



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.07.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.(MD).No.992 of 2013

WEB COPY

1.Kavitha
2.Minor.Haritha
(R2 minor represented by her mother and guardian Kavitha)
3.Thayammal
4.Gurusamy Naicker .. Appellants/Claimants

Vs.

1.Senthilkumar

2.The New India Assurance Company Ltd.,
913, Catholic Centre Main Road,
Kovilpatti,
Thoothukudi District. .. Respondents/Respondents

Prayer:- Appeal filed under Section 30 Workmen's Compensation Act, against the order dated 29.10.2008 in W.C.No.39 of 2006 on the file of the Motor Accident Claims Tribunal Commissioner for Workmans' Compensation, Tirunelveli.

For Appellants : Ms.U.Minnavadi
For R2 : Mr.D.Sivaraman

JUDGMENT

Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company.

2. It is a case of fatal. The manner of the accident is not in dispute. The Deputy Commissioner of Labour has awarded a sum of Rs.3,69,430/- as compensation. This appeal has been filed by the appellants/ claimants questioning the quantum.

3. The appellant has raised the following substantial questions of law:

"(1) Whether the Commissioner is correct in fixing the compensation on the basis of income much less than the amount given by the employer as evidenced by him?

(2) Whether the Commissioner is correct in awarding interest from the date of filing of the petition instead of awarding interest from the date of accident following the judgments of larger benches of the Supreme Court in 1976 ACJ 141 and 1997 ACJ 517?"



4. Learned counsel for the appellants would submit that with regard to the income of the deceased, the Deputy Commissioner of Labour has failed to take into account the evidence given by the first respondent that he paid Rs.250/- per day and the deceased as a driver was working for 16 days per month. The Deputy Commissioner of Labour ought to have fixed monthly income of the deceased as per the minimum wage for the drivers fixed by the Government of Tamil Nadu.

5. The minimum wages for a driver fixed by the Government of Tamil Nadu is Rs.4,000/- per month which is not disputed and therefore, in my considered opinion, the Deputy Commissioner of Labour ought to have taken the monthly income of Rs.4,000/- per month. Since the age of the deceased is 32, the relevant factor is fixed at 203.85. Accordingly, the total loss of income comes to Rs.4,07,700/- (4000 X 50% X 203.85). The compensation of Rs.2,500/- awarded for funeral expenses stands unaltered.

6. In view of the above, the total compensation is enhanced from Rs.3,69,430/- to Rs.4,10,200/-. Thus, the first question of law is answered in favour of the appellants/claimants.

7. The second question of law is concerned, the learned counsel appearing for the second respondent/Insurance Company would request to modify the rate of interest from 12% to 7.5% by relying on the judgment of the Hon'ble Supreme Court of India reported in 2009 (2) TN MAC 287 (SC) in Oriental Insurance Company Ltd., Vs. Mohd. Nasis and another, wherein it has been held that interest will also be payable at the rate of 7.5 % from date of filing of Claim Petition till date of award. This is not an appeal filed by the Insurance Company and this is an appeal filed by the claimants and therefore, I am not inclined to interfere with the rate of interest. The second question of law is answered against the second respondent.

8. It is represented that the amount awarded by the Tribunal has already been deposited. The second respondent/Insurance Company is directed to deposit the enhanced award amount, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants /appellants 1,3 and 4 are permitted to withdraw the entire amount now awarded with accrued interest and costs, as apportioned by the Tribunal, by filing a petition before the Tribunal. The share of the minor/second respondent shall be deposited in any one of the nationalized banks in fixed deposit till she attains the age of majority and the first appellant/the mother is permitted to withdraw the interest amount once in three months. The claimants are directed to pay the Court fee, if any to be paid for the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment.



9. With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Commissioner for Workman's Compensation,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (**2 copies**)

+1CC to Mr.D.Sivaraman, Advocate, SR.No.75167
+1CC to Mr.R.Krishnan, Advocate, SR.No.75106

C.M.A. (MD) .No.992 of 2013
25.07.2018

CM
ES/RP/SAR 3/19.09.2018/3P/6C