

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2955 of 2007

1.S.Selvi
2.S.Thenrasu (Minor)
3.S.Abirami (Mionr)
4.K.Poochendu ... Appellants
Appellants 2 & 3 Minor rep. by
their mother & natural guardian Selvi.

Vs.

1.S.Palaniappan
2.The New India Assurance Company Ltd.,
Motor Accident Third Party Claim Cell,
Moore Street, Parrys,
Chennai - 1. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in MCOP.No.254 of 2003 dated 11.7.2005 on the file of the Motor Accident Claims Tribunal (Sub Court) at Ponneri.

For Appellants : Mr.V.Sivakumar
For Respondents : Mr.J.Michael Visuvasam [for R2]

JUDGMENT

The claimants/legal representatives of a pillion rider who lost his life when he was fatally knocked down by a lorry on 09.7.2002, has come forward with this appeal seeking enhancement of compensation. They moved the Tribunal with a claim for Rs.9,77,000/- restricted to Rs.9,15,000/- whereas the Tribunal has awarded a compensation of Rs.3,30,400/- payable with interest at 9% per annum.

2. The learned counsel for the appellants submitted that the deceased was aged 33 years and was working as a fitter in a private concern and was earning a monthly salary of Rs.6,385/-. He added that the claimants had the salary certificate issued by the employer of the victim which gives the said figure, but the Tribunal did not accept it and returned it and fixed the income

of the victim at Rs.60/- per day, hence Rs.1,800/- per month. The learned counsel also showed the salary certificate that the claimants attempted to produce in the Court with all the seal and marking of the Bench Clerk. It is bit suppressing as to how the documents with exhibit marking written by the Bench Clerk can be returned as easily as was done by the Tribunal. However, since the accident had taken place some sixteen years ago from today, it would be a futile venture to probe into this.

3. The learned counsel for the appellant added that it is not his fault, but the evidence produced by the claimants was not entertained by the Court, and even though, the same could have been challenged immediately due to inadequate legal advise, the same was not appeared to have been done then and hence the claimants should not be penalized on that head. He further added that the damages on non-pecuniary heads such as loss of consortium, loss of love and affection for the mother and children etc., are too inadequately compensated.

4. In all, the claimants claimed compensation of Rs.9,15,000/- and were awarded a sum of Rs.3,30,400/- . The break-up of the award under various heads is tabulated below :

Heads	Amount Awarded (Rs.)
Loss of income	2,75,400/-
Funeral Expenses	10,000/-
Loss of love and affection	20,000/-
Loss of consortium	5,000/-
Total :	3,30,400/-

5. The learned counsel for the appellant argued that to introduce a salary certificate or whatever it is worth at a belated stage may not be appropriate and the Court may go slow in acting on it without proving it formally.

6. The agony shall end some day. Even if this Court ignores the salary certificate yet, even by 2002 standards a fitter can be believed to earn atleast Rs.3,000/- per month and accordingly this Court fixes his income at Rs.3,000/-. Since he has to support a family of four that includes widow, two children and a mother, based on the dictum in Sarala Varma Vs DTC Ltd. [2009 (2) TNMAC 1] is 11, one fourth need to be deducted from his income towards his personal expenses and accordingly his net monthly support to the family would be reduced to Rs.2,250/-. Applying a multiplier of 16, the total compensation awardable on the head of compensation would be Rs.4,32,000/-; for loss of

consortium Rs.75,000/- is provided ; for loss of love and affection for two children Rs.1,00,000/- (Rs.50,000/- for two children each)and for his mother Rs.15,000/-. Thus the final figure of enhanced compensation would read as follows :

Heads	Enhanced Compensation (Rs.)
Loss of income	4,32,000/-
Loss of consortium	75,000/-
Loss of love and affection to children	1,00,000/-
Loss of love and affection to mother	15,000/-
Funeral Expenses	10,000/-
Total :	6,32,000/-

7.In the end the appeal is partially allowed and the compensation is enhanced from Rs.3,30,400/- to Rs.6,32,000/-. However, in order that the compensation awarded is just and fair, it is necessary to maintain the same parity and accordingly the interest rate is reduced from 9% to 7.5% per annum. The learned counsel for the second respondent/Insurance Company submitted that the entire award amount as per the award of the Tribunal has been satisfied. The Insurance Company is therefore directed to deposit the balance amount of the enhanced compensation with interest @ 7.5% per annum within a period of four weeks from the date of receipt of a copy of this order, whereupon the claimants are permitted to withdraw the same forthwith. No costs.

Sd/-
Assistant Registrar

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
Sub Court,
Ponneri.

+lcc to Mr.Michael Vishuvasam Advocate, S.R.No.5895

GJ(CO)
RS(27/03/2017)

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