



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.446 of 2008

The Divisional Manager,
The New India Assurance Co.Ltd
Cuddalore.

... Appellant/2nd Respondent
Vs

1. Tmt. Purani
2. Ponnusamy
3. Ambika
4. A.Jeyakumar

..RR1 TO 3/ Petitioner 1 to 3
..4th Respondent / Respondent 1

Petition filed under Section 173 of the Motor Vehicles Act, 1998 to set aside the decree and Judgment passed in M.C.O.P.No 541 of 2003 dated 21.06.2005 on the file of Motor Accident Claims Tribunal (Principal Subordinate Judge) Tindivanam, Villupuram District.

For Appellant : Mr.J. Chandran

For Respondents : No appearance (R1 to R4)

JUDGEMENT

The instant Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the judgment and decree passed in MCOP.No.541 of 2003 on 21.6.2005 on the file of the learned Motor Accident Claims tribunal (Principal Subordinate Judge) Tindivanam, Villupuram District.

2. The brief facts leading to the filing of the instant appeal are as follows;

a. The deceased Devanathan was working as a Mason. On 15.4.2003, the said Devanathan and others were participating in a temple function in their village, at that time, a tipper Lorry bearing Registration No.TN-32-V-4026 came from V.M. Pettai towards Tindivanaam with high speed without observing any traffic rules hit against the deceased resulting in his death. The 4th respondent is the owner of the offending vehicle and the appellant is the insurer of the vehicle.

b. The legal heirs of the deceased namely, the first to third respondents filed a claim petition before the Motor



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Accident Claims Tribunal against the appellant claiming compensation of Rs.7 lakhs.

c. The tribunal by its judgment and decree dated 21.6.2005 in MCOP No.541 of 2003 passed an Award directing the appellant Insurance Company to pay the first respondent a sum of Rs.3,86,000/- together with interest at 9% per annum from the date of claim till the date of realisation.

d. Aggrieved by the Award passed by the tribunal, the instant appeal has been filed by the Insurance Company.

3. Heard Mr. J. Chandran, learned counsel for the appellant. Despite service of notice on the respondents and their names having been printed in the cause list today, none appears on the side of the respondents.

4. According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that the tribunal was wrong in considering the age of the deceased as 18 years and arriving at compensation for loss of income by adopting multiplier method as follows;

Loss of Income

3000 x 12 = Rs.36000/- 1/3 of personal expenses
= Rs.24,000 x 16 multiplier
= Rs.3,84,000/-

5. According to the learned counsel, only 50% towards personal expenses ought to have been deducted by the tribunal, but instead, the tribunal has deducted only 1/3rd towards personal expenses. Further, learned counsel for the appellant would contend that since the actual age of the appellant is 21 years, the correct multiplier to be adopted is 18 years, whereas, the tribunal has applied wrong multiplier as 16 years.

6. This Court has perused and examined the Award which is the subject matter of challenge in this appeal. After perusing and considering the same, this Court finds that even though only 1/3rd was deducted towards personal expenses of the deceased, the compensation under various other heads were not granted to the respondents 1 to 3. The tribunal has not awarded compensation for love and affection, transport expenses and even for funeral expenses, the compensation awarded was only Rs.2,000/-, whereas the reasonable amount that ought to have been awarded by the tribunal under that head should be Rs.25,000/-.

7. As held by the decision of the Honourable Supreme Court reported in 2009 ACJ 1298 (Sarla Verma and others Vs. Delhi Transport Corporation and another), 50% of personal expenses should have been deducted, but instead, the tribunal has deducted only 1/3rd towards personal expenses.



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8. In view of the tribunal not having awarded compensation under various other heads as stated above, the compensation awarded by the tribunal even if it is re-worked, will approximately amount to the same compensation of Rs.3,86,000/- awarded by the tribunal. This Court has re-worked the compensation of Rs.3,86,000/- awarded to the respondents 1 to 3 in the following manner.

Loss of income Rs.3000-50%(personal expenses) = 1500 x 12 x 18	Rs. 3,24,000/-
Funeral expenses	Rs. 25,000/-
Loss of love and affection (Rs.10,000 x 3 persons)	Rs. 30,000/-
Transport Expenses	Rs. 5,000/-
Loss of Estate	Rs. 2,000/-
Total	Rs. 3,86,000/-

9. In the result, the Award passed by the tribunal is MCOP.No.541 of 2003 dated 21.6.2005 is hereby modified to Rs.3,86,000/- along with interest at the rate of 9% per annum from the date of petition till the date of realisation. No costs.

10. It is represented that the entire Award amount has already been deposited to the credit of MCOP.No.541 of 2003. The claimants/respondents 1 to 3 are permitted to withdraw the said amount lying in the credit of MCOP No. 541 of 2003 on making appropriate application.

Sd/--

Assistant Registrar(CS)

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Sub Assistant Registrar

msr/nl

To

1.The Principal Subordinate Judge,
The Motor Accident Claims Tribunal,
Tindivanam,Villupuram District.

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

+lcc to Mr. J. Chandran, Advocate SR.No. 56044

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