



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.1627 of 2018

1.D.Amutha
2.Minor N.D.Adhavan
3.Minor N.D.Akashayalakshmi
(Minor 2nd and 3rd appellant rep. by their
natural guardian and mother, the 1st appellant herein)
.... Appellants/Claimants

-vs-

1.B.Balamurugan
2.The Branch Manager,
New India Assurance Company Limited,
Bharathi Road, Arcot Woodlands Buildings,
Cuddalore -1. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment in MCOP No.392 of 2016 dated 31.08.2017 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Cuddalore.

For Appellants : Mr.E.Sathiyaraj

For Respondents: Mr.J.Michael Visuvasam for R2

J U D G M E N T

[Judgment of the Court was made by
R.SUBRAMANIAN,J.]

The claimants have come forward with this appeal seeking enhancement of compensation.

2. According to the claimants, the deceased was aged about 43 years at the time of accident, which occurred on 07.10.2015. The deceased was an Electrician. He was also doing business viz., Milk vending and running Travels. The Tribunal has taken his monthly income as Rs.10,000/- solely on the ground that he has not produced Income Tax Returns.



3. From the materials available on record and going through the evidence adduced, it could be seen that the deceased was paying a sum of Rs.10,000/- as salary to one Ashokan, who was examined as P.W.3. Selvam, who was examined as P.W.4 had deposed that the deceased was running a Travel Agency and he utilised the car of the deceased and was giving a sum of Rs.30,000/- per month. Ex.P60 has been produced to establish the said fact. Thiru.Saravanan, who was examined as P.W.5 had deposed that he was working as Sub-Dealer under the deceased in respect of the milk business and both were earning a sum of Rs.20,000/- per month. To prove the same, Exs.P62 and P63 were filed. Thiru.Shangmugam, who was examined as P.W.6 had deposed that the deceased was doing real estate business. Considering all the above aspects and the evidence adduced. we feel that the Tribunal should have at least fixed Rs.20,000/- as monthly income.

4. The learned counsel for the Insurance Company is unable to point out any circumstances which would lead us to believe that the deceased was earning anywhere less than Rs.20,000/-

5. In the light of the above, the monthly income of the deceased is fixed at Rs.20,000/- and 25% should be added towards future prospects. If calculated on that basis, the annual income would be Rs.3 lakhs. Considering the dependency of the deceased viz., 2, 1/3rd of the income has to be deducted for his personal expenses. Therefore, after deducting Rs.1,00,000/- towards personal expenses, the annual loss of dependency would be Rs.2,00,000/-. The deceased was aged about 43 years at the time of accident. Thus, the appropriate multiplier would be "14". If calculated on that basis, the Loss of Income works out to Rs.28,00,000/-.

6. The Tribunal has awarded Rs.30,000/- towards loss of love and affection; Rs.20,000/- towards consortium for the first appellant and Rs.10,000/- towards transport and funeral expenses. The compensation awarded by the Tribunal under these heads is sustained.

7. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.28,60,000/- from Rs.11,80,000/-.

ii) The compensation is apportioned as follows:-

1st appellant wife will be entitled to Rs.12,60,000/- with proportionate interest and entire costs.

Appellants 2 and 3 (minor children) will be entitled to Rs.8,00,000/- each with proportionate interest.



(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, less the amount, if any, already deposited, along with accrued interest within a period of four weeks from the date of receipt of a copy of this judgment.

(iv) The share of the minors is directed to be deposited in any one of the nationalised bank till they attain majority. The 1st appellant/Wife is permitted to withdraw her share of the award amount as ordered by this court. The first appellant is also permitted to withdraw the quarterly interest from out of the deposit.

(v) Petitioners/appellants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount, if any.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

svki

To

Motor Accidents Claims Tribunal, I Additional District Judge,
Cuddalore.

+lcc to Mr.E.Sathiyaraj, Advocate sr.no.57712

+lcc to Mr.J.Michael Visuvasam, Advocate sr.no.57068

CMA No.1627 of 2018

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nr 19/12/2018