

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.147 of 2004

- 1.Poothumponnu
- 2.Minor Rajeswari
- 3.Minor Rajendiran
- 4.Pooma ... Appellants/Claimants

[Minors 2 and 3 are rep. by their
N.F., mother, 1st appellant
herein - all residing at North Street,
Poonchuthi & Post, Melur Taluk,
Madurai District.]

-Vs-

1. R.Santha
2. The Divisional Manager,
National Insurance Co. Ltd,
Jawaharlal Nehru Street,
Pondicherry. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.11.2001 made in M.C.O.P.No.107 of 2000 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Villupuram.

For Appellant : Mr.S.Kalyanaraman

For Respondent No.2 : Mr.S.J.Jegadev

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.107 of 2000 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Villupuram. The claimants filed the above appeal claiming compensation of Rs.4,00,000/- for the death of Arjunan, who died in a motor accident. The first appellant is the wife; the appellants 2 and 3 are minor children and 4th appellant, the then unmarried sister of the deceased Arjunan. The first respondent before the Tribunal is the owner of the offending vehicle.

2. The learned counsel appearing for the appellants/claimants would submit that the deceased would have earned not less than Rs.4,000/- per month, as he was a lorry driver and his contribution to the family was Rs.3,000/-. He also pointed out that the amount fixed by the Tribunal under the heads of loss of consortium and loss of love and affection, was too low. According to him, under the head loss of consortium, the Tribunal ought to have awarded a minimum sum of Rs.30,000/- and under the head loss of love and affection, the appellants would be entitled to Rs.30,000/-.

3. The learned counsel appearing for the second respondent / Insurance Company would submit that the Tribunal awarded a reasonable compensation and it does not require any interference.

4. The accident took place on 02.06.1994. It occurred due to rash and negligent driving of the offending vehicle. It is not in dispute that the insurer is liable to pay the compensation.

5. The Tribunal found the age of the deceased to be 30 on the basis of the entries in the post-mortem certificate marked as Ex.P.3. In the absence of any other evidence, the age of the deceased must be taken to be 30. Admittedly, the deceased was a lorry driver. The Tribunal fixed his monthly income as Rs.1,200/-. The learned counsel for the appellants requested this Court to fix the salary as Rs.2,500/-. However, this Court is not inclined to accept the said submission in view of the fact that in the petition itself it was stated that the deceased was earning only Rs.1,200/- per month, as salary and Rs.50/-, as daily batta.

6. It is seen that the Tribunal has not taken into account the batta payable to the deceased driver. Having regard to the fact that the accident occurred in the year 1994 and the fact that the deceased earned Rs.50/- as batta, I am inclined to fix the monthly income of the deceased as Rs.2,000/-. As already noticed that the deceased was 30 years old, the Tribunal applied Multiplier 17. There are four dependants. Therefore, $1/4^{\text{th}}$ has to be deducted towards personal expenses. The loss of dependency works out to $\text{Rs.}2000 \times 1 / 4 \times 17 \times 12 = \text{Rs.}3,06,000/-$.

7. The Tribunal granted Rs.15,000/- under the heads loss of consortium and loss of love and affection. The age of the wife was 27 years old at the time of accident and the minors were 7 and 5 years old respectively. The wife lost her husband and the children lost the care and guidance of their father. Having regard to the age of the wife and children, this Court is inclined to hold that the amount fixed under the heads loss of

consortium and loss of love and affection by the Tribunal is very low. It has to be enhanced. Hence, the amount under the heads loss of consortium should be enhanced from Rs.15,000/- to Rs.30,000/- and the amount under the head loss of love and affection should be enhanced to Rs.30,000/-. The compensation has to be reassessed as follows:

Sl.No.	Heads	Calculation
1.	Salary	Rs.2,000.00 per month
2.	1/4 th deducted as personal expenses of the deceased	[Rs.2,000.00 - Rs.500.00] = Rs.1,500.00 per month
3.	Compensation after multiplier of 17 is applied	[Rs.1,500.00 x 12 x 17] = Rs.3,06,000.00
4.	Loss of Consortium	Rs.30,000.00
5.	Loss of Love and Affection and Care and Guidance for Minor Children	Rs.30,000.00
6.	Funeral Expenses	Rs.2,000.00
Total	Compensation Awarded	Rs.3,68,000.00

8. In the result, the Civil Miscellaneous Appeal is allowed in part to the extent as mentioned above. The second respondent-Insurance Company is directed to deposit the enhanced award amount of Rs.3,68,000/- [Rupees Three Lakhs Sixty Eight Thousand only] with interest @ 9% per annum and costs, less the statutory deposit, to the credit of M.C.O.P.No.107 of 2000 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Villupuram, within a period of six weeks from the date of receipt of a copy of this order. The appellants/claimants are permitted to withdraw the enhanced compensation amount awarded by this Court with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sri

To

The Motor Accident Claims Tribunal
(Additional District Judge-cum-
Chief Judicial Magistrate),
Villupuram.

+lcc to Mr.S.Kalyanaraman, Advocate, S.R.No.11276

C.M.A.No.147 of 2004

NRI (CO)
CA(18/04/2017)



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