

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2520 of 2018

1.R.Lakshmi
2.D.Vasanth
3.V.Vijaya
4.S.Kayalvizhi
5.S.Suresh Kumar (Minor)
6.S.Suseela (Minor)
7.Shanthi
8.Bhavani
9.Velmurugan
... Appellants /Plaintiffs
(Minors 5 & 6th appellants rep by the 4th appellant
S.Kayalvizhi, as a mother & natural Guardian)

Vs.

1.M.Bhuvaneswaran
2.The United India Insurance Co. Ltd.,
C.1, Old No.C 52, 1st Main Road,
1st Floor, Anna Nagar, Chennai - 600 102.
Now Office at,
The United India Insurance Company Ltd.,
Third Party Claim HUB,
No.134, Silingi Building, IV Floor,
Greens Road, Chennai - 600 006. .. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree made in MCOP.No.431 of 2009, dated 06.01.2018, on the file of the Motor Accidents Claims Tribunal / Chief Small Causes Court, Chennai.

For Appellants : Mr.J.Ramkumar
For R1 : -
For R2 : Mr.Baskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.431 of 2009, dated 06.01.2018, on the file of the Chief Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

2.The appellants, who are the claimants, have filed M.C.O.P.No.431 of 2009, on the file of the Chief Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai, claiming a sum of Rs.5,00,000/- as compensation for the death of one Gangammal, mother of the appellants 1 to 3, mother-in-law of the appellants 4 and 7, and grand mother of the appellants 5,6,8 and 9 who died in the accident that took place on 08.12.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the second respondent-Insurance Company to pay the compensation of a sum of Rs.1,50,000/- to the appellants/claimants.

4.Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with this appeal seeking enhancement for the same.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing the notional income of the deceased at Rs.3,000/- per month. The deceased was a flower vendor. The Tribunal ought to have fixed the notional income of the deceased at Rs.6,000/- per month. There are 9 dependents who have filed the claim petition and the Tribunal erred in deducting 1/3rd, instead of 1/4th towards personal expenses. The Tribunal failed to grant any amount towards loss of love and affection and prayed for granting amounts under the head of loss of love and affection. The learned counsel for the appellants also prayed for enhancement towards loss of estate and funeral expenses.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have stated in the claim petition that the deceased was earning Rs.3,000/- per month as a flower vendor and P.W.1 also deposed to that effect. In view of the same, the contention of the learned counsel appearing for the appellants that the Tribunal ought to have fixed Rs.6,000/- per month as notional income is contrary to the pleadings and evidence let in by the appellants. The Tribunal has awarded the compensation, considering the pleadings and evidence. Hence, there is no reason for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

8. From the materials on record, it is seen that as rightly pointed out by the learned counsel appearing for the 2nd respondent-Insurance Company that the appellants have pleaded that the deceased was a flower vendor and was earning a sum of Rs.3,000/- per month and P.W.1 also deposed to that effect. In view of the above facts, the Tribunal accepting the evidence of P.W.1, age, date of accident and minimum wages fixed by the Government, fixed the notional income at Rs.3,000/- per month. There is no perversity warranting interference by this Court in the said fixation of notional income.

9. As far as the contention of the learned counsel for the appellants that the Tribunal ought to have deducted 1/4th towards personal expenses and erred in deducting 1/3rd is concerned, the Tribunal has dismissed the claim petition filed by the appellants 4 to 9 as they are the daughters-in-law and grand children of the deceased as they are not dependents of the deceased. There is no error in the said finding of the Tribunal warranting interference in the said order.

10. The Tribunal did not grant any amount towards loss of love and affection. Hence, a sum of Rs.40,000/- is awarded under the head of loss of love and affection. The award granted under all other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	1,20,000/-	1,20,000/-	confirmed
2.	Loss of estate	15,000/-	15,000/-	confirmed
3.	Funeral expenses	15,000/-	15,000/-	confirmed
4.	Loss of love and affection	-	40,000/-	granted
	Total	1,50,000/-	1,90,000/-	Enhanced by Rs.40,000/-

11. The second respondent-Insurance Company is directed to deposit the enhanced compensation amount, less the amount already deposited, if any, along with accrued interest and costs from the date of petition till date of realization to the credit of M.C.O.P.No.431 of 2009, on the file of the Chief Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 to 3 are

permitted to withdraw their share of the award amount with interest and proportionate costs on the basis of apportionment fixed by the Tribunal by making necessary application before the Tribunal.

In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Chief Judge,
(Motor Accidents Claims Tribunal),
Small Causes Court, Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to M/S.J.Ramkumar, Advocate 76972

+1cc to M/S.B.Bhaskaran, Advocate Sr.77146

C.M.A.No.2520 of 2018

srg 29/01/2019

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