

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1250 of 2011
and
MP.No.1 of 2011

1.Devi Kamalam

2.United India Insurance Company Ltd.,
Irinjalakuda.

... Appellants/2nd Respondent & 3rd respondent

Versus

1.Imbichikoya Thankal

2.Koyamma Beevi

3.Minor Zakkariya

4.Minor Ubaid

(Minor 3 and 4 Rep by Father and Guardian
and Next Friend Imbichikoya Thankal)

5.Saifa Beevi

6.Sakkona Beevi

7.Haris Koya

8.Aarifa Beevi

9.Abubackar

... Respondents/Petitioners
& 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 27.02.2003 made in M.C.O.P.No.962 of 2001 on the file of the Motor Vehicle Claims Tribunal First Additional District Judge - cum - Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.S.Arun Kumar
For Respondents: No appearance

JUDGMENT

This Civil Miscellaneous Petition has been filed against the award and decree dated 27.02.2003 made in M.C.O.P.No.962 of 2001 on the file of the Motor Vehicle Claims Tribunal (I Additional District Judge - cum - Chief Judicial Magistrate), Coimbatore.

2.The respondents herein are the claimants before the Tribunal. The respondents 1 & 2 herein are the parents and the respondents 3 to 8 are the siblings of the deceased Musthafa. The essence of the case of the claimants is that on 10.04.2001, at about 00.30 hours, when the said Musthafa was returning to home, after attending his sister's marriage at Vayanadu, by his Motorcycle bearing Regn.No.TCG 0558, near Valayar Bus Stand, a TATA Sumo car bearing Regn.No.KL-8-N-3511, owned by the first appellant and insured with the 2nd appellant/Insurance company, was driven by the driver/ninth respondent herein, in a rash and negligent manner and collided with the Motorcycle. Due to the accident, the said Musthafa sustained grievous injuries and died on the spot. Therefore, the respondents 1 to 8 herein, as the legal heirs of the said Musthafa, filed the claim petition before the Tribunal, claiming a sum of Rs.10,00,000/- as compensation for his death.

3.Heard the submissions made by the learned counsel appearing for the appellants and perused the materials available on record.

4.It is the submission of the learned counsel appearing for the appellants that the claimants have claimed the compensation for the death of the said Musthafa and the deceased Musthafa being a bachelor, the Tribunal ought to have deducted 1/3 amount from his income towards his personal expenses, but the Tribunal has deducted only 1/3 amount towards his expenses. Further, the learned counsel would state that the interest calculated by the Tribunal at 9% is excessive, as per the Reserve Bank of India guidelines. It is the submission of the learned counsel for the appellants that the compensation amounts awarded by the Tribunal under different heads are on the higher side. Thus, the learned counsel for the appellants sought for proper reduction in the compensation amount awarded by the Tribunal.

5.From the perusal of the materials available on record, it is seen that the Tribunal, after considering the pleadings and oral & documentary evidence adduced on either side, has held that the accident took place only due to the rash and negligent driving of the driver of TATA sumo belonging to the first appellant herein and insured with the 2nd appellant/Insurance Company. P.W.3 is the proprietor of the company, in which the deceased was working. P.W.3 has issued a salary certificate, which was marked as Ex.P9. As per the salary certificate, the Tribunal has fixed his monthly salary as Rs.5,000/-. Thereafter, the Tribunal has deducted 1/3rd amount towards his personal expenses and arrived at a sum of Rs.3,333/- as his monthly contribution to the family. On the basis of the age of

the deceased, who was aged 22 years at the time of death, the Tribunal adopted the multiplier 17 and awarded a sum of Rs.6,79,932/- ($3,333 \times 12 \times 17$) as loss of income. The Tribunal has awarded the total compensation of Rs.6,79,932/- with interest at the rate of 9% per annum.

6.Considering the materials available on record, this court is of the opinion that the sum of Rs.5,000/- fixed by the Tribunal as the monthly income of the deceased is on the higher side. Hence, the same is reduced and fixed at Rs.3,000/-. Further, the Tribunal has erroneously deducted only $\frac{1}{3}$ amount towards the personal expenses. Since the deceased being a bachelor, the amount to be deducted towards personal expenses, is $\frac{1}{2}$ amount from the monthly income. If so deducted, the actual monthly contribution of the deceased to the family would be Rs.1,5000/-. If multiplier 17 is applied, then the total loss of contribution to the family works out to Rs.3,06,000/-, which would be just and proper compensation under the head of loss of income. However, it is seen that the Tribunal has not awarded any amount for the loss of love and affection. The parents of the deceased would have suffered loss of love and affection due to the death of their son. Hence, for the loss of love and affection, a sum of Rs.10,000/- each is awarded to the parents of the deceased. In addition, a sum of Rs.15,000/- each is hereby awarded for the loss of estate and for funeral expenses. However, it is seen that the Tribunal has erroneously awarded interest at the rate of 9% per annum, which is on the higher side. Hence, the percent of the interest on the compensation amount is reduced to 7.5%.

7.Accordingly, the compensation amount awarded by the Tribunal is hereby modified and reduced as follows:-

Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
Loss of income	Rs.6,79,932/- (Rs.5000/- X $\frac{2}{3}$ = Rs.3333 X 12 X 17)	Rs.3,06,000/- (Rs.3000/- X $\frac{1}{2}$ = Rs.1500 X 12 X 17)
Loss of love and affection.	-	Rs.20,000/- (Rs.10,000/- X 2) (only for parents)
Funeral expenses	-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Total	Rs.6,79,932/-	Rs.3,56,000/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.6,79,932/- awarded by the Tribunal is hereby reduced to Rs.3,56,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The appellants are directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit, the claimants are permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellants are permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.962 of 2001 on the file of the Motor Accidents Claims Tribunal, First Additional District Judge-cum-Chief Judicial Magistrate, Coimbatore, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accidents Claims Tribunal,
First Additional District
Judge-cum-Chief Judicial Magistrate,
Coimbatore.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.J.Arunkumar, Advocate Sr.10988

CMA No.1250 of 2011
and
MP.No.1 of 2011

sr[co]
srg 03/06/2019