

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.3442 of 2008

and

MP.No.1 of 2014

1. Meena
 2. Minor Vigneswaran
 3. Minor Pavithra
 4. Minor Bargavi
- (2 to 4 are minors and represented by their mother and natural guardian Tmt.Meena, the 1st applicant)
5. Balavadivel
 6. Pushpavalli
- ...Appellants/Claimants

Vs.

1. Sheik Muneer Basha
 2. National Insurance Company
Represented by its Branch Manager
15-1-85, G.B.C. Road
Ponnur, Guntur Taluk - 522 124,
Andhra Pradesh.
 3. S.Manjula
 4. United India Insurance Company
Represented by its Branch Manager
No.69, Armenian Street, Chennai-1.
- (RR 804 given up)
- ...Respondents/
Respondets

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to modify the order dated 30.06.2008 made in MCOP No.73 of 2008, on the file of the Motor Accident Claims Tribunal, Sub-Court, Tiruvarur by enhancing the compensation.

For Appellants : Mr.N.Anand Venkatesh
For R2 : Mrs.R.Surekha

JUDGMENT

The claimants are the appellants herein. They have filed M.C.O.P.No.73 of 2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Tiruvarur, claiming compensation for the death of deceased Kumar @ Rajkumar. This appeal has been preferred by the appellants / claimants for enhancement of compensation.

2. The 1st claimant / 1st appellant is the wife of the deceased. The appellants 2 to 4 are the minor children of the deceased. The appellants 5 & 6 are the father and mother respectively of the deceased. The 1st respondent is the owner of the offending vehicle and the offending vehicle was insured with the 2nd respondent/National Insurance Company Ltd.,

3. The Tribunal has awarded a total compensation of Rs.5,10,000/- as against the total claim of Rs.20,00,000/-. The Tribunal held that the accident occurred on 25.01.2007, only due to rash and negligent driving of the offending vehicle. There is no appeal filed by the insurer and insured. Therefore, the only question that arose is whether the compensation awarded by the Tribunal is too low.

4. The learned counsel appearing for the appellants would submit that the Tribunal committed error in fixing the monthly income of the deceased at Rs.4,000/- and according to him, the deceased was a lorry driver and he was earning a monthly salary of Rs.15,000/-.

5. However on perusal of records, no document has been filed to show that the deceased was earning Rs.15,000/- p.m. In the absence of dependable evidence, it cannot be said that the Tribunal had committed error in fixing monthly income of the deceased at Rs.4,000/- per month.

6. It is not in dispute that the deceased was aged 44 at the time of the accident. As per the decision in Sarala Varma & Other Vs. Delhi Transport Corporation & another [2009(2) TNMAC 1]: [2009 ACJ 1298] 30% of actual income has to be added, while computing future prospects of the deceased, then the monthly income comes to Rs.5,200/-. Admittedly, there are four dependants on the deceased. Hence, 1/4 share of his income has to be deducted from the monthly income. As the deceased was aged 44, the multiplier to be adopted would be 14. Thus, total loss of dependency comes to $3,900 \times 14 \times 12 = \text{Rs.}6,55,200/-$.

7. The Tribunal has omitted to award any compensation under the heads of Transportation, loss of consortium, loss of love and affection and attendant charges. It is seen from the

records, that immediately after the accident, the deceased was admitted to the Government Hospital, Chithoor, Andhra Pradesh District. Thereafter, he was shifted to Stanley Medical College and Hospital, Chennai. It is seen from the records, that the deceased was a native of Tiruvarur and his body was transported to Tiruvarur from Chennai. He was hospitalized for nearly 19 days. He died on 12.02.2007.

8. Taking all the above factors into consideration and having regard to the inflation factor, this Court is of the view that the compensation payable to the dependants has to be re-assessed as follows:-

S.No.	Heads	Calculation
1	Loss of Dependency	
	Income	Rs.4,000.00 per month
	Future Prospects	Rs.1,200.00 per month
	Total	Rs.5,200.00 per month
	1/4th deducted as personal expenses of the deceased [Rs.5,200 x 1/4 = Rs.1,300]	Rs.5,200.00 - Rs.1,300.00=Rs.3,900.00
	Multiplier adopted 14	Rs.3,900.00 x 14 x 12
	Compensation after multiplier of 14 is applied	Rs.6,55,200.00
2	Transportation charges	Rs.10,000.00
3	Loss of Consortium	Rs.20,000.00
4	Love & affection for children Rs.15,000 each (for 3 children)	Rs.45,000.00
5	Funeral expenses	Rs.10,000.00
6	Attendant Charges	Rs.10,000.00
	Total	Rs.7,50,200.00

9. The learned counsel appearing for the claimants / appellants submitted that the parents of the deceased died, pending disposal of the appeal. He has also requested this Court to permit the other claimants to share the compensation amount equally. The claimants 1 to 4 are entitled to 1/4 share in the compensation amount.

10. The learned counsel appearing for the 2nd respondent

submits that the award amount of Rs.5,10,000/- had already been deposited. The 2nd respondent / National Insurance Company is directed to deposit the balance amount of Rs.2,40,200/- with interest @ 7.5% p.a. from the date of petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this order. It is open to the claimants/appellants, to withdraw the compensation amount with interest, as fixed by this Court, after filing a Memo, along with a copy of this order. The appellants / claimants are directed to pay the necessary Court fee for the enhanced compensation amount.

11. In the result, the above appeal is allowed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Sub-Court, Tiruvarur.

2.The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.N.B. Surekha, Advocate, S.R.No.13354

+lcc to Mr.N. Anand Venkatesh, Advocate, S.R.No.13742

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