

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.477 of 2017

1. D.T.Parthasarathy

2. The Oriental Insurance Co. Ltd.

Branch Office,

CPO VIII Old Mysore Road,

Police Ground Opposite,

Bangalore - 560 018.

..Appellants/Respondents 2&3

versus

1. Suseelamma

2. Minor Tigeswari

3. Minor Bhavya

(Minors are represented by

their mother Suseelamma)

.. Respondents 1to3/Petitioners

4. Mohamed

.. 4th respondent/1st respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.08.1995 made in M.C.O.P.No.33 of 1995, on the file of the Motor Accident Claims Tribunal (Additional Special Judge), Krishnagiri.

For Appellants : Mr.N.Vijayakumar

For Respondents : No appearance

JUDGMENT

The deceased, Ramakrishna, aged about 30 years, working as a chawkidhar in Central Silk Board, earning a sum of Rs.1,400/- per month, met with an accident on 22.12.1991. Hence, the legal representatives of the deceased, namely, wife, and daughters of the deceased filed a claim petition in M.C.O.P.No.33 of 1995, on the file of the Motor Accident Claims Tribunal (Additional Special Judge), Krishnagiri, claiming compensation of Rs.4,00,000/-.

2. On consideration of oral and documentary evidence, the Tribunal awarded a sum of Rs.3,66,750/- as compensation along with interest at the rate of 12% p.a. from the date of petition till the date of deposit, the break up details of which is as hereunder :-

Loss of dependency	-	Rs.3,36,000/-
Transport expenses	-	Rs. 750/-
Loss of consortium	-	Rs. 15,000/-
Loss of love and affection (Rs.7,500/- x 2 minors)	-	Rs. 15,000/-

Total	-	Rs.3,66,750/-

Challenging the above award as excessive, the Insurance Company has filed this appeal.

3. The learned counsel appearing for the appellant Insurance Company submits that the Tribunal ought not to have granted compensation for a period of 28 years, taking the retirement age of the deceased at 58 years. The quantification arrived at in the said fashion is neither permissible or acceptable and is contrary to the principles of law. Hence, the award amount is excessive and needs to be interfered.

4. A perusal of the records reveal that the Tribunal fixed the monthly income of the deceased at Rs.1,499/- as per the salary certificate (Ex.P2) and taking the age of the deceased as 30 years based on the postmortem report (Ex.P1), after deducting a sum of Rs.499/- towards his personal expenses, fixed the monthly contribution to the family at Rs.1,000/-. The age of the deceased being 30 years, he would have gone on to work till the age of retirement at 58 years, in which event the family has suffered pecuniary loss of income for a period of 28 years. Accordingly, the Tribunal quantified the compensation for a period of 28 years at Rs.3,36,000/- (Rs.1,000 X 12 X 28). Considering the age of the deceased, the multiplier of 17 is permissible. But, the Tribunal has not considered the future prospective increase in income of the deceased. Had the deceased lived his life, he would definitely have earned more and contributed more to the family, which has been lost due to the untimely death of the deceased. If future prospective increase in income, even at the rate of 40% is considered, the quantification of compensation would definitely be more. The Tribunal has not considered the said aspect. Therefore, the award under the head loss of income cannot be said to be excessive or exorbitant.

5. The compensation awarded under the head loss of consortium to the spouse and loss of love and affection to the children are on the lower side. The 1st claimant has lost her husband at a very young age and has been left alone to carry on in bringing up the children. The children have also lost their father at a very tender age. Therefore, the compensation under the heads loss of consortium and loss of love and affection should have been given at a higher rate. But, in the case on hand, the Tribunal has awarded only a sum of Rs.15,000/- towards loss of consortium and Rs.7,500/- each to the children, which are very low. Further, no compensation has been awarded under the head funeral expenses.

6. Therefore, in no way, could the award be said to be excessive or exorbitant. Had the claimants preferred an appeal, the Court could have definitely enhanced the compensation. However, no appeal having been filed by the claimants, this Court is not inclined to enhance the award amount at this point of time, keeping in mind that the accident happened in the year 1991 and the award of the Tribunal is of the year 1995. Almost two decades have passed since the award passed by the Tribunal and, therefore, considering enhancement of compensation would not be desirable.

7. For the reasons aforesaid, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 31.08.1995 passed in M.C.O.P.No.33 of 1995 by the Motor Accident Claims Tribunal (Additional Special Judge), Krishnagiri.

8. The appellant/Insurance Company is directed to deposit the entire amount of compensation, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimants are permitted to withdraw the compensation as per the apportionment ordered by the Tribunal.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Additional Special Judge),
Krishnagiri.

2. The Section Officer, V.R. Section,
High Court, Madras.

C.M.A.No.477 of 2017

SJ(CO)
EU(08/03/2018)