IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3773 of 2005

Muthayammal (died)
1. Palaniammal
2. Sulochana .. Appellants/ Petitioners 2&3

..vs..

1. M.Shanmughanathan
2. A.Balasubramaniam
3. The United India Insurance Company Ltd., Tiruchengode Taluk, Namakkal District
4. S.Palanisamy
   (notice to R-1 is not necessary)

.. Respondents/ Respondents

Prayer:Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 19.02.2004 made in M.C.O.P.No.273 of 2001 on the file of the Motor Accident Claims Tribunal, Principal District Court, Erode.

For Appellants : Mr. N.Manokaran
For Respondents : M/s. R.Sreevidhya, for R-3.

J U D G M E N T

The claimants have filed this Appeal challenging the quantum of compensation awarded at Rs.52,000/- as inadequate.

2. The Legal Representatives of the deceased (Sellappan), namely, wife, two daughters and one son (arrayed as fourth respondent) have filed the claim petition claiming a sum of Rs.3,00,000/- as compensation.

3. The deceased Sellappan, aged 60, at the time of accident, was doing Weaving and also doing rice business on ever sundays, earning a sum of Rs.5,000/- per month,

died in an accident on 10.12.1998. The Tribunal has quantified the compensation at Rs.52,000/- with the following breakup details:-

Loss of income	-	Rs.50,000/-
Funeral expenses	-	Rs. 2,000/-
		Rs.52,000/-

4. While quantifying the pecuniary benefits, the annual income of the deceased was taken at Rs.15,000/- and deducting 1/3rd towards the personal expenses, the annual contribution has been taken at Rs.10,000/-, as per the II Schedule under Section 163-A of the M.V.Act.

5. The main contention of the learned counsel for the appellants / claimants and the learned counsel for the fourth respondent / claimant is only with regard to the loss of income awarded to the family of the deceased.

6. The Tribunal has relied upon II Schedule of the MV Act to arrive at the loss of income. However, in the decision reported in 2009 (2) TN MAC 1 (SC) (Sarla Verma and others v. Delhi Transport Corporation) it has been held that when the deceased was aged 60 and above, addition at 10% towards the future prospective increase in income can be entertained. In case of self-employees also, the proposition has been made applicable. Further, in the decision reported in the case of Rajesh v. Rajbir Singh and others, 2009 (2) TN MAC 36 (SC) : (CDJ 2013 SC 485), the annual income of the deceased has been fixed at Rs.6,500/- and for the age of 47, the multiplier of 13 has been adopted and after deducting 1/4th towards the monthly and personal expenses of the deceased, the quantum of compensation has been arrived at.

7. Further in respect of the accident that took place in the year 2008, the Hon'ble Supreme Court, for an agriculturist, has taken the monthly income at Rs.6,500/-, deriving support from the case of Sadiq and others v. Divisional Manager, United India Insurance Co. Ltd., 2014 ACJ 627. Therefore, the monthly income fixed, in this case, has to be increased, but slightly, since the accident was of the year 1998. Hence, this Court is of the view that fixing the monthly income at Rs.2,000/- would be just. It is relevant to point out that when the

deceased had been able to support and provide sustenance to the family consisting of five members, the logical inference is that the deceased might have been earning more than Rs.2,000/-. The addition of 10% towards future prospective increase in income is also supported by the decision of Santhosh Devi v. National Insurance Company Limited and others, 2012 (2) TN MAC 1 (SC), decided by the Hon'ble Supreme Court. Hence, if the monthly income is fixed at Rs.2,000/-, deducting 1/4th towards the personal and living expenses and adding 10% towards future prospectus and applying the multiplier of 5, the loss of dependency would be Rs.99,000/- (Rs.2,000/- (-) Rs.500/- : Rs.1,500/- + 10% : 1,650/- x 12 x 5). Hence, the loss of income is fixed at Rs.99,000/-.

8. So far as the loss of love and affection is concerned, for all the four dependencies together also, the Tribunal has not awarded any sum. Some meager amount has to be awarded under that count. Hence, a sum of Rs.30,000/- is awarded under that count.

8.1. Towards loss of consortium to P-1 / first appellant / wife nothing has been awarded. Hence, a sum of Rs.10,000/- is awarded under that count.

8.2. Also, the Tribunal has not awarded any sum towards loss to estate. Hence, a minimum of Rs.9,000/- would be justified under that head and thus the said sum is awarded under that head.

8.3. The funeral expenses awarded at Rs.2,000/- is confirmed as such.

8.4. Thus, the total amount of compensation to be awarded is quantified at Rs.1,50,000/-. The re-structured breakup details are as follows:-

Heads	Rs.
Loss of dependency	99,000/-
loss of love and affection	30,000/-
Loss of consortium to P-1/ wife	10,000/-
Loss to estate	9,000/-
Funeral expenses	2,000/-
Total	1,50,000/-

9. In the result, the Appeal is partly-allowed, enhancing the quantum of compensation from Rs.52,000/- to Rs.1,50,000/-. No costs.

10. At this juncture, the learned counsel for the third respondent herein contended that it cannot be saddled with the liability, which is more than the award amount towards payment of interest and payment of interest should be reasonably fixed, so that the interest does not exceed the award amount. It is also contended that the claimants have been lethargic in filing the appeal belatedly as well as in re-presenting the appeal papers belatedly and therefore, the rate of interest should be less.

11. No doubt, the accident had happened in the year 1998 and the claim petition has been filed in the year 2001. But the appeal has been taken up for hearing only in the year 2005. Who is responsible for this delay, whether it is the system or the appellants or the respondents? There is no specific answer.

12. Under the stated circumstances, considering the submissions made by the learned counsel for both sides, the third respondent herein shall deposit the amount of compensation, as awarded by this Court, along with the interest at 6% per annum, less the amount already deposited, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the entire amount shall be transferred to the Savings Bank Accounts of the claimants, through RTGS, as per the ratio of apportionment made by the Claims Tribunal. It is made clear that the claimants are not entitled to receive any interest for the default period. It is also made clear that before receiving the copy of this judgment the claimants shall pay the necessary court fee.

srk

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To
1. The Principal District Court,Motor Accident Claims Tribunal, Erode.
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104
+1cc to Mr.N.Manokaran , Advocate SR.No. 53667
+1cc to M/s.R.Sreevidhya. , Advocate SR.No. 53816

C.M.A.No.3773 of 2005

A.SK(24/09/2019)