

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.3667 to 3669 of 2008

1. C.Pasupathy

2. Chenniappan ... Appellants/Claimants in C.M.A.No.3667 of 2008

1.C.Pasupathy ... Appellant/Claimant in C.M.A.Nos.3668 &
3669 of 2008

.. Vs ..

1. P.Jayaprakash

2. United India Insurance Company Limited,
Rep. by its Branch Manager,
No. 85, Salem Road,
Namakkal.

3. The Managing Director,
Tamil Nadu State Transport Corporation,
Tiruchi. ... Respondents/Respondents in all CMAs

(Claim against the 3rd Respondent dismissed. Hence notice to R-3 may be dispensed with)

CMA.No.3667 of 2008 : Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award of the Motor Accident Claims Tribunal (The Chief Judicial Magistrate), Erode in M.C.O.P.No.139 of 2003 dated 09.11.2006.

CMA.No.3668 of 2008 : Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award of the Motor Accident Claims Tribunal (The Chief Judicial Magistrate), Erode in M.C.O.P.No.147 of 2003 dated 09.11.2006.

CMA.No.3669 of 2008 : Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award of the Motor Accident Claims Tribunal (The Chief Judicial Magistrate), Erode in M.C.O.P.No.148 of 2003 dated 09.11.2006.

For Appellants : Mr.S.Kaithamalaikumaran
(in all CMAs)

For Respondents : Mr.D.Baskaran for R2
(in all CMAs)

COMMON JUDGMENT

The case in brief, is as follows:

On 08.04.2002 at about 07.15 a.m., the deceased Manikandan was travelling in the private bus bearing Reg.No.TN-45-D-8229, belonging to the first respondent and insured with the second respondent Insurance Company, from Namakkal to Trichy along the Trichy - Salem Main Road accompanied by his mother by name Pasupathy and his grandmother by name Muthayammal. When the bus was nearing Thiruvashi Chelliya Thottam, due to the rash and negligent driving of its driver, it dashed against another bus bearing Reg.No.TN-45-N-1305 belonging to the third respondent Transport Corporation. Due to the impact, all of them sustained grievous injuries. The deceased-Manikandan succumbed to the injuries and as against which, the legal heirs of Manikandan has filed M.C.O.P.No.139 of 2003. The grandmother of the deceased-Manikandan has also died, against which M.C.O.P.No.147 of 2003 has been filed by her daughter-Pasupathi. M.C.O.P.No.148 of 2003 has been filed by Pasupathi herself, claiming compensation for the injuries sustained by her in the accident.

2.The MCOPs have been taken on file and after trial, the Tribunal, based on the evidence and documents account, has awarded sums of Rs.75,000/-, Rs.1,20,000/- and Rs.76,200/- with interest at the rate of 7.5% per annum from the respective dates of petitions in M.C.O.P.Nos.139 of 2003, 147 of 2003 and 148 of 2003.

3.Challenging the same, the present appeals have been filed by the claimants for enhancement of compensation.

4.The learned counsel for the appellants/claimants in the appeals, has submitted that the Tribunal has failed to take note of the evidence and documents available on record in a proper perspective and has awarded lesser compensation amounts and hence the same have to be enhanced. He further submitted that the Tribunal ought to have awarded Rs.2,000/- per percentage of disability suffered by the claimants, by following the judgments of this Court as well as the Apex Court. He further submitted that the Tribunal ought to have awarded reasonable sums towards mental agony and pecuniary damages.

5.Per contra, the learned counsel for the second respondent-Insurance Company submitted that the Tribunal has analyzed each and every aspect into consideration and has awarded the compensation amounts which are just, fair and reasonable and hence the same do not require any interference by this Court.

6.This Court has considered the said submissions made by the learned counsel appearing for both sides and perused the materials available on record.

7.(a)An analysis of the common award of the Tribunal would go to show the following aspects :-

i)In respect of C.M.A.No.3667 of 2008 (M.C.O.P.No.139 of 2003) (where the son of the claimant C.Pasupathy was died), the Tribunal has awarded a total compensation of Rs.75,000/- without any breakup details. Before the Tribunal, Ex.P-29 legal heirship certificate has been produced to show that the claimants are the parents of the deceased.

ii) PW-4-mother of the deceased, has been examined to speak about the manner of accident.

iii) From the evidence on record, it was made clear that there was no chance of another child to the parents/claimants, since operation was done on the first appellant.

iv)Placing reliance on the decision reported in 2005 (5) CTC 645 (United India Insurance Co. Ltd., Vs. Nedunchezian) and taking note of the fact that there was no possibility for the mother of the deceased to give birth to another child and also all other aspects, the Tribunal has fixed the total compensation at Rs.75,000/- in M.C.O.P.No.139 of 2003.

(b)This Court is of the view that the compensation awarded by the Tribunal is too low, since the deceased was aged 7 years at the time of accident. The parents have lost their 7 year old child which speaks volumes. There is no contra evidence to dispute the manner of accident or against the claimants' documents. It is seen that the deceased was the only son of the claimants. In short, the claimants have lost their future itself. In such circumstances, this Court is of the considered view that enhancing the amount awarded by the Tribunal to Rs.1,75,000/- in toto under the following heads, would meet the ends of justice:

HEADS	AMOUNT (Rs.)
Loss of love and affection	50,000/-
Funeral Expenses	5,000/-

Loss of dependency	1,00,000/-
Loss to estate	20,000/-

Total	1,75,000/-
	=====

(c) It is made clear that only for the compensation of Rs.75,000/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.1,00,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

8.(a) In respect of M.C.O.P.No.147 of 2003, the claimant/appellant herein has lost her mother. It is claimed that the deceased-mother was doing agricultural operations and was earning a sum of Rs.3,000/- per month, but the Tribunal has taken the annual income at Rs.10,000/-, applied the multiplier of 11 and has awarded a sum of Rs.1,10,000/- towards loss of income. The Tribunal has also awarded a sum of Rs.5,000/- each towards loss of love and affection and funeral expenses, respectively. This Court is of the view that the sum taken by the Tribunal at Rs.10,000/- towards annual income is too low. Since apart from the agricultural operations, the deceased was earning some amount towards poultry works. Hence, the award of Rs.1,20,000/- needs substantial enhancement. This Court is of the view that the sum of Rs.2,00,000/- in toto would meet the ends of justice and the details of the same are as follows:

HEADS	AMOUNT (Rs.)
Loss of income (Rs.15,000/- x 11)	1,65,000/-
Loss of love and affection	25,000/-
Funeral expenses	5,000/-
Loss of estate	5,000/-

Total.....	2,00,000/-

(b) It is made clear that only for the compensation of Rs.1,20,000/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.80,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

9.(a)As far as M.C.O.P.No.148 of 2003, which is challenged by the claimant/appellant in C.M.A.No.3369 of 2008 is concerned, the Tribunal has awarded a sum of Rs.76,200/- towards total compensation payable by the second respondent herein to the appellant. This Court is of the opinion that the total compensation arrived at by the Tribunal is too meager and hence the same needs substantial enhancement for more than one reason. Firstly, it is not in dispute that the Doctor has been examined to speak about the injuries sustained by the claimant/appellant. Further the appellant sustained fractures on her left shoulder, left elbow, left leg foot and spinal cord, which was assessed by the Doctor. The Doctor has also given evidence to the effect that the appellant will not be able to squat, sit in cross legs and climb the stairs. Enough documentary evidence has been adduced by the claimant to prove that she has suffered disablement as assessed by the Doctor. There is no contra evidence or documents forthcoming on the side of the second respondent herein to take a different view. Hence, this Court is of the opinion that awarding a sum of Rs.54,000/- in addition to the amount of Rs.76,200/- awarded by the Tribunal to the claimant, under the following heads, would meet the ends of justice:

HEADS	AMOUNT (Rs.)
Medical Expenses	25,200/-
Transportation Expenses	1,000/-
Extra Nourishment	2,000/-
Permanent disablement	50,000/-
Pain and sufferings	25,000/-
Loss of expectation of life	27,000/-

Total	1,30,200/-
	=====

(b)It is made clear that only for the compensation of Rs.76,200/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.54,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

10.In the result, the Civil Miscellaneous Appeals filed by the claimants/appellants are partly allowed. No costs. The

second respondent herein is directed to deposit the modified compensation amounts with interest, as ordered above, and costs, less the amounts if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal. It is made clear that before receiving the copy of this judgment, the claimants shall pay the necessary court fee, if any, for the enhanced compensation.

s/d-

Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

sni / srk
To

1. The Motor Accident Claims Tribunal
The Chief Judicial Magistrate, Erode
2. United India Insurance Company Limited,
Rep. by its Branch Manager,
No. 85, Salem Road,
Namakkal.
3. The Section Officer,
V.R. Section, High Court,
Madras.

+3 Ccs to Mr.S.Kaithamalaikumar, Advocate sr 70072, 70073,
70074

+1 Cc to Mr.D.Baskaran, Advocate sr 70405.

C.M.A.Nos.3667 to 3669 of 2008

WEB COPY

LN(CO)
SP(19/12/2020)