

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.01.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2913 of 2010

1. M.Renuka
2. Minor Aravind
3. Minor Pavithran
(Minors rep. by their mother
and national guardian M.Renuka) ...
Appellants

-Vs-

1. Smt.N.Geethamalini
2. The New India Assurance Co., Ltd.,
No.45, 5th Floor, Moore Street,
Chennai - 600 001. ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decreetal order dated 11.03.2010 passed in M.C.O.P.No.1864 of 2005 on the file of the Motor Accidents Claims Tribunal [Small Causes Court], Chennai for enhancement of compensation.

For Appellants : Mr.R.Bharath Kumar

For R2 : Mr.S.Manohar

JUDGMENT

The claimants, who are the widow and children of one Meganathan, who was fatally knocked down by a car belonging to the first respondent and insured with the second respondent while crossing the road, have come forward with this appeal seeking compensation.

2. The deceased was aged about 39 years at the relevant time and was working as a cook in Government Hospital. Ext.-P6 Salary certificate shows that he was earning a gross salary of Rs.5414/-, and his take home pay was Rs.3,029/-. The claimants made a claim for Rs.10,00,000/-, whereas the Tribunal has passed an award for Rs.4,24,000/- payable with interest at 7.5%. The Tribunal also attributed 20% negligent to the deceased himself and accordingly reduced the total compensation amount payable by 20%.

3. The learned counsel for the appellants submitted that the Tribunal has reckoned the net monthly income of the deceased

at Rs.4,260/- and after providing 1/3 of the said amount towards the personal expenses of the deceased and applied 15 as multiplier, it arrived at a sum of Rs.5,11,200/-, for loss of consortium it has granted Rs.10,000/-, for loss of love and affection the petitioners 2 and 3 get Rs.5,000/- each, and reduced the total compensation amount determined by 20% as the Tribunal found that the deceased too had contributed to the accident to that extent, all of which are on the lower side and does not represent a just and fair compensation.

4. The learned counsel submitted that the Tribunal in arriving at the net monthly salary his contribution to Provident Fund also required to be included and also he being a cook, would be entitled to future career prospects and increase in income and accordingly the formula propounded in Sarala Varma & Other Vs. Delhi Transport Corporation & another [2009(2) TNMAC 1]: [2009 ACJ 1298] should be applied. He also argued that non pecuniary heads of compensation also should be reasonably valued.

5. The learned counsel for the second respondent/Insurance Company cautioned the Court that the Tribunal has carefully eliminated those of deductible elements in salary and arrived at net value and going by 2004 standards, the compensation determined by the Tribunal is just, fair and reasonable.

6. I perused relevant records more particularly Ext.-P6, the salary certificate of the deceased, and his contribution to Provident Fund needs to be included in arriving at his salary. His contribution to Provident Fund is Rs.565/- and it is rounded Rs.4,750/-. After providing for his personal expenses, his monthly support to the family would be Rs.3,217/- and this is rounded to Rs.3,220/-. Since he was 39 years at that relevant time, as per the dictum in Sarala Varma case, 50% of his monthly income should be added towards his future prospects. Accordingly, his income reckoned to Rs.4,830/-, applying multiplier of 16, the total sum on the head of loss of dependency would be Rs.4,830X12X16 = Rs.9,27,360/-. On non-pecuniary heads, compensation for loss of consortium is fixed at Rs.1,00,000/-, taking into consideration that he has left a young widow behind; for loss of love and affection for two children, they would be entitled to Rs.50,000/- each. As to the other heads, I confirm the compensation amount granted by the Tribunal. The final amount of compensation now determined is tabulated below:-

Heads	Enhanced Amount (Rs.)
Loss of dependency	9,27,360.00
Loss of consortium	1,00,000.00

Heads	Enhanced Amount (Rs.)
Loss of love and affection for 2 children @ Rs.50,000/- each	1,00,000.00
Funeral expenses and transportation	3,800.00
Total :	11,31,160.00

Since the Tribunal has apportioned 20% negligence to the deceased himself, the compensation amount is scaled down by 20% and according the revised award amount is Rs.9,04,928/-, rounded off to Rs.9,05,000/-.

7. In fine, the appeal is allowed without costs and the compensation awarded by the Tribunal is enhanced and the claimant is entitled to a sum of Rs.9,05,000/- (Rupees nine lakhs five thousand only) as revised compensation and the interest awarded by the Tribunal at 7.5% per annum from the date of filing the claim petition till the date of deposit, is confirmed. As to the other terms of the award and apportionment of the award to the claimants, the order of the Tribunal remains intact. The second respondent/insurance company is directed to deposit the enhanced award amount, less if any already deposited, within a period of four weeks from the date of receipt of a copy of this order, and thereupon the claimants are permitted to withdraw the same forthwith. The appellants are directed to pay the necessary court fee for the enhanced portion of the amount, if any.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ds/kmi

To:

1. The Judge, Small Causes Court, Chennai.
 2. The Section Officer, V.R.Section, High Court, Madras.
- +lcc to Mr.S.Manohar, Advocate sr.1360
+lcc to Mr.R.Bharath kumar, Advocate sr.1575

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GMI (co)

ss (28/10/2017)

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