1/4th, considering the number of dependents especially the minor dependents.

10. So far the loss of love and affection is concerned, what is awarded is only a sum of Rs.5,000/- to the third claimant and a sum of Rs.10,000/- each, to claimants 2, 4 and 5. This award should have been more, especially, when claimants 4 and 5 are minors, who were morally, economically and physically dependent upon the deceased father.

11. Under the circumstances, the loss of love and affection awarded is enhanced to Rs.1,00,000/- each, for the minor claimants, viz., appellants 4 and 5 herein and for claimants 2 and 3, parents, appellants 2 and 3 herein, the loss of love and affection is awarded at Rs.50,000/- each. Thus, towards loss of love and affection, for all the four persons together, a sum of Rs.3,00,000/- is awarded.

12. The loss of consortium awarded to wife at Rs.25,000/-, medical expenses at Rs.28,000/-, funeral expenses at Rs.25,000/- and transport expenses at Rs.5,000/- are as per the standard procedures prescribed and hence, the compensation awarded under those heads are confirmed as such. Thus, the total amount of compensation is quantified at Rs.18,74,750/-.

13. In the result, the Civil Miscellaneous Appeal is allowed, by enhancing the total amount of compensation from Rs.6,90,000/- to Rs.18,74,750/-, which is payable with interest at 7.5% per annum, from the date of petition till the date of deposit. No costs.

14. It is represented by the learned counsel appearing for the third respondent / Insurance Company that the amount of compensation, as determined by the Claims Tribunal, has already been deposited by it.

15. In view of the said submission, the third respondent / Insurance Company is directed to deposit the enhanced amount of compensation, as determined by this Court, along with interest at 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of two weeks from the date of receipt of a copy of this judgment. On such deposit being made, the share of the minor claimants shall be kept in a Fixed Deposit, in any one of the Nationalized Banks, till the minors 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 Tribunal is directed to transfer the amount to the Savings Bank Accounts of the major claimants, through RTGS, as per the ratio of apportionment made by the Claims Tribunal. The court fee for the enhanced compensation amount shall be paid by the claimants before receiving the copy of this judgment. The claimants are not entitled to any interest for the default period.

Sd/-
Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Bhavani at Erode District.

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

+1cc to Mr.T.RAVICHANDRAN, Advocate, S.R.No.68011

+1cc to Mr.MA.P.THANGAVEL, Advocate, S.R.No. 68427

C.M.A.No.2659 of 2017

KJI (CO)
TR(06/02/2018)

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