

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.897 of 2008

National Insurance Co. Ltd.,
751, Anna Salai,
Chennai - 600 002.

..Appellant/Respondent-2

Vs

1.Mrs.Selvakumari

2.K.Shankar

3.Shalini

4.Esther

5.Jebakumar

..Respondents

1to5/Petitioners

(Minor represented by his mother
and next friend Esther)

6.S.Francis Gnaa Dass

..Respondent-6/Respondent-1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award made in MCOP.No.4681 of 2002 dated 05.04.2007 on the file of the Motor Accident Claims Tribunal, (Small Causes Court No.2), Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : R1 to R6 - No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Small Causes Court No.2) Chennai in its Award dated 5.4.2007 passed in MCOP.No.4681 of 2002 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.2, Chennai.

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

(i) Kotteswaran @ Looka died on 3.10.2002, as a result of an accident caused by a lorry bearing Registration No.TN 02 22 59 on 2.10.2002.

(ii) The dependants of the deceased Kotteswaran @ Looka preferred a compensation claim against the appellant before the Motor Accidents Claims Tribunal, II Small causes Court, Chennai in MCOP.No.4681 of 2002. The Tribunal, by its Award dated 5.4.2007 in MCOP.No.4681 of 2002 directed the appellant

to pay a sum of Rs.5,38,000/- together with interest at the rate of 7.5 percent per annum from the date of claim till the date of realisation and also awarded costs of Rs.12,380/-. The tribunal apportioned the award amount in favour of the respondents as stated below;

1 st respondent	- Rs.1,38,000/-
2 nd respondent	- Rs. 50,000/-
3 rd and 5 th respondents	- Rs.1,25,000/- each
4 th respondent	- Rs.1,00,000/-

(iii) Aggrieved by the Award dated 5.4.2007 in M.C.O.P.No.4681 of 2002, the instant appeal has been filed.

3. Heard Mr.S. Arun Kumar, learned counsel for the appellant.

4. Till date notice has not been served on the respondents. Since the appeal is of the year 2008, and this Court is going to confirm the Award, there is no necessity to serve the notice on the respondents.

5. According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that in the absence of evidence, the tribunal has erroneously fixed the monthly salary of the deceased at Rs.4,500/- and has also wrongly applied the 13 multiplier without any basis.

6. This Court, after having considered the materials available on record, and after examining the impugned Award and after hearing the submissions of the learned counsel for the appellant observes the following;

a. Under the impugned Award, the Tribunal has awarded Rs.4,68,000/- towards loss of dependency by assessing the monthly income of the deceased at Rs.4500/- and the tribunal has also deducted 1/3rd towards the expenses of the deceased, if he was alive and has also applied the correct multiplier of 13 as per the decision of the Hon'ble Supreme Court reported in 2009 ACJ 1298 (Sarla Verma and others Vs. Delhi Transport Corporation and another). Therefore, there is no infirmity in the Award of the tribunal which has assessed the loss of dependency at Rs.4,68,000/-.

b. In so far as loss of love and affection is concerned, the tribunal has fixed a sum of Rs.45,000/- and Rs.20,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. Being a fatal accident and the deceased was 46 years and was carrying on the business of a stove repairer and painter, the compensation awarded by the tribunal is a just compensation.

7. Considering all the above mentioned factors, this Court is of the considered view that the Award passed by the

tribunal for a sum of Rs.5,38,000/- in favour of the respondents 1 to 5 is a just and reasonable compensation. Therefore, there is no merit in the instant appeal. Accordingly, the appeal is dismissed. No costs.

8. It is represented that the entire award amount has been deposited. The respondents 1 to 5 are permitted to withdraw the amount along with accrued interest which is lying to the credit of MCOP.No.4681 of 2002 as per the apportionment made by the tribunal by filing an appropriate application.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Motor Accident Claims Tribunal,
(Small Causes Court No.2), Chennai.

2. The Record Clerk,
VR Section,
High Court, Madras.

+ 1 cc to MR. S. Arunkumar, Advocate Sr.58976

C.M.A.No.897 of 2008

BR(CO)
EU(26/11/2018)

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