

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.9 of 2018

1.Ayyammal
2.Kathiravan
3.Kavitha

... Appellants/Claimants

-vs-

1.Durairaj
2.The Branch Manager,
The National Ins.Co.Ltd.,
AVN Plaza, First Floor,
100 mt. Road,
Gayathri Nagar,
Mudaliyarpeta,
Pondicherry.

... Respondents/Owner, Insurer

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 08.09.2017 passed in M.A.C.T.O.P.No.627 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Court) Perambalur.

For Appellant : Mr.P.Mani

For Respondents: Mr.S.Arunkumar for R2
No Appearance for R1

J U D G M E N T

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

The Appeal is at the instance of the Claimants who are the Wife and Children of Duraisamy who died in the motor accident that occurred on 29.09.2014. The 1st Appellant is the wife, the 2nd and 3rd appellants are the son and daughter respectively of the deceased Duraisamy.

2. According to the Claimants, the said Duraisamy had parked his two wheeler which was owned by him near the RS Marriage hall situated at Vallikandapuram village on the Trichy to Chennai National Highway to attend an incoming phone call on left side of the mud road. The Driver of the lorry bearing registration No.PY-01-AF-4559 drove the vehicle in rash and negligent manner dashed against Duraisamy. The said Duraisamy suffered grievous injuries and died at the Perambalur Government Hospital. Claiming that the accident occurred due to the rash and negligent driving of the lorry and that the said Duraisamy was earning about Rs.4,00,000/- per year as an agriculturist as well as a landlord, the Claimants sought for a compensation of Rs.75,00,000/-.

3. The claim was resisted by the Insurance company contending that there was no negligence on the part of the driver of the lorry. According to the Insurance Company, the said Duraisamy who was riding in the two wheeler ahead of the lorry and was also talking on a cellphone. He lost his balance fell down towards the right side of the road resulting in the accident. It is also claimed that the age, occupation and the monthly income of the deceased are not truly disclosed.

4. The Tribunal on a consideration of the evidence of record and the fact that First Information Report was filed against the driver of the lorry concluded that the accident occurred due to the negligence of the lorry driver. On the quantum, the Tribunal took note of the evidence and found that there was no actual pecuniary loss to the family inasmuch as the major portion of the income of the deceased was by way of rent from immovable properties and agricultural income. The Tribunal also took note of the evidence of the Chartered Accountant who was examined by the claimants viz., PW3 who had also deposed that the income from the immovable properties is now being received by the son and, PW3 had also deposed that he has a daughter and a son. Relying upon the evidence of PW1 who is the

son of the deceased, the Tribunal had concluded that there was no actual financial loss to the family because of the death of Duraisamy.

5. The Tribunal, however, concluded that the monthly income of the said Duraisamy could be taken as Rs.6,000/-, considering his age as 63 years at the time of the accident, after deducting $\frac{1}{3}^{\text{rd}}$ towards his personal expenditure the monthly income is taken as Rs.4,000/-. The Tribunal worked out the loss of dependency at Rs.3,36,000/- ($4,000 \times 12 \times 7$). The Tribunal granted a sum of Rs.30,000/- towards loss of love and affection, Rs.25,000/- to the 1st claimant, wife for loss of Consortium, Rs.25,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and damage. However, the Tribunal arrived at total compensation of Rs.4,21,000/-. Aggrieved the claimants or on appeal.

6. We have heard Mr.P.Mani learned counsel appearing for the appellants and Mr.S.Arunkumar learned counsel appearing for the 2nd respondent Insurance Company.

7. This appeal being at the instance of the claimants, The only question that is to be decided is as to whether the quantum of compensation awarded by the Tribunal is just and reasonable.

8. It is in evidence that the income from the immovable property is received by the claimants, therefore, the same cannot be taken as the pecuniary loss or loss of dependency. We therefore have to fix the notional income of the deceased at the time of the accident and calculate the loss of dependency on basis of the said income. The accident had occurred in 2014, even an agricultural labourer would be earning a sum of Rs.6,000/- at the relevant point of time. We are, therefore, of the opinion that the income of the deceased Duraisamy would be fixed at Rs.18,000/- per month. After deducting $\frac{1}{3}^{\text{rd}}$ towards his personal expenditure the monthly loss of dependency is fixed at Rs.12,000/-. The deceased was aged about 63 years. Therefore, the multiplier applicable would be 7 so the total loss of dependency would be Rs.10,08,000/- ($12,000 \times 12 \times 7$). The Tribunal has awarded Rs.25,000/- towards loss of Consortium and same is enhanced to Rs.40,000/-, the award of Rs.30,000/- towards love and affection is enhanced to Rs.80,000/-. The award of Rs.25,000/- towards funeral expenses and Rs.5,000/- towards loss of estate are confirmed. Thus the total award comes to Rs.11,58,000/- which is rounded off to Rs.11,60,000/-.

The appeal is therefore allowed in part modifying the award of the Tribunal.

9. Out of said sum of Rs.11,60,000/-, the 1st claimant, wife would be entitled to Rs.5,60,000/- with proportionate interest and entire costs. The claimants 2 and 3, the children would be entitled to Rs.3,00,000/- each with proportionate interest. The Insurance Company is directed to deposit the enhanced compensation within a period of six weeks from the date of receipt of the copy of the order. On such deposit, the Appellants are permitted to withdraw their respective shares of the deposit amount. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.

+1cc to Mr.P.Mani, Advocate Sr.59864

+1cc to Mr.S.Arunkumar, Advocate Sr.60039

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