IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.10.2018

CORAM

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No. 3511 of 2005

1. K.Deiva Sagayam (died)

2. D.Hemasona Suganthi

3. D.Kiruba Nayagam

4. A.Santhosha Rani

5. D.James Nayagam

6. D.Bala Basker

7. D.Inba Nayagam

8. D.Selva Nayagam

9.D.Jeeva Nayagam ... Appellants/Petitioners

(Appellants 3 to 9 brought on record as Lrs of the deceased of the 1st Appellant vide order of this Court dated 24.09.2018 made in C.M.P.1770/2009)

Vs

1. Sivaji Enterprises

2. Oriental Insurance Co. Ltd.,
Esplanade,
Chennai - 600 108.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act of 1988 against the Judgment and Decree in M.C.O.P.No.4205 of 1999 dated 18.11.2004 on the file of IV Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

For Appellants : Mr.S.Alex Raj

For Respondents : Mr.R.Sivakumar (for R2)

JUDGMENT

The Civil Miscellaneous Appeal is filed by the claimants/appellants against the Judgment and Decree in M.C.O.P.No.4205 of 1999 dated 18.11.2004 on the file of IV Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

2. The brief facts of the claim petition is that on 21.09.1998 at 6.00 a.m., while the deceased Edwin Nayagam was travelling in the Tempo Traveller van bearing Registration No.TN 09 H 4960 as passenger. When the said vehicle was proceeding from Chennai to Trichy National Highways, the driver drove the van in a rash and negligent manner and dashed against the bus bearing Registration TN 58 N 0184. Due to the said accident, the deceased Edwin Nayagam sustained grievous injuries and died. It is further stated that due to negligent driving of the driver of the tempo traveller, the said accident occurred and hence, the driver of the van is solely responsible. As the van is insured with the second respondent / insurance company, the legal heirs of the deceased have filed the claim petition before the Tribunal claiming compensation of Rs.3,00,000/-.

3. The Tribunal upon analysing the documents and evidences awarded a sum of Rs.1,17,000/- as compensation under various heads. The breakup details are as follows :-

Loss of income (1600 x 12 = 19200 x 5)	:	Rs.96,000/-
Future prospects	:	8,000/-
Loss of enjoyment amenities	:	5,000/-
Mental agony to appellants	:	5,000/-
Funeral expenses	:	3,000/-
		Rs.1,17,000/-

4. Challenging the award as inadequate, the claimants have filed this appeal for enhancement.

5. The learned counsel for the appellant has argued that the income fixed by the Tribunal at Rs.2,400/- is on the lower side. Even though the Tribunal has observed that the deceased was 23 years and was running a Telephone booth and xerox shop as it's Proprietor, it has concluded that the deceased could have earned only a sum of Rs.2,400/-, out of which 1/3rd of the amount has been deducted towards his personal expenses.

According to the learned counsel for the appellant, the deceased was earning a sum of Rs.4,000/- per month which was not properly appreciated by the Tribunal. It is further contended that the second appellant, who was the unmarried sister also depending upon the income of the deceased and hence the sum awarded by the Tribunal and interest awarded at 9% is not proper, instead the Tribunal ought to have awarded 12%. Further, it is argued that during the pendency of this appeal, the 1st appellant / father of the deceased died on 16.12.2006 and hence appellants 3 to 9 were brought on record as his legal heirs.

6. The learned counsel for the 2nd respondent/insurance company argued that the claimants have not produced any documentary evidence to prove the income of the deceased. Further, he argued that the driver of the said vehicle, was not possessing valid driving licence at the time of accident and therefore, the respondent cannot be mulcted with any liability to pay compensation. In any event, according to the claimant, the award passed by the Tribunal is fair and reasonable and it does not call for any interference by this Court for enhancement. The learned counsel for the respondent / insurance company relied on the judgment of the Honourable Supreme Court in Sarala Verma & Others and Delhi Transport Corporation & Another reported in 2009 (2) TN MAC 1 (SC), wherein it was held that the father is not a dependent, only the mother is the dependent.

7. For the above said proposition, the learned counsel for the appellant also relied on the judgment of this Court in Branch Manager, ICICI Lombard General Insurance Company, Mumbai versus Kaliyamoorthy reported in 2016 (1) TN MAC 453 (DB) wherein it was held and the same is as under :-

> 16. If a married daughter / sister / brother has to be excluded from the expression, "Legal Representative", employed in Section 166 of the Motor Vehicles Act, then it would virtually amounting to substituting the words "Legal Representatives" with "dependants", as used in Section 2 (1) (d) of the Workmen's Compensation Act. No doubt, one who is gainfully employed cannot be called as a dependent. At the same time, not all married daughters / sisters can be said to be gainfully employed. The word "dependant" has a different meaning in different connotation. Some may be dependent in terms of money and others may be dependent in terms of service.

8. However, in the present case, the Court below, taking note of the age of the father of the deceased has applied the multiplier method and awarded the compensation. Further during the pendency of this appeal, the first claimant died and the

other legal heirs of the father of the deceased were brought on record, who are all married and they are also not depending on the income of the deceased, even at the time of the death of the deceased or as on date. Hence, the appeal filed by the claimants by impleading the other brothers who were no way depending upon the income of the deceased is not justifiable.

9. On perusal of records, it is seen that the Tribunal after analysing the evidence and documents placed and also taking into consideration of evidence of PW2, has given a finding that the accident occurred only due to the rash and negligent driving of the driver of the Tempo Traveller, hence, this Court feels that the liability fixed on the insurance company / 2nd respondent is proper and justifiable.

10. Insofar as the newly impleaded parties i.e. appellants 3 to 9 are concerned, it is found that, at the time of death of the 1st appellant, he was aged 73 years and the appellants 3 to 9 are brothers of the first appellant, who were aged more than 50 years. Hence, this Court feels that, at any point of time, they were not dependents of the deceased. That apart, the appellants 3 to 9, who are the brothers and sister of the 1st appellant and aged more than 50 years would not have been dependent on the deceased, who was 23 years at the time of accident or at the time of filing implead application.

11. As far as compensation is concerned, the deceased was a bachelor who died at the aged of 23 years. Even in the claim petition, it was claimed that the deceased was the proprietor running a telephone booth and xerox shop and earning Rs.4,000/- per month. However, the Tribunal concluded that since there was no documentary evidence produced to that effect, notional income of Rs.1,600/- per month was taken as earning of the deceased and after appropriate deduction arrived at a sum of Rs.96,000/- towards loss of income. This Court is of the opinion that the above sum, is fair and reasonable and needs no interference. Further, the Tribunal has awarded reasonable amount in respect of other heads, which also does not require any interference by this Court. Hence, this Court is of the opinion that the award passed by the Tribunal is quite reasonable and proper. Accordingly, the Judgment and decree dated 18.11.2004 passed by the Tribunal is confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition if any, is closed.

12. The second respondent /Insurance Company is directed to deposit the entire award amount along with accrued interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of MCOP No.4205 of 1999 on the

file of the IV Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the surviving second claimant, who is the sister of the deceased, through RTGS, within a period of two weeks thereafter. The 2^{nd} appellant and the appellants 3 to 9, who were brought on record by this Court are entitled to equal share in the award passed by the Tribunal. Accordingly, the appellants 2 to 9 are permitted to withdraw a sum of Rs.14,625/- each along with interest awarded by the Tribunal.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
   IV Judge, Small Causes Court,
   Chennai.

Copy to
The Section Officer,
Vernacular Section,
Madras High Court.

+1 CC to Mr.R.Sivakumar, Advocate sr 69436.
+1 CC to Mr.A. Shanmugaraj, Advocate sr 70216.

C.M.A.No. 3511 of 2005

CNR(CO)
SP(16/10/2019)