IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1616 of 2004

1. Radha
2. Minor Bhuvaneswari
3. Minor Adhikesavan
4. Chembayi Ammal
(Minors 2 & 3 represented by their mother and next friend Radha, 1st appellant) …. Appellants/Petitioners

Versus

1. Govindan

2. Divisional Manager,
United India Insurance Ltd.,
Cuddalore. …. Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 01.12.2002 made in M.C.O.P.No.33 of 2001 on the file of the Motor Accident Claims Tribunal (Additional District Judge, FTC) Chidambaram.

For Appellants : Mr.T.Dhanyakumar

For 1st Respondent : Notice sent service awaited

For 2nd Respondent : Mr.C.Paranthaman

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 01.02.2002 made in M.C.O.P.No.33 of 2001 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court), Chidambaram.

2. The brief facts of the case are as follows :-

On 19.08.1996 at about 7.30 p.m., when the deceased Pandurangan was proceeding from Anna Nagar, the vehicle belonged to the 1st respondent being an Auto bearing Registration No. TS L 8440 was driven by its driver in a rash and negligent manner and hit against the deceased, due to which the deceased sustained fatal injuries and inspite of treatment given at Jipmar Hospital at Pondicherry, he died on 28.04.1996. The claimants who are the legal heirs of the deceased Pandurangan, have preferred a claim application, claiming a sum of Rs.12,00,000/- as compensation.

3. The 2nd respondent Insurance Company has filed a counter statement denying the accident and also the claimants' right as L.R's of the deceased and also the claim of Rs.12,00,000/-.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident had occurred only due to rash and negligent act of the driver of the auto and hence, fixed the liability on the 2nd respondent Insurance Company to pay the compensation. The Tribunal has awarded a sum of Rs.2,50,000/- as compensation under the following heads :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Income - by considering the age of the deceased at 36 and taking the annual income at Rs.15,000/- by applying the multiplier at 16	2,40,000.00
Loss of Love and Affection and Consortium	8,000.00
Funeral Expenses	2,000.00
Total compensation	2,50,000.00

Aggrieved against the said award, the appellants/claimants have preferred this appeal.

5. In the grounds of appeal, it is stated that the the award of the Tribunal is against the weight of evidence and probabilities of the case. The sum awarded by the Tribunal is very much on the lower side and it is against the evidence on record, The loss of dependancy determined by the Tribunal at Rs.15,000/- is also on the lower side. The Tribunal has also failed to take into consideration the earning power of the deceased person. The further sum awarded for transportation and medical expenses have also not been properly considered by the Tribunal.

6. Heard both sides and perused the documents available on record.

7. On the side of the appellants, it is argued that the Tribunal while arriving the annual income of the deceased has not considered the fact that the deceased was an agriculturist and also possessing vast land and he could have earned Rs.50,000/- per month. But, the Tribunal has fixed only Rs.15,000/- as annual income. The other arguments advanced by the appellants is that there is no sum awarded for consortium and also for the loss of love and affection for the children of the deceased. It is also argued by the learned counsel for the appellants is that the sum awarded for funeral expenses also is also very meager and it is against the evidence of probability.

8. On perusal of award, it is seen that based on the evidence and documents, the Tribunal has taken the annual income of the deceased at Rs.15,000/- by observing that even after the death of the said person, the agricultural land is being maintained and hence, there is no loss of income.

9. On the side of the 2nd respondent/ Insurance Company, it is argued that on considering the year of the accident occurred, the sum arrived by the Tribunal is quite reasonable. Hence, the 2nd respondent has not raised any objection with regard to award.

10. But, on considering the fact that when the deceased was only 36 years at the time of accident and also the number of persons depending on the income of the deceased, the monthly income of Rs.3,500/- would be the reasonable amount. Accordingly, this Court is of the view that fixing the loss of income is calculated by taking his monthly income at Rs.3,500/- and applying the multiplier for his age at 16, the sum has to be calculated after deducting 1/4th of income of the deceased.

11. Accordingly, the loss of income has to be arrived at Rs.2625 x 12x 16 = Rs.5,04,000 (3500 x ¼ = Rs.875/- (3500 - 875 x Rs,2625/-). Then, coming to the arguments advanced by the appellants regarding the consortium and loss of love and affection , the sum awarded by the Tribunal at Rs.8000/- is not justified. While considering the age of the claimants and also the age of the wife, a sum of Rs.10,000/- be enhanced for consortium and for the loss of love and affection, a sum of Rs.20,000/- has to be enhanced for the claimants 2 to 5, the sum awarded by the Tribunal for the funeral expenses at Rs.2,000/- has also to be properly considered. Accordingly, sum of Rs.15,000/- is to be enhanced towards funeral expenses.

12. Accordingly, the amount awarded by the Tribunal under various heads are modified as follows :

Heads	Amount awarded by the Tribunal (Rs.)	Modified amount awarded by this Court (Rs.)
Loss of Income	2,40,000.00	5,04,000.00
Consortium for the wife (1st claimant)	8,000.00	10,000.00
Loss of Love and Affection (for the claimants 2 to 5)		20,000.00
Funeral Expenses	2,000.00	15,000.00
Total compensation	2,50,000.00	5,49,000.00

13. Hence, the award of Rs.2,50,000/- granted by the Tribunal in MCOP. No.33 of 2001 is enhanced to Rs.5,49,000/-. The said enhanced amount shall carry the rate of interest at 7.5% per annum against the interest awarded by the Tribunal, viz., 9% per annum and the apportionment shall be as ordered by the Tribunal. The appellants are directed to pay additional court fee for the enhanced amount.

14. This Civil Miscellaneous Appeal is partly allowed. No costs.

15. Accordingly, the appellant/Transport Corporation is directed to deposit the entire award amount, in respect of above Appeal as per the enhancement passed by this Court, with interest and costs, after adjusting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the respective shares of the respective claimants to their bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
   (Additional District Judge, Fast Track Court),
   Chidambaram

2. The Section Officer,
   V.R.Section,
   High Court, Madras. (2 copies)

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.71787

+1cc to Mr.C.Paranthaman, Advocate, S.R.No.71663

CMA.No.1616 of 2004

EV(CO)
SSM(07/01/2019)