

KIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2031 of 2011

1.Mrs.P.Anandhi
2.Minor.Tejasvini
3.Minor.Sanjayram

(Minor Appellants 2 and 3 are
represented by natural
guardian and mother P.Anandhi)

4.Mr.Palanisamy

5.Mrs.Angammal ... Appellants

Vs.

1.A.Veerappan

2.K.Madesh

3.The New India Assurance Company Limited,
No.12, New Hospital Road,
Gobichettipalayam,
Erode ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the Judgment and Decree
dated 02.07.2010 made in M.C.O.P.No.502 of 2009 on the file of
the Motor Accidents Claims Tribunal cum Principal Sub Judge,
Coimbatore.

For Appellant	: Mr.B.Nedunchezhiyan
For R1	: Not ready in notice
For R2	: No appearance
For R3	: Mr.S.Manohar

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the
Order and Decree dated 02.07.2010 made in M.C.O.P.No.502 of 2009
on the file of the Motor Accidents Claims Tribunal cum Principal
Sub Judge, Coimbatore.

2. The appellants 2 and 3 are the daughter and son
respectively of the first appellant/Mother. The fourth appellant
is the first appellant's father-in-law. The fifth appellant is

the first appellant's mother-in-law. When the first appellant's deceased husband on 03.06.2018 at about 6.45 a.m. was driving the Karl Kubel Institute's Tempo Traveller bearing Reg.No.TN-38-AR-6472 and when he drove the vehicle after crossing the bridge situated near Mangarai Checkpost and was proceeding from South to North by complying with the Road Traffic Rules, at that time, a Tipper lorry bearing Reg.No.TN-30-U-5368 from the opposite direction, owned by the first respondent, was driven in a rash and negligent manner and on being lost control over the vehicle, it suddenly collided with the said Tempo traveller of the deceased husband of the first appellant, due to which, the husband of the first appellant died instantly. Hence, the legal heirs of the deceased preferred the petition before the Tribunal, claiming compensation.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.5,48,000/- with interest at 7.5% per annum.

4. Heard both sides and perused the materials available on record.

5. The legal representatives of the deceased Maruthavanan seeks enhancement of compensation in M.C.O.P No.502 of 2009. The accident has taken place due to the rash and negligent driving of the driver of the second respondent Tipper lorry, which is not in dispute and accordingly, the finding rendered by the Tribunal with regard to the rash and negligent on the part of the first respondent-driver is hereby confirmed.

6. Coming to the quantum of compensation, the learned counsel for the appellants/claimants would submit that at the time of the accident, deceased was employed as a driver and was earning Rs.6,500/- p.m. and the Tribunal relied upon Exhibit P-11 salary certificate issued by the employer of the deceased. However, no one has been examined in support of the same.

7. Taking into consideration the above said fact, it appears from the records that the Tribunal has fixed notional income as Rs.3,000/- p.m. and accordingly, calculated the loss sustained by the family and as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, the age of the parents should not be the criteria and the claimants are entitled for compensation of taking into consideration 40 as the age and for future prospects, the pecuniary loss sustained by the family is re-assessed is $\text{Rs.}3,000 + 3000 \times 40/100 \times 12 \times 15 = \text{Rs.}7,56,000/-$.

8. In view of the fact that the deceased was aged about 40 years, accordingly, the 'loss of income' awarded by the Tribunal shall stand enhanced from Rs.4,68,000/- to Rs.7,56,000/- as calculated above.

9. With regard to the 'loss of consortium', the first claimant/wife is entitled to Rs.40,000/- and accordingly, it is increased from Rs.25,000/- to Rs.40,000/- and for 'loss of love and affection' to each of the appellants/petitioners 2 and 3-minors and to the appellants 4 and 5, being the parents of the deceased, are entitled to Rs.60,000/- in total (Rs.15,000/- each). For 'funeral expenses', Rs.15,000/- is hereby awarded. For the 'loss of estate', Rs.15,000/- is awarded and accordingly, the award is enhanced as tabulated hereunder:

Heads	Tribunal	High Court
Loss of income	Rs.4,68,000/-	Rs.7,56,000/-
Loss of consortium	Rs. 25,000/-	Rs. 40,000/-
Loss of love and affection	Rs. 50,000/-	Rs. 60,000/-
Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
Loss of estate	--	Rs. 15,000/-
Total	Rs.5,48,000/-	Rs.8,86,000/-

10. The learned counsel for the Insurance Company stated that the entire award amount awarded by the Tribunal, has already been deposited and the Insurance Company shall deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this judgment. Interest at the rate of 7.5% with regard to the enhancement of amounts shall accordingly be calculated for payment.

11. On such deposit, except with regard to the share of the minor appellants 2 & 3, others are permitted to withdraw the amount. The share of the compensation to the claimants as fixed by the Tribunal shall hold good. With regard to the share of the minor appellants 2 and 3, the same shall be deposited in any one of the Nationalised Bank in an interest bearing account till they attain majority and in the interregnum, the first appellant/mother shall withdraw periodical interest on the same for the welfare of the minors.

12. With the above enhancement in the amount awarded by the Tribunal, this Civil Miscellaneous Appeal is allowed. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal cum Principal Sub Judge,
Coimbatore.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.K.Vinod, Advocate, S.R.No.15018

+1 cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.15679

C.M.A.No.2031 of 2011

SSV(CO)
SSM(07/05/2019)



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