

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM

The Hon'ble Mr.Justice K.K.SASIDHARAN

AND

The Hon'ble Mr.Justice R.SUBRAMANIAN

C.M.A.No.1545 of 2018
and C.M.P.No.12294 of 2018

United India Insurance Co. Ltd.,
No.146, N.Kumar Complex,
Thiruchengodu, Namakkal District.

... Appellant/2nd Respondent

vs.

Ramasamy (died)*

1.Subbulakshmi

2.Subramani

3.Parvathi

4.Kalaivani

5.Muthugounder

6.Tamil Nadu State Transport
Corporation Ltd., 12, Ramakrishna
Road, Salem.

... Respondents/Petitioners 1 to 4/

Respondents 1 & 3

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 10.08.2017 made in M.C.O.P.NO.24 of 2009 on the file of Motor Accidents Claims Tribunal (Sub Court), Sankari.

For Appellant : Mr.D.Bhaskaran

For Respondents 1 to 4 : Mr.C.Paraneedharan

J U D G M E N T

(Order of the Court was made by Mr.R.Subramanian, J.)

The insurance company challenges the award of Rs.14,45,000/- granted by the Tribunal for the death of Ex-serviceman Ramasamy, the husband of second claimant and father of claimants 3 to 5. The accident occurred on 05.09.2008. The claim petition was filed seeking a compensation of Rs.5 lakhs for the injuries sustained in the accident. During the pendency of the claim petition, the injured, namely Ramasamy, died and his legal

representatives were brought on record. The claim petition was amended as to one seeking compensation for his death.

2. According to the claimants, the deceased was earning about Rs.25,000/- per month of which Rs.18,000/- constituted his pension. He was earning about Rs.10,000/- by practising in Homeopathy. The Tribunal took the income at Rs.20,000/- and added 15% towards future prospects. Deducting one-fourth for his personal expenses and applying the multiplier of 5, the Tribunal arrived at the pecuniary loss at Rs.10,35,000/-. The Tribunal also awarded Rs.75,000/- towards loss of consortium to the wife and Rs.2,00,000/- towards loss of love and affection to the children. Rs.35,000/- was awarded towards medical expenses, Rs.75,000/- was awarded towards pain and suffering and Rs.25,000/- was awarded towards funeral expenses. In all, the Tribunal awarded a sum of Rs.14,45,000/- as compensation.

3. Mr. Bhaskaran, learned counsel appearing for the appellant/insurance company would contend that in the absence of any evidence, the Tribunal was not right in taking the income as Rs.20,000/-. He has also pointed out that there cannot be any future prospects for a person aged 71 years. Therefore, according to him, the Tribunal has erred in granting 15% towards future prospects. He has also questioned the quantum of conventional damages, i.e., loss of consortium and loss of love and affection.

4. Per contra, Mr. Paraneedharan, learned counsel appearing for the respondents/claimants would contend that the deceased though aged 71 years was active and he was doing various works earning about Rs.25,000/- per month. Therefore, on overall analysis, the compensation granted is justifiable.

5. We have considered the rival submissions. It is not in dispute that the deceased was working as Subedar in the Army and was getting a sum of Rs.18,000/- as pension. There being no evidence for the additional income earned by the deceased, we are of the considered opinion that the income should be taken only as Rs.18,000/- per month. The age of the deceased was fixed by the Tribunal as 71 years at the time of accident and therefore, there can be no addition for future prospects. Taking the income at Rs.18,000/- per month, after deducting one-third towards personal expenses, the pecuniary loss is arrived at Rs.7,20,000/-.

6. The amount awarded towards loss of consortium is reduced to Rs.25,000/- and the amount awarded towards loss of love and affection is reduced to Rs.1,20,000/-. The amount awarded under the heads of medical expenses, pain and suffering and funeral expenses is sustained. Thus, the total compensation would work out to Rs.10,00,000/- (Rupees ten lakhs only).

7. In view of the above, the Civil Miscellaneous Appeal is partly allowed. The award of the Tribunal is modified reducing the compensation from Rs.14,45,000/- to of Rs.10,00,000/- payable to the claimants at 7.5% p.a. interest from the date of petition till the date of payment with proportionate costs. As far as the apportionment is concerned, the first claimant being the wife will take a sum of Rs.4,00,000/- and claimants 2 to 4 will take a sum of Rs.2,00,000/- each with proportionate interest and costs. The appellant/insurance company is directed to deposit the compensation awarded by this Court within a period of four (4) weeks from the date of receipt of a copy of this order. On such deposit, the claimants will be entitled to withdraw their respective shares with proportionate interest. No costs. Consequently, C.M.P.No.12294 of 2018 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

1. The Sub Judge,
Motor Accidents Claims Tribunal, Sankari.

+1cc to Mr.D.Bhaskaran, Advocate SR.NO.58655

+2cc to Mr.T.S.Arthanareeswaran, Advocate SR.NO.58995

PA(CO)
sm:5.10.2018

C.M.A.No.1545 of 2018

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