

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.1584 of 2005

and

C.M.P.No.880 of 2007

1.Vellaiyammal

2.Poongodi

3.Kandayee@Kandammal ... Appellants/Petitioners

Vs.

1.Kulandaivelu

2.The United India Insurance Co.Ltd.,
Erode Division Office,
Rep by its Divisional Office-I,
104, Peramanoor Main Road,
Salem-7. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount awarded in Judgment and decree dated 1.8.2003 made in M.C.O.P.No.1517 of 2001 on the file of the Motor Accidents Claim Tribunal/Principal District Court Salem.

For Appellant : Mr.N.Manokaran

For R2 : M/s.G.Priya Vadhana
for Mrs.Sunandasuren

JUDGMENT

This Civil Miscellaneous Petition has been preferred as against the judgment and award passed in M.C.O.P.No.1517 of 2001 on the file of the Motor Accidents Claim Tribunal/Principal District Court Salem.

2.The brief facts leading to the Claim Application are as follows:-

On 29.08.2001 at about 10.30 P.M while the deceased was standing in Kakkapalayam Bus stop on the southern side of the Salem to Sankari Main Road, the driver of the lorry bearing Registration No.KA 01 B 9949 came in a rash and negligent manner and dashed against the deceased. Due to the said accident, the deceased sustained injury and he died. A criminal case has also been registered against the driver of the said lorry in Crime Number 618 of 2001 under Section 304(A) of I.P.C by Magudenchavadi Police Station. The claimants being legal heirs of the deceased, claimed a sum of Rs.5,00,000/- as compensation.

3. The respondent/Insurance Company in the counter statement denied the accident and also the other aspects regarding age, occupation and income of the deceased and on the whole, the claim made by the deceased is excessive.

4. The Tribunal after analyzing the evidence and documents placed before the sum has determined the compensation and awarded a sum of Rs.2,65,000/- under the following heads:-

Sl. No.	DESCRIPTION	AMOUNT
1.	Loss of Income	Rs. 2,56,000/-
2.	Loss of Consortium	Rs. 5,000/-
3.	Loss of Estate	Rs. 2,000/-
4.	Funeral Expenses	Rs. 2,500/-
Total		Rs. 2,65,500/-

5. Aggrieved against the award, the claimant has preferred this appeal for enhancement.

6. The grounds raised in the appeal is that the tribunal has not considered the earning capacity, age of the deceased, future prospects of the deceased while awarding the compensation. Further, no sum has been awarded under the head of 'Transportation'. The further grievance raised in the appeal is that the income of the deceased taken at Rs.2,000/- as against the claim of Rs.5,000/-.It is further stated that the tribunal has failed to follow the law laid down in the judgment reported in 2000(1) Law Weekly 222 while determine the quantum.

7. Heard both sides and perused the documents available on records.

8. On the side of the appellant, it is argued that the deceased was 35 years at the time of the accident and he was doing agriculture work and also a power-loom weaver, he was earning Rs.5,000/- per month, whereas, the Tribunal has taken the income only at Rs.2,000/- which is very much on the meager side. It is also argued that the claimant who are the wife, daughter and mother of the deceased were very much depending upon the income of the deceased have lost their support, but the Tribunal has not awarded any sum for 'love and affection' and even for the transport expenses', 'the Tribunal has not awarded any amount. In spite of the fact that the deceased was doing agricultural work and also the power loom weaving business, the income fixed by the Tribunal at Rs.2000/- is very less, especially when there is ample evidence adduced by P.W.1 to prove the income of her husband/deceased. It is also argued that the monthly income fixed by the tribunal has to be increased by considering his nature of work i.e., Agricultural work and power loom waiving and his earnings as per the recent judgment of this Hon'ble Division Bench of this Court, wherein the Hon'ble Division Bench has fixed the monthly income of the coolie worker at Rs.2,500/-

9. On perusal of records, it is seen that the Tribunal as stated that from agricultural coolie work, he was earning Rs.2,000/- p.m and from waiver business also he was earning Rs.5,000/-, the Tribunal has taken as income as Rs.2,000/- and accordingly determined the the annual loss of income at Rs.24,000/-

10. While, considering the age of the deceased who was 35 years at the time of the accident and also the age of the dependents, this Court is of the view that the monthly income of the deceased and monthly income at Rs.3,500/- would be appropriate. According the loss of income is arrived at Rs.5,53,600/- by deducting 1/3 towards personal expenses and by adopting multiplier 16.

11. In respect of the other heads, the tribunal has awarded meagre amount towards, loss of estate, loss of consideration and funeral expenses. Therefore, the amount is modified as mentioned below. Similarly, the tribunal has not awarded any amount for transportation and care and guidance for which, a sum of Rs.10,000/- and Rs.25,000/- is awarded respectively.

13. Accordingly, the compensation awarded by the tribunal is modified by this Court as below:-

Sl. No	Head	Sum award by the tribunal	sum modified this Court
1.	Loss of income	Rs.2,56,000	Rs. 7,10,400/-
2.	Loss of Estate	Rs.2,000	Rs. 10,000/-
3.	Loss of Consortium	Rs.5,000	Rs. 20,000/-
4.	Funeral Expenses	Rs.2,500	Rs. 15,000/-
5.	Transportation	--	Rs. 10,000/-
6.	Care and guidance	--	Rs. 25,000/-
Total		Rs.2,65,000/-	Rs. 7,90,400/-

13. In view of the above modification, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

14. Accordingly, the 2nd respondent/Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank account thro' RTGS within one week thereon as apportioned by the tribunal. The rate of interest for the said modified amount is at 7.5% p.a. The Appellants/claimants are directed to pay additional court fee for the enhanced award amount.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.69955
+1cc to M/s.Sunanda Suren, Advocate, S.R.No.69424

C.M.A.No.1584 of 2005 and
C.M.P.No.880 of 2007

EV (CO)

RRS (04/07/2019)



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