

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.478 of 2015

1.P.Pushpavathi

2.Sangeetha

3.Sophia

... Appellants/Claimants

Vs

1.K.Krishnamoorthy

2.S.Hariharan

3.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.46, Whites Road,
Royapettah,
Chennai - 600 014.

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.09.2014 made in M.C.O.P.No.394 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

For Appellants : Mr.S.Kaithamalaikumaran
For Respondents : Mrs.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 23.09.2014 made in M.C.O.P.No.394 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

2.The brief facts is as follows:

On 28.04.2012, at about 1.15 p.m., deceased Velusamy was riding the moped bearing Reg.No.TN-33-AQ-8551 on the Erode to Muthur main road, near fire service, Modakkurichi, in front of Hari Surya Gas company, from south to north on his left side of

the road. At that time, the car bearing Reg.No.TN-67-AD-2551 was coming from behind in rash and negligent manner and hit against the deceased. The deceased sustained injuries all over the body. The deceased was taken to K.M.C.Hospital, Erode where he died on account of the injuries sustained in the accident on the same day. The claimants who are the legal heirs of the deceased claimed a sum of Rs.15,00,000/- as compensation for the death of one Velusamy.

3.The 3rd respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that the accident was happened only due to the negligence of the deceased and there was absolutely no fault or mistake and part of the driver of the vehicle bearing Reg.No.TN-67-AD-2551. Hence the respondent is not liable to pay compensation to the petitioner. The other aspect denied by the Insurance Company is that the deceased drove his vehicle without any valid driving license. The deceased drove his vehicle without knowing the traffic rules and regulations and voluntarily invited the accident. The sum claimed by the claimant as compensation is excessive.

4.The Tribunal after analysing the evidence and documents placed before the same has given a finding that the accident has occurred only due to rash and negligent driving on the part of the 1st respondent's driver and the 3rd respondent being insurer of the said vehicle, the Tribunal has directed to pay the compensation of Rs.4,07,600/- to the claimants. The sum awarded by the Tribunal under various heads is as follows:

Loss of consortium	Rs.10,000/-
Funeral expenses	Rs.10,000/-
Loss of things	Rs.10,000/-
Transportation charges	Rs.5,000/-
Loss of income	Rs.3,72,600/-
Total	Rs.4,07,600/-

Aggrieved against the said award the claimants have preferred this appeal for enhancement of compensation.

5.In the grounds of appeal, the appellants have contended that the Tribunal erred in fixing Rs.4,500/- per month as notional income of the deceased. The deceased was an

agricultural coolie and he can earn not less than Rs.250/- per day during the relevant period. The Tribunal has failed to note that the deceased was only bread winner of the family. The Tribunal has not properly considered income and occupation of the deceased. The sum awarded by the Tribunal at Rs.10,000/- towards loss of consortium to the 1st appellant is very much meagre and no sum has been awarded towards loss of love and affection to the appellants 2 & 3. The sum awarded towards transportation at Rs.5,000/- is also meagre side and the sum awarded towards funeral expenses is also not on the reasonable side.

6. Heard Mr.S.Kaithamalaikumaran, learned counsel appearing for the appellants and Mrs.R.Sreevidhya, learned counsel appearing for the respondents and perused all the materials available on record.

7. With regard to the negligent act by observing the evidence of PW2 who was supposed to be an eyewitness and has given a finding that it is the driver of the 1st respondent who is very much responsible for the accident. The 1st respondent vehicle was proceeding behind the vehicle driving by the deceased Velusamy. Hence the negligent is fixed on the driver of the 1st respondent. While determining, the Tribunal has also observed that the age of the deceased is 49 years and also by verifying the aspects of occupation and income the Tribunal has awarded a sum of Rs.4,07,600/- as compensation to the appellants

8. On perusal of the records, it is observed that the Tribunal has taken income of the deceased at Rs.4,500/- per month when it is stated that he was doing agricultural operation besides brokerage and earning not less than Rs.8,000/- per month. Considering the age of the deceased who was 49 years at the time of the accident, this Court takes the monthly income of the deceased at Rs.5,000/- per month. Further, considering the fact that the Tribunal has not awarded any amount towards loss of love and affection to the claimants 2 & 3 who are the daughters of the deceased, the same is properly considered by this Court by awarding Rs.20,000/- each to the claimants 2 & 3. Similarly, this Court finds it proper to enhance the sum awarded under the heads funeral expenses and loss of consortium. Accordingly, the same is enhanced to Rs.15,000/- and Rs.40,000/- respectively under those heads. The Tribunal has not awarded any sum towards loss of estate and this Court awards a sum of Rs.15,000/-. As discussed above the amount awarded by the Tribunal towards loss of income is modified by taking Rs.5,000/- per month as notional income of the deceased by including 15%

towards future prospects and by deducting 1/3rd towards personal expenses. Hence, the loss of income is modified to Rs.4,14,000/- [(Rs.5,000/- x 12 x 9 = Rs.5,40,000/-) (Rs.5,40,000/- + 15% = Rs.6,21,000/-) (Rs.6,21,000/- x 1/3 = Rs.2,07,000/-) (Rs.6,21,000/- - Rs.2,07,000 = Rs.4,14,000/-)]. The sum awarded by the Tribunal under other heads are confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	Rs.3,72,600/-	Rs.4,14,000/-
2.	Funeral expenses	Rs.10,000/-	Rs.15,000/-
3.	Loss of things	Rs.10,000/-	Rs.10,000/-
4.	Transportation charges	Rs.5,000/-	Rs.5,000/-
5.	Loss of consortium to the 1 st appellant	Rs.10,000/-	Rs.40,000/-
6.	Loss of estate	-	Rs.15,000/-
7.	Loss of love and affection (Rs.20,000/- each to the appellants 2 & 3)	-	Rs.40,000/-
	Total	Rs.4,07,600/-	Rs.5,39,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,07,600/- is hereby enhanced to Rs.5,39,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

10. 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 now determined by this Court along with interest

and costs, 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 apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal.

Sd/-
Assistant Registrar(Ad-I)

// True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.S.Kaihamalai Kumaran, Advocate, SR.No.61682.
+1cc to Ms.R.Sree Vidhya, Advocate, SR.No.62493.

C.M.A.No.478 of 2015

LN(CO)
CSR: 17.02.2020

सत्यमेव जयते

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