

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.2873 of 2015

1.Egavalli

2.Anusuya

3.Minor Prema

(Minor represented by her next friend and Mother Egavalli)

... Appellants

Vs

1.Ramakrishnan

2.The Divisional Manager

Shriram General Insurance Co. Ltd.,

Having office at Puducherry

... Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 13.06.2014 made in M.C.O.P.No.392 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Puducherry.

For Appellants : Mr.T.Ananthasekar
For R2 : Mr.K.Poomalai

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 13.06.2014 made in M.C.O.P.No.392 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Puducherry.

Brief facts of the case:

2.On 05.06.2012 at about 09.00 a.m. when the deceased Iyyappan was riding his bicycle from east to west direction on the Sangarabarani River bridge, Kumarapalayam, Pondy - Thiruvannamalai main road, at that time, the tipper lorry bearing Reg. No. TN-21-AX-5688 belongs to the first respondent, driven by its driver in a rash and negligent manner, which came behind the two wheeler driven by the deceased, dashed behind him and the deceased was thrown away in pool of blood. Due to severe injuries sustained all over his body, he succumbed to death on the spot itself. A criminal case was also registered against

the driver in Crime No.148/2012. The claimants who are the legal heirs of the deceased have claimed a sum of Rs.22,50,000/- as compensation under the various heads viz., loss of dependency, loss of consortium, loss of love and affection, loss of estate and funeral expenses.

3.The 2nd respondent / Insurance Company totally denied the mode of accident and involvement of lorry bearing Reg. No. TN-21-AX-5688 and also the negligence as stated by the claimants. Further, the sum claimed by the claimants under various heads are denied as there are no documentary proof.

4.Aggrieved over the said award, the claimants have preferred the present appeal for enhancement.

5.On perusal of the record, it is observed that the Tribunal after considering evidence and documents placed before the same, has given a finding that the negligence was contributed only by the driver of the lorry which belongs to the 1st respondent and further observed that the said lorry driver was not given a permit to drive where the accident had occurred. Since, there is no valid permit, the Tribunal given a finding that the Insurance Company has to indemnify the loss and get the reimbursement from the 1st respondent. The Tribunal awarded a sum of Rs.5,33,000/- as compensation against the claim of Rs.20,50,000/- under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Loss of dependency	4,68,000
2.	Loss of love and affection	30,000
3.	Loss of consortium	20,000
4.	Funeral expenses	7,500
5.	Loss of estate	7,500
Total		5,33,000

The Tribunal taking the monthly income of the deceased at Rs.4,500/-, the loss of dependency was taken at Rs.4,500/- x 12 = Rs.54,000/-. After deducting 1/3rd of the income towards personal expenses of the deceased and applied multiplier '13', the loss of dependency is fixed at (4,500 x 12 = 54,000 - 18,000) = 36,000 x 13 = Rs.4,68,000/- and hence a sum has been arrived.

6.Aggrieved against the said compensation, the claimants have preferred this appeal by stating that the Tribunal has not

considered the monthly income of the deceased properly and further stated that as per the principles laid down by the Hon'ble Apex Court, the Tribunal ought to have fixed the monthly income of the deceased at Rs.6,500/-. The Tribunal has also failed to consider the future prospects by awarding the sums to the claimants. The claimants are wife and children of the deceased. The age of the deceased was 40 years and the Tribunal has not considered these aspects. The sum awarded by the Tribunal towards loss of estate is also very meagre. The other grievance raised by the appellants/claimants is that the Tribunal has not awarded any amount for transportation and hence on the whole, the judgment and decree of the Tribunal by awarding very meager amounts for the death of the deceased, who is aged about 46 years.

7. Heard, Mr.T.Ananthasekar, learned counsel appearing for the appellants/claimants and Mr.K.Poomalai, learned counsel appearing for the respondent/Insurance Company.

8. On perusal of the records, it is seen that the deceased was aged 46 years at the time of his death. While determining the monthly income of the deceased, the Tribunal has made discussion by stating that the deceased was an agricultural coolie and as per the claimants, the deceased was earning a sum of Rs.500/- per day. But the Tribunal has taken monthly income of the deceased at Rs.4,500/- and the appellants are very much aggrieved. Since, the age of the deceased was 46 years and the Tribunal has not considered the norms and the amount fixed by the Apex Court and it has to be properly considered. Hence, in view of the decisions arrived in in the earlier case and also considering the age of the deceased and the occupation, the monthly income of the deceased ought to have taken as follows:

Rs.6,500/- x 12 = 78,000

Rs.6,500/- x 12 x 1/3 = 26,000

52,000

52,000 x 13 = Rs.6,76,000/-

9. The other grievances raised by the appellants are that the amount awarded by the Tribunal towards loss of love and affection, funeral expenses and loss of estate are meager and the same are enhanced to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- under those heads respectively. The Tribunal has rightly awarded sum under the head 'loss of consortium'. The Tribunal has not awarded any amount towards transportation and this Court awards a sum of Rs.15,000/-. Accordingly, the sum modified by this Court as follows;

Heads	sum awarded by the tribunal	sum modified by this Court
Loss of dependency	Rs. 4,68,000/-	Rs.6,76,000
Loss of love and affection	Rs. 30,000/-	Rs. 40,000/-
Loss of consortium	Rs. 20,000/-	Rs. 20,000/-
Funeral expenses	Rs. 7,500/-	Rs. 15,000/-
Loss of estate	Rs. 7,500/-	Rs. 15,000/-
Transportation	-	Rs. 15,000/-
Total	Rs. 5,33,000/-	Rs. 7,81,000/-

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.5,33,000/- to Rs.7,81,000/- shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The respondent/ Insurance Company is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit, the appellants 1 & 2 are permitted to withdraw the respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor 3rd appellant is directed to be deposited in any one of the Nationalised Banks till she attains majority. The 1st appellant being the mother of the 3rd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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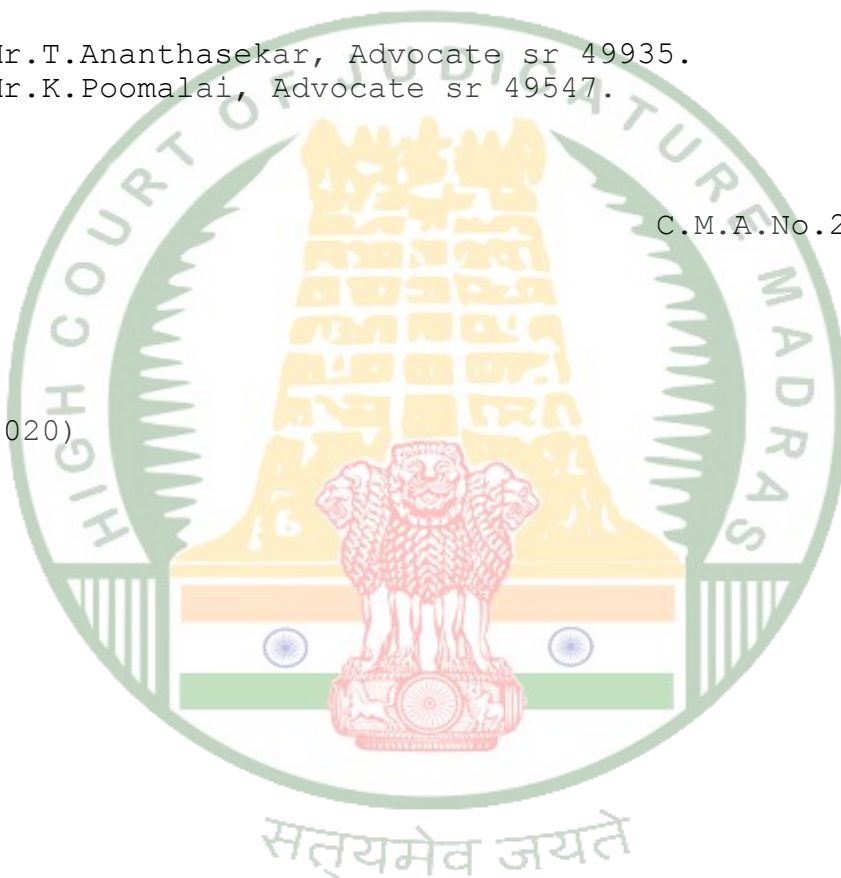
1.The Principal District Judge
Motor Accidents Claims Tribunal
Puducherry

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

+1 CC to Mr.T.Ananthasekar, Advocate sr 49935.
+1 CC to Mr.K.Poomalai, Advocate sr 49547.

C.M.A.No.2873 of 2015

GP(CO)
SP(05/06/2020)



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