

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1788 of 2005

Uma

...Appellant/Claimant

...vs...

1.P.Devaraj

2.National Insurance Company Limited,
Branch II,
No.1272-1273, Mettur Road,
Palaniappa Complex,
Erode - 11.

3.V.Palaniappan

4.Saraswathi

...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.06.2004 in M.C.O.P.No.730 of 2001 on the file of the learned Principal District Judge, Erode District.

For Appellant : Mr.Kaithamalai Kumaran

For Respondents : Mr.S.Arun Kumar for R2
R1 - No appearance
R3 & R4 - Not ready

JUDGMENT

The appellant is the claimant in M.C.O.P.No.730 of 2001 on the file of the Principal District Judge, Erode. She has filed the present appeal seeking for enhancement of compensation awarded to her for the death of her husband and also to scale down the share of compensation awarded in favour of the parents of the deceased.

2. The appellant is the wife of the deceased and she filed M.C.O.P.No.730 of 2001 on the file of the Principal District

Judge, Erode and the parents and sister of the deceased filed a separate M.C.O.P.No.890 of 2001 before the same Court. The learned Principle District Judge, Erode clubbed both these M.C.O.Ps and awarded a compensation of Rs.3,39,400/- together with interest at the rate of 9% per annum. Out of the total compensation of Rs.3,39,400/-, a sum of Rs.1,35,000/- was awarded to the appellant and the balance amount was given to the claimants in M.C.O.P.No.890 of 2001. Not satisfied the award passed by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of compensation.

3. The brief case of the appellant/claimant is as follows:

On 04.03.2001, one Saravanan, husband of the claimant was travelling in a scooter bearing Registration No.TSR 6312 as pillion rider from Tiruchengodu to Erode. At that time, a speeding van bearing Registration No.TN 33 L 8291 hit the two wheeler, as a result of which the deceased Saravanan died on the spot.

4. According to the appellant/claimant, the deceased was aged about 26 years on the date of the accident and that he was a coolie earning a sum of Rs.2,400/- per month. It is also contended that the rash and negligent driving of the driver of the van bearing Registration No. TN 33 L 8291, belonging to the first respondent, was the cause of the accident and that since the said van was insured with the United India Insurance Company Limited, Erode, both of them are jointly and severally liable to pay compensation.

5. Mr.Kaithamalai Kumaran, learned counsel appearing for the appellant would contend that though the Tribunal awarded a compensation of Rs.3,39,400/- together with interest at the rate of 9% per annum to the present appellant/claimant as well as the parents and sister of the deceased Saravanan, while apportioning the award, has granted a huge sum of Rs.78,400/- to the father of the deceased and Rs.1,25,000/- to the mother of the deceased.

6. The learned counsel appearing for the appellant would further contend that since the father of the deceased died, the amount awarded to the father should entirely be given to the present appellant. He also stressed that the Tribunal, while fixing the loss of dependency did not add 40% towards future prospects and the award passed by the Tribunal is very meagre. In the instant case, it is contended by the appellant/claimant that the deceased was earning a sum of Rs.2,400/- per month as a coolie and was aged about 26 years on the date of the accident. Therefore, 40% is to be added to the future prospects of the deceased as per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601. Thus,

Rs.2,400/- + Rs.960/- (40% of Rs.2,400/-) = Rs.3,360/-.

7. Since there are three dependents, depending on the income of the deceased, 1/3 has to be deducted towards the personal expenses of the deceased. As the deceased was aged about 26 years on the date of the accident, the proper multiplier to be adopted in the instant case is 17 as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Therefore, the loss of dependency is calculated as follows:

Multiplier Method:

= Rs.3,360/- * 12 * Multiplier 17 * 1/3 deduction
= Rs.6,85,440/- * 1/3 deduction
= Rs.4,56,960/-

Apart from the said amount, the appellant/claimant is entitled to a sum of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards loss of consortium, funeral expenses and loss of estate respectively. Thus, the compensation amount is enhanced as detailed below:

S.No	Head	Amount granted (Rs.)
1.	Loss of dependency	4,56,960/-
2.	Loss of consortium	40,000/-
3.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
Total		5,26,960/-

Thus, the total award amount would be granted Rs.5,26,960/-. The Tribunal has awarded a sum of Rs.3,39,400/- together with interest at the rate of 9% per annum.

8. It is represented that the Insurance Company have deposited the award amount and the claimants have also withdrawn the same. It is pertinent to point out that the parents of the deceased did not file any appeal/cross objections to enhance the compensation amount. As far as the present case is concerned, the appellant/wife of the deceased contended that out of the award amount of Rs.3,39,400/- only a sum of Rs.1,35,000/- alone was given to her share of the compensation. Since the parties have already withdrawn their respective shares, the enhanced compensation amount can be given to the share of the present appellant/claimant.

9. In the result,

(i) The appeal is partly allowed. No costs.

(ii) The Insurance Company is directed to deposit the

enhanced compensation amount of Rs.1,87,560/- (Rupees One Lakh Eighty Seven Thousand Five Hundred and Sixty only) (Rs.5,26,960/- - Rs.3,39,400/-) together with interest at the rate of 7.5% from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.730 of 2001. On such deposit being made, the appellant/claimant is at liberty to withdraw the same. The shares given to the parents and sister of the deceased shall remain intact.

vkrr/bga

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To
The Principal District Judge,
Erode District.

Copy to:-

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

+1cc to Mr.S.Kaithamalaikumaran, Advocate, SR.No.86348

+1cc to Mr.S.Arun Kumar, Advocate, SR.No.87018.

C.M.A.No1788 of 2005

Kak (26/04/2019)

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