

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2017

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA,

C.M.A. No. 746 of 2017

G.Kesavan (Died),

1. R.Vijaya
 2. K.Venkatesan
 3. K.Moorthy
 4. R.Santha
 5. K.Rajendran
- Appellants/Claimants

vs

1. R.Rajendran
 2. ICICI Lombard General Insurance Company Ltd.,
No.84/85, Wall Tax Road,
Arihant Plaza, 1st Floor,
Chennai - 600 003.
- Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act, 1988 Claims Tribunal against the Judgment and Decree dated 28.03.2014 and made in MCOP. No.3882 of 2010 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes at Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondent 2 : Mrs.Sreevidhya

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.No.3882 of 2010 as inadequate, the Claimants have come forward with this Civil Miscellaneous Appeal.

2. On 27.04.2010 at about 7.30 hours, while the deceased was walking along the Thandurai Main Road opposite to Middle School, Annaikattucherry, Pattabiram, Chennai from South to North direction, a crane bearing Reg. No. TN 20 P 2162 came from the same direction in a rash and negligent manner, dashed against him and he sustained fatal injuries. Hence, the legal heirs of the deceased approached the Tribunal with a claim of Rs.10,00,000/- as compensation. The Tribunal has awarded a sum

of Rs.2,09,000/- payable with interest at the rate of 7.5% per annum on the following heads.

The break-up details of the same are as under:

Heads	Amount in(Rs.)
Pecuniary loss	1,44,000/-
Love and affection	50,000/-
Funeral expenses	15,000/-
Total	2,09,000/-

Dis-satisfied with the award amount, the claimants have preferred this appeal.

3. The learned counsel for the Claimants would contend that the total amount of compensation awarded by the Tribunal is very low and the same needs to be enhanced.

4. Heard both sides and perused the materials available on record.

5. A perusal of the award would go to show that no documentary evidence was produced to show the monthly income of the deceased and hence, the Tribunal has fixed the notional income of the deceased at Rs.3,000/-. The claimants 2 to 6 are not fully dependent on the deceased and the aged person could have many commitments of her own and hence 50% is deducted from her income. After deducting the same, the Tribunal has fixed the notional income as Rs.4,500/- in the absence of any proof, as per the judgment of the Supreme Court reported in 2014 (1) TN MAC 459 (Syed Sadiq Vs., Deputy Manager, United India Insurance Co. Ltd). After deducting 1/3 from the said amount, the monthly income is fixed as Rs.3,000/- per month (i.e) $3,000 \times 12 \times 8 = \text{Rs.}2,88,000/-$. Since the deceased has left behind two daughters and three sons and also her husband, who died pending proceedings in the year 2014, the Tribunal awarded Rs.50,000/- for love and affection. Considering the same, the amount awarded by the Tribunal is now enhanced to Rs.1,00,000/-. For funeral expenses, Rs.15,000/- was awarded and the same is retained. Therefore, this Court is inclined to enhance the award passed by the Tribunal on the following heads:

Heads	Amount (in Rs.)
Pecuniary loss is calculated as $\text{Rs.}3,000/- \times 12 \times 8$	2,88,000/-

Heads	Amount (in Rs.)
Loss of love and affection	1,00,000/-
Funeral expenses	15,000/-
Total	4,03,000/-

6. According, the Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal is enhanced from Rs.2,09,000/- to Rs.4,03,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The second respondent-Insurance Company is directed to deposit the said amount within a period of four weeks from the date of receipt of a copy of this judgment and the claimant is entitled to withdraw the same forthwith. The claimant is directed to pay the necessary Court fee, if any for the enhanced portion of the award amount. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Motor Accident Claims Tribunal,
IV Court of Small Causes at Chennai.

+1 cc to Mrs.R.sreevidya,advocate,sr.18443.

ssi(co)
krd 11/4

C.M.A. No. 746 of 2017

सत्यमेव जयते

WEB COPY