



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1564 of 2016

1.Rajammal
2.Radhika
3.Sumathi
4.Ananthi

.. Appellants/Claimants

Vs.

1.R.Sivakumar
2.A.Nakkammal

3.The New India Assurance Company Ltd.,
1st Floor, NKN Complex,
Bed Ford Circle, Coonoor,
The Nilgiris-636 101.

4.Rajmohameed

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.09.2010 and made in M.C.O.P.No.172 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II, Coimbatore.

For Appellants : Mr.B.Gopalakrishnan
for S.Gunalan

For R3 : Mr.E.Rajadurai
for M/s.M.B.Gopalan

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 20.09.2010 and made in M.C.O.P.No.172 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II, Coimbatore.

2.The appellants are claimants in M.C.O.P.No.172 of 2007, on the file of the Motor Accident Claims Tribunal, Additional



District Judge, Fast Track Court No.II, Coimbatore. They filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of one V.Muthusamy, who died in the accident that took place on 03.08.2006. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent/driver of the Omni van belonging to the 2nd respondent and insured with the 3rd respondent/Insurance Company and directed both the respondents 1 and 2 jointly and severally to pay a sum of Rs.2,43,400/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal and exonerating third respondent, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the Tribunal erred in exonerating the 3rd respondent/Insurance Company from its liability on the ground that the appellants failed to prove that the 1st respondent possessed driving license at the time of accident. The Tribunal erroneously fixed onus on the appellant. It is for the 3rd respondent to prove that the 1st respondent did not possess the driving license at the time of accident. There was valid insurance policy for the offending vehicle issued by the 3rd respondent. The deceased was doing milk vending business and earning a sum of Rs.6,000/- per month. The Tribunal erroneously fixed at Rs.3,000/- as his notional monthly income. The deceased was aged about 60 years at the time of accident. The correct multiplier is '9'. The Tribunal has applied multiplier '8' and prayed for setting aside the award exonerating the 3rd respondent/Insurance Company and for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the appellants failed to prove that 1st respondent possessed valid driving license at the time of accident. On such failure, the Tribunal rightly exonerated the 3rd respondent from its liability. The appellants have not proved the avocation and income of the deceased. In such circumstances, the amounts awarded by the Tribunal is not meagre and appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent and perused the materials available on record.

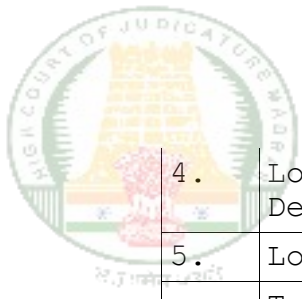
6.From the materials on record, it is seen that the 3rd respondent-Insurance Company in the counter statement contended that the appellants must prove that the 1st respondent driver of



the vehicle had driving license to drive omni van at the time of accident. From the award of the Tribunal it is seen that the 3rd respondent has not specifically denied that the 1st respondent was not possessing driving license at the time of accident and also did not let in any evidence to prove that the 1st respondent did not possess the driving license to drive the omni van. The Tribunal erroneously fixed onus on the appellants to prove that the 1st respondent possessed driving license at the time of accident. Due to this error the award of the Tribunal exonerating the 3rd respondent-Insurance company from its liability is liable to be set aside and is hereby set aside.

7.As far as quantum of compensation is concerned the accident has occurred in the year 2006. The appellants have contended that the deceased was aged 60 years and doing milk vending business and earning a sum of Rs.6,000/- per month. The Tribunal fixed Rs.3,000/- per month as notional income of the deceased which is meagre and the same is enhanced to Rs.5,000/-. The Tribunal has adopted multiplier '8' but the correct multiplier applicable is '9'. The amount awarded by the Tribunal towards loss of dependency is modified to Rs.3,60,000/- [Rs.5,000/- x 12 x 9 x 2/3]. A sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is meager and the same is enhanced to Rs.15,000/-. A sum of Rs.5,000/- awarded by the Tribunal towards loss of consortium to the 1st appellant is meagre and the same is enhanced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted by this Court towards loss of estate. The amount awarded by the Tribunal towards loss of love and affection is confirmed. Thus, the amounts granted by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Funeral Expenses	5,000	15,000	Enhanced
2.	Loss of Consortium to the 1 st appellant	5,000	40,000	Enhanced
3.	Loss of Love and Affection	3,000	3,000	Confirmed



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4.	Loss of Dependency	2,30,400	3,60,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	2,43,400	4,33,000	Enhanced by Rs.1,89,600/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,43,400/- is hereby enhanced to Rs.4,33,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share from the enhanced award amount on the basis of the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rst/gbi

To

1. Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.II, Coimbatore.

2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M/s.M.B.Gopalan, Advocate SR.No.23322

+1cc to Mr.S.Gunalan, Advocate SR.No.22129

C.M.A.No.1564 of 2016

RV(CO)
GMY(01/10/2019)