

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.09.2017

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A.No.1019 of 2006

National Insurance Co. Ltd.,
751, Anna Salai,
Chennai - 600 002.

... Appellant/2nd Respondent in
Trial Court

Versus

1. Sathi Devi
2. Supriya
3. Karthikeyani
4. Gopinathan

... Respondents/
Petitioners 1 to 3 and
First Respondent in Trial

Civil Miscellaneous Appeal filed against the judgment and decree, dated 11.08.2005 and made in M.A.C.T.O.P. No.372 of 2003, on the file of the Motor Accidents Claims Tribunal, Poonamallee District & Sessions Court (Fast Tract Court No.3), Poonamallee.

For Appellant : Ms.Shanmuga Nandhini
for Mr.S. Vadivel

For Respondents 1 to 3 : Mr.S.Sathish Rajan
For 4th Respondent : Exparte in Lower Court

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JUDGMENT

In a road accident took place on 08.09.1993 involving an auto-rickshaw and a container lorry, the passenger of the auto-rickshaw died. Seeking compensation for which, his widow, mother and daughter moved the Tribunal with a claim of Rs.10,00,000/- against the owner and the Insurance Company of the auto-rickshaw concerned, the Tribunal however has passed an award for

Rs.5,20,880/- payable with interest at 9% per annum. Challenging the quantum of compensation awarded by the Tribunal, the Insurance Company of the auto rickshaw has come forward with this appeal.

2. The victim of the accident, one Surendiran was stated to be working as Grade - I Operator in M/s.Dunlop India Ltd., and vide Ext.P4 - Salary certificate he was stated to be earning Rs.4,299/-. After deducting 1/3rd salary towards personal expenses, the Tribunal capitalized the loss of family support by adopting multiplier 15 and arrived compensation of Rs.5,15,880/-. Towards Funeral Expenses it awarded Rs.5,000/-. Nothing was awarded by the Tribunal on the head of loss of consortium, love and affection for the daughter and the mother.

3. Ms.Shanmuga Nandhini, learned counsel for the appellant, contended that at the relevant time, when the accident took place the victim was not employed in M/s.Dunlop India Ltd., and this would be known from the testimony of the second petitioner who was examined before the tribunal as P.W.1. Therefore, the Tribunal was in error reckoning the monthly salary of the victim at Rs.4,299/-. It would be just and appropriate, contended the counsel, that the Tribunal had adopted notional income, which as per 2003 standards might not exceed Rs.2,500/-.

4. Per Contra, Mr.S.Sathish Rajan, learned counsel for the claimants/respondents has argued that at the relevant time when the accident took place, there was a lay off in M/s Dunlop Company where the victim was working, and merely because there was official lay off, it cannot be said that the victim's services must be devalued to an extent that bears no parity to his ability to earn. He also added that Tribunal has ignored the entitlement of the widow to be compensated for loss of consortium and also compensation for love and affection for the daughter and mother.

5. This Court does not find the submissions made on behalf of the appellant impressive. It may be that at the relevant time, the victim might not have been actually employed but Ext-P4 indicates that the victim was capable of earning at Rs.4,299/- at the relevant time. In the absence of any material to doubt it, it may not be appropriate for the Court to adopt any arbitrary technique and devalue the monetary worth of victim's ability to earn. As rightly contended by the learned counsel for the claimants/respondents, the Tribunal has literally ignored payment of compensation to the widow for the loss of consortium.

6. In the result, this Court does not find any merit and the appeal is dismissed with costs. The learned counsel for the appellant submitted that the appellant has already deposited the entire amount in to Court. The claimants are entitled to withdraw the same forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rsi/ssn

To
The Motor Accidents Claims Tribunal
The Poonamallee District & Sessions Court,
(Fast Tract Court No.3),
Poonamallee.

+1 cc to Mr.S.Vadivel Advocate sr 67504
+1 cc to Mr.S.Sathish Rajan Advocate sr 67427

C.M.A.No.1019 of 2006

nrjk(co)
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