

IN THE HIGH COURT OF JUDICATURE AT MADRAS

20.09.2018

CORAM

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A. No.670 of 2007

1. P. Subbammal

2. M. Perumal ...Appellants / Petitioner

Versus

1. Hyderabad Industries Ltd.,
Manjan Karanai Post,
Kannigaiper Village,
Periapalayam Road,
Uthukottai Taluk,
Thiruvallur District.

2. National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai - 600 002. ...Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the common judgment and decree in M.C.O.P. No.2638 of 2004, dated 28.04.2006 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.S. Alex Raj
for Mr.Shanmugaraj

For Respondents : R1- Ex-parte

Mr.S.Vadivel for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed under section 173 of Motor Vehicle Act, 1988 against the order and decree in M.C.O.P. No.2638 of 2004, dated 28.04.2006 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

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

On 09.03.2004 at about 1.15 p.m., when the son of the appellants viz., P.Madasamy @ Annamalai was riding his cycle towards T.H. Road in the Minjur from North to South, at that time a lorry bearing registration No.TN 20 H 8382 driven by its driver in a rash and negligent manner proceeding in the wrong direction, hit the cyclist and as a result, the said Mandasamy sustained severe injuries. In spite of the treatment given, he died on 17.03.2004. A criminal case was also registered in the Minjur Police Station. The parents being legal representatives of the deceased, have filed the claim petition for compensation, claiming a sum of Rs.6,00,000/- as compensation.

3. The Tribunal after analysing the evidence and documents has awarded a sum of Rs.1,59,000/- as compensation under various heads, which are as follows :-

Loss of dependency	:	Rs.1,44,000/-
(1,200 x 12 x 10)		
Loss of estate	:	5,000/-
Loss of love and affection:		5,000/-
Funeral expenses	:	5,000/-

		Rs.1,59,000/-

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

5. The learned counsel for the appellants argued that the trial Court should have considered the age of the deceased. He has further argued that the income of the deceased was stated to be Rs.2,200/-, apart from boarding and lodging of Rs.1,000/- spent by PW3.

6. It is argued by the appellant that the Tribunal has fixed the income of the deceased as Rs.60/- per day. The Tribunal ought to have considered the income of the deceased as Rs.3,200/- and also while applying the multiplier, the Tribunal has applied 10 instead of 18. Hence, on the whole, the award amount is meagre for the deceased, who was 20 years at the time of the accident.

7. Heard both sides and perused the materials available on record.

8. On a perusal of records, it is seen that the deceased was aged about 20 years and also a bachelor. In the absence of the proof for the income, the Tribunal has fixed the monthly

income at Rs.1,800/- after deducting 1/3 towards his personal expenses calculated the monthly dependency at Rs.1,200/-.

9. Though it is the strong contention of the appellant that the tribunal ought to have fixed the monthly income of the deceased at Rs.3200/-, no supporting documents were filed to prove the same. Hence, the tribunal has fixed Rs.1800/- as monthly income and deducted 1/3 towards the personal expenses and calculated the loss of dependency. This Court has considered the observation made by the tribunal and fixed the same amount i.e Rs.1800/- as monthly income of the deceased. But, this Court noted that the tribunal while calculating the loss of dependency, has adopted the wrong multiplier 10 instead of 18 according to the age of the deceased, who was 20 years at the time of the accident as per Ex.P6 Post-mortem Certificate. Hence, the correct multiplier 18 is taken for calculation. This Court also noted that the tribunal has not added any amount towards future prospects, therefore, this Court is inclined to add 40% of the monthly income toward future prospects and deducts 1/2 of the total income towards personal and living expenses. Accordingly, the sum for loss of dependency is calculated and modified as Rs.2,72,160/- $(1800 + 720(40\% \text{ of } 1800) \div \frac{1}{2} \times 12 \times 18)$.

10. The amount awarded under the head "loss of love and affection" is modified as "loss of happy life". So under that head an amount of Rs.1,00,000/- is now awarded. Since, the sum awarded under the head funeral expenses and loss of estate are found inadequate, the same are enhanced to Rs.15,000/- each. Accordingly, this Court enhances the award amount from Rs.1,59,000/- to Rs.4,02,160/- as detailed below :-

Heads	Sum awarded by the Tribunal	Sum modified by this Court
Loss of dependency	1,44,000/-	2,72,160/-
Loss of estate	5,000/-	15,000/-
Loss of love and affection	5,000/-	-
Loss of happy life	-	1,00,000/-
Funeral expenses	5,000/-	15,000/-
Total	1,59,000/-	4,02,160/-

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed as indicated above. No costs. Consequently, connected miscellaneous petition if any is closed.

12. The second respondent / Insurance Company is directed to deposit the entire amount of compensation, as enhanced by this Court, less the amount, if any, already deposited, along with interest @ 7.5% from the date of petition till the date of deposit to the credit of MCOP No.2638 of 2004 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 amount directly to the bank account of the claimants/appellants, as per the ratio of apportionment ordered by the Tribunal, through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any, shall be paid on the enhanced compensation amount.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Chief Judge, Small Causes Court
(Motor Accidents Claims Tribunal),
Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to Mr.S.Vadivel, Advocate, S.R.No.65444

+1 cc to Mr.A.Shanmugaraj, Advocate, S.R.No.65562

CMA No.670 of 2007

MP(CO)
SSM(08/08/2019).