IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2017

PRONOUNCED ON : 20.04.2018

CORAM

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A. No.1753 of 2007

1. Karpagavalli
2. K.Vadivel
3. K.Rajeswari
4. K.Kalyanasundaram
5. K.Gowri
6. K. Malliga .. Appellants/Petitioner

Versus

1. S.R.Gani
2. The New India Assurance Co. Ltd.
   45, Moore Street, Chennai. .. Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 1st day of April 2005, made in M.C.O.P. No.1362 of 2004 on the file of Motor Accident Claims Tribunal (Chief Court of Small Causes), Madras

For Appellants : Mr.T.Seshaiah

For Respondents : Mr.M.Krishnamoorthy for R2
R1- Exparte

J U D G M E N T

The claimants are the appellants. The claimants are aggrieved by the grant of compensation of Rs.66,000/- awarded by the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Madras in M.C.O.P. No.1362 of 2004 as against

Rs.4,00,000/- claimed in the claim petition for the death of Krishnamurthy Achari in the accident that took place on 22.11.2003.

2. The brief facts of the case is that on 22.11.2003 at about 6.00 am when the deceased Krishnamurthy Achari was

standing in the G.S.T. Road, opposite to Chrompet bus stop, the lorry bearing Registration No.TN 04A-5510 was driven by its driver in a rash and negligent manner and hit against the deceased. In the impact, the deceased died on the spot. At the time of accident, the deceased was aged 66 years, working as a Carpenter and earning Rs.200/- per day. Therefore, for the death of the deceased, the claimants, who are wife and five children of the deceased, have claimed a compensation of Rs.4,00,000/-.

3. The insurance company resisted the claim petition by filing a counter before the court below specifically disputing the occupation and earning capacity of the deceased. It was also contended that the accident did not occur as projected by the claimants in the claim petition.

4. The Tribunal, on perusal of oral and documentary evidence placed before it awarded a sum of Rs.66,000/- as compensation to the claimants with the following break up details :

Loss of Income 15,000 -1/3 x 5	:	Rs.50,000/-
Loss of Consortium	:	5,000/-
Loss of Love and affection to petitioners	:	3,000/-
Loss of future prospects	:	3,000/-
Funeral Expenses	:	5,000/-
Total		66,000/-

5. Against the award passed by the Tribunal, the appellant has preferred the appeal on the grounds that the i) income of the deceased has been wrongly assessed at Rs.15,000/- per annum and not considered the income of the deceased as Carpenter of Rs.200/- per day; ii) the age of the deceased also not correctly fixed; iii) the amount awarded for loss of consortium is also very meagre and iv), the loss of love and affection is also very low. Hence, the learned counsel for the appellant submits that the decree and judgment of the Tribunal has to be set aside and the claim of the appellant has to be allowed.

6. Heard both sides and perused the records.

7. The point for determination is as to whether the amount claimed by the appellant has to be allowed?

8. The first issue raised in the appeal is that the age of the deceased has been taken as 70 is wrong

a) While determining the age of the deceased, the document filed before the Tribunal is Ex,P.4, Post morterm certificate. Ex.P.4 reveals that the age of the deceased is noted as 70. Though the the appellant herein has argued that the Tribunal is wrong in fixing the age of the deceased at 70, it is noticed that no other document has been filed before the Tribunal or this Forum to fix the correct age, which has not been mentioned. Even in the claim petition, it is the appellant, who has stated that the age of the deceased as 70. Hence, the age mentioned by the appellant in the claim petition and the age mentioned in the Postmortem Certificate are one and the same . Accordingly, this Court finds no error in fixing the age of the deceased as 70, as fixed by the Tribunal.

b) While considering the income of the appellant, it is stated in the claim petition that the deceased was Carpenter, by profession and he was earning a sum of Rs.200/- per day. In the absence of any proof of income, the Tribunal has taken it as Rs.15,000/- p.a. and deducted a sum of Rs.5,000/- towards personal expenses and the annual income has been fixed as Rs.10,000/-. By adopting multiplier of 5, the loss of income of the deceased has been arrived at Rs.50,000/-

9. While advancing the arguments, the learned counsel for the appellants has relied upon the Judgment of the Hon'ble Supreme Court in the case of (Kishan Gopal and another vs. Lola) reported in 2013 2 TNMAC 358 SC, wherein the age of the deceased at the time of accident was 10 years old, a student and the notional income of the deceased was taken as Rs.60,000/-. p.a.

10. The decision cited by the learned counsel for the appellants/claimants is not relevant to this case. Here, the age of the deceased is 70 years old. While perusing the numbers of dependants of the deceased, i.e. 6 in numbers, a sum of Rs.5,000/- deducted towards personal expenses is on the higher side, when the income of the deceased has to be distributed for the entire family. Hence, a sum of Rs.2,000/- has to be taken towards personal expenses and his contribution to the family is arrived at Rs.15,000 - 2,000 = Rs.13,000/-. For the amount awarded under the head loss of Consortium to the first claimant has to be properly enhanced to Rs.10,000/- as she lost her husband at her advancing age. A sum of Rs.3,000/- awarded by the Tribunal towards loss of love and affection is not considered. For the loss of care and guidance to all the claimants, a sum of Rs.3,000/- each is awarded. Likewise, the amount awarded under the head of Funeral expenses has to be enhanced from Rs.5,000/- to Rs.15,000/-

11. Accordingly, the award passed by the Tribunal is enhanced from Rs.66,000/- to Rs.1,06,000/- as follows:-

	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Income Rs.15,000 - Rs.2000 x 5	50,000/-	65,000/-
Loss of Consortium	5,000/-	10,000/-
Loss of Love and affection to petitioners	3,000/-	-
Loss of care and guidance to petitioners Rs.3,000 x 6	-	18,000/-
Loss of future prospects	3,000/-	3,000/-
Funeral Expenses	5,000/-	15,000/-
Total	66,000/-	1,06,000/-

12. The second respondent / Insurance Company is directed to deposit the enhanced compensation as determined by this Court less the amount already deposited, if any along with interest @ 7.5% per annum, from the date of petition till the date of deposit within a period of six weeks from the date of receipt of copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank accounts of claimants through RTGS, within a period of two weeks thereafter, as per the ratio of apportionment fixed by the Tribunal.

13. The appellants are directed to pay the court fee towards the enhanced compensation amount, if any, payable by them.

14. Hence, the appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vsi2

To :

1) The Judge, Motor Accident Claims Tribunal
(Chief Court of Small Causes), Madras

2) The Section Officer,
V.R. section, High Court, Madras. (2 COPIES)

+1cc to Mr.M.KRISHNAMOORTHY, Advocate, S.R.No.29913
+1cc to Mr.T.SESHAIAH, Advocate, S.R.No.30096

judgment of
C.M.A. No.1753 of 2007

VG II(CO)
TR(30/05/2018)