

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 27.02.2017
CORAM
THE HON'BLE Dr.JUSTICE S.VIMALA

C.M.A.No.897 of 2017
and C.M.P.No.4409 of 2017

Branch Manager,
New India Assurance Company Ltd.,
Nellikuppam Branch. ... Appellant/Respondent

Vs.

1.Tarabai
2.Sakunthala ...Respondents 1 & 2/Petitioners 2&3
3.Managing Director,
Thanthai Periyar Transport Corporation,
Villupuram. ...Respondent 3/Respondent 1
4.Ravichandran
5.Sasichandran
6.Vasanthi
7.Brindha ... Respondents 4 to 7/Respondents 3 to 6
[R4 to R7 were set ex parte before the trial Court]

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 17.09.2004 made in M.C.O.P.No.492 of 1994 on the file of the Motor Accident Claims Tribunal, [Additional Sub Court], Tindivanam.

For Appellant : Mr.S.Jayasankar

J U D G M E N T

The deceased, Batcha Reddiar, aged 80 years, a Landlord and thereby, earning a sum of Rs.8,000/- per month, met with an accident that took place on 13.09.1993 and succumbed to the injuries sustained in the accident. Therefore, the legal representatives of the deceased filed a claim petition claiming compensation in a sum of Rs.6,00,000/-.

2.The Tribunal, on consideration of oral and documentary evidence, awarded compensation in a sum of Rs.2,02,000/-, the break-up details of which are as under:

Loss of income [3000x12x5]	-	Rs.1,80,000/-
Loss of love and affection	-	Rs. 10,000/-
Loss of estate	-	Rs. 10,000/-
Funeral Expenses	-	Rs. 2,000/-

Total		Rs.2,02,000/-

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

3.Though very many grounds have been raised in the appeal, however, at the time of argument, the learned counsel for the appellant has restricted his argument to the quantum of compensation alone and therefore, this Court is not venturing into the other grounds raised by the appellant.

4.Learned counsel appearing for the appellant submitted that there being no proof for income of the deceased, the fixation of notional income at Rs.4,000/- per month is on the higher side. He further submitted that the Tribunal ought to have deducted 50% from the annual income of the deceased towards personal expenses instead of 1/3rd deduction. Hence, the award requires to be reduced.

5.This Court gave its anxious consideration to the contentions advanced by the learned counsel for the appellant and perused the materials available on record as also the order passed by the Tribunal.

6.A perusal of the award passed by the Tribunal reveals that on the side of the claimants, Ex.P9-Postmortem report has been marked, which shows the age of the deceased as 83 years, whereas, in the claim petition, the age of the deceased was mentioned as 80 years. Hence, the Tribunal has fixed the age of the deceased as 83 years based on Ex.P9. So far as the avocation of the deceased is concerned, it is claimed in the claim petition that the deceased was a Landlord and earning a sum of Rs.8,000/-. However, no proof has been filed by the claimants to substantiate the same. In the absence of any documentary evidence, the Tribunal has fixed the monthly income of the deceased at Rs.4,000/- and the Tribunal deducted a sum of Rs.1,000/- towards personal expenses of the deceased and quantified the contribution of the deceased to the family at Rs.3,000/- p.m. The age of the deceased being above 80 years, the Tribunal has adopted the multiplier of 5 and quantified the compensation towards loss of income at Rs.1,80,000/- [Rs.3,000 x 12 x 5]. The Tribunal has also awarded a sum of Rs.10,000/- towards loss of love and affection and Rs.10,000/- towards loss of estate and Rs.2,000/- towards funeral expenses.

7.Though it is the contention of the learned counsel for the appellant that the Tribunal ought to have fixed the monthly income at Rs.3,000/-, however, the said contention is liable to be rejected for the simple reason that the Supreme Court, in Syed Sadiq - Vs - United India Insurance Co. (2014 (2) SCC 735) has fixed the monthly income at Rs.6,000/- even for a vegetable vendor. The Tribunal, following the ratio laid down in the said decision, has fixed the monthly income at Rs.4,000/-, which, in the considered view of this Court is justifiable and warrants no interference. Further, the Tribunal, as per the ratio laid down in the decision of the Apex Court in Sarla Verma's case (2009 5 LW 561), however,

keeping in mind the fact that the deceased is aged above 80 years, and since the income has been fixed at Rs.4,000/- deducted a sum of Rs.1,000/- towards the personal expenses and adopted the correct multiplier of 5, while quantifying the compensation. In the considered view of this Court, the Tribunal has taken the right view in the matter of fixation of income as well as making deduction towards the personal expenses and, accordingly, quantified compensation towards loss of income and the same cannot be said to be excessive and warrants no interference.

8.Insofar as the compensation awarded under the other heads, viz., loss of love and affection, loss of estate and funeral expenses are concerned, the compensation awarded is very low. However, at this point of time, this Court is not inclined to enhance the compensation awarded under the non-pecuniary heads. Accordingly, the compensation awarded under the above heads are confirmed.

9.For the reasons aforesaid, there being no merits the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.The appellant/Insurance Company is directed to deposit the entire amount of compensation as awarded by the Tribunal, less the amount, if any, already deposited, along with interest at 9% per annum from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. The claimants are entitled to compensation as per the ratio of the apportionment made by the Tribunal. On such deposit being made, the Tribunal is directed to transfer the respective share amounts of the claimants directly to their bank account through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gya/GLN

To

1.Motor Accident Claims Tribunal,
[Additional Sub Court],
Tindivanam.

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

3.The Managing Director
Thanthai Periyar Transport Corporation,
Villupuram

RV(CO)
sm:23.3.2018

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