



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.09.2018
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

WEB COPY

C.M.A.No.2874 of 2010

1.Chinnammal
2.Dhanalakshmi
3.Sarvalakshmi

.. Appellants

..Vs..

1.K.Murugan
2.The National Insurance Company Ltd.,
K.K.Road, Villupuram

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2010 made in M.C.O.P.No.106 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Villupuram District at Villupuram.

For Appellants : Mr.S.Krishnasamy
For Respondents : No Appearance for R1
Mr.J.Chandran for R2

J U D G M E N T

The instant appeal has been filed by the claimants challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Villupuram District) at Villupuram under its Award dated 29.06.2010 in M.C.O.P.No.106 of 2006.

The brief facts leading to the filing of the instant appeal are as follows:-

2. One Earum Mailon died on 09.08.2003 as a result of an accident while driving a Tractor bearing registration No.TN-32-2005 owned by the first respondent and insured with the second respondent. The dependents of the deceased who are the Appellants in the instant appeal, preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No. 106 of 2006 seeking a compensation of Rs.8,64,000/- for the death of Earum Mailon. The Motor Accident Claim Tribunal by its Award dated 29.06.2010 in M.C.O.P.No.106 of 2006 directed the second respondent to pay the Appellants a sum of Rs.2,30,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.



3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been by the claimants seeking enhancement of compensation of Rs.2,70,000/-.

WEB COPY

4. Heard, Mr.S.Krishnasamy, learned counsel for the Appellants and Mr.J.Chandran, learned counsel for the second respondent. The notice in this Appeal has been served on the first respondent, but there is no appearance on his side.

5. According to the learned counsel for the Appellants, the deceased Earum Mailon was a driver possessing a valid heavy vehicle driving licence. According to the learned counsel for the Appellants, the deceased Earum Mailon while driving the Tractor insured with the second respondent, the accident had happened which resulted in his death. According to the learned counsel for the Appellants, the deceased Earum Mailon was earning a monthly salary of Rs.5,000/- at the time of accident. The learned counsel for the Appellants also contended that the heavy vehicle driving licence of the deceased Earum Mailon was also marked as Ex.P3, before the Tribunal.

6. The learned counsel for the Appellants further contended that the deceased was aged 24 years, at the time of his death and he left behind his mother and two unmarried sisters who are the Appellants as his dependents. According to the learned counsel for the Appellants, even though the Appellants had disclosed in the claim petition before the Tribunal that the deceased was earning a monthly income of Rs.5,000/-, the Tribunal has assessed the monthly income of the deceased only at Rs.1,500/-. According to the learned counsel for the Appellants, considering the year of the accident and the avocation of the deceased, the Tribunal ought to have assessed the monthly income of the deceased at the time of accident as Rs.5,000/-.

7. Therefore, according to the learned counsel for the Appellants, the compensation awarded to the Appellants under the impugned award is an inadequate compensation.

8. Per contra, the learned counsel for the second respondent would submit that considering the year of the accident and also considering the age of the deceased, the compensation awarded under the impugned award is a just compensation. The learned counsel for the second respondent further contended that no document has been produced by the Appellant before the Tribunal to prove that he was earning a monthly income of Rs.5,000 at the time of accident.



9. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) The second respondent insurance company has not challenged the findings of the Tribunal regarding its liability to the Appellants.

b) It is an undisputed fact that the deceased died while driving the Tractor insured with the second respondent insurance company.

c) The age, avocation and the dependents of the deceased have not been disputed by the second respondent, before the Tribunal.

d) In the instant case, the deceased was aged 24 years at the time of the accident and as a heavy vehicle driver possessing a valid heavy vehicle driving licence and died leaving behind his mother and two unmarried sisters who are the Appellants in the instant Appeal. These facts have not been disputed by the second respondent before the Tribunal.

e) In the claim petition, the Appellant had disclosed that the deceased was earning a monthly income of Rs.5,000 at the time of accident. The accident happened in the year 2003. This Court is of the considered view that as a heavy vehicle driver holding a valid heavy vehicle driving licence during the year 2003, the Tribunal ought to have assessed the monthly income of the deceased Earum Mailon at Rs.2,500/-, since no document was produced by the Appellants before the Tribunal to prove the monthly income of the deceased, at the time of accident.

f) Being a bachelor, 50% will have to be deducted towards his personal expenses from the monthly income and after deduction, applying the multiplier method in the following manner:

$$\text{Rs.1,250/-} \times 12 \times 18 = \text{Rs.2,70,000/-}$$

and therefore, the compensation of Rs.2,70,000/- will have to be awarded to the Appellants towards loss of income.

g) As per Pranay Shethi's case rendered by the Hon'ble Supreme Court reported in 2017 (6) SCC 680, 40% will have to be added as future prospects which works out to Rs.1,08,000/-. In the instant case, the deceased being a driver holding a valid heavy vehicle driving license would certainly have lost future prospects and therefore, the future prospects at 40% amounting to Rs.1,08,000/- will have to be awarded to the Appellants.

h) In the considered view of this Court, the Tribunal has not awarded adequate compensation towards funeral and loss of consortium to the Appellant and also not awarded any compensation to the Appellants towards transportation costs, loss of estate and loss of love and affection, considering the fact that there are three dependents for the deceased.



10. In the light of the above observations, Award passed by the Tribunal under the impugned Award has to be enhanced in the following manner:

Heads	Amount awarded by the Tribunal	Modified Award Amount
Loss of income	Rs.2,04,000/-	Rs.2,70,000/-
Funeral Expenses	Rs.5,000/-	-
Funeral and Transportation cost	Nil	Rs.15,000/-
Loss of Love and Affection	Rs.21,000/-	Rs.30,000/-
Loss of Future Prospects	Nil	Rs.1,08,000/-
Loss of Estate	Nil	Rs15,000/-
Total	Rs.2,30,000/-	Rs.4,38,000/-

11. In view of the above observations recorded by this Court, the award passed by the tribunal is modified by enhancing the award amount from Rs.2,30,000/- to Rs.4,38,000/- and the second respondent is directed to deposit the award amount of Rs.4,38,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount that has already been deposited, to the credit of M.C.O.P.No.106 of 2006 on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate) Villupuram District at Villupuram, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellants are permitted to withdraw the amount lying to the credit of M.C.O.P.No.106 of 2006 along with accrued interest by filing an appropriate application.

12. Accordingly, the appeal is partly allowed without costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nl

To

1.The the Motor Accident Claims Tribunal
(Chief Judicial Magistrate) Villupuram District
Villupuram.



2. The Section Officer,
VR Section,
High Court, Madras.

WEB COPY

+1cc to Mr.S.Krishnasamy, Advocate, S.R.No.67041

+1cc to Mr.J.Chandran, Advocate, S.R.No.67871

C.M.A.No.2874 of 2010

(CO)
GSP(19/12/2018)