



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No. 758 of 2015

1. Perumal
2. Minor Saravanan
3. Minor Illavarasi
4. Minor Iswarya ..Appellants/Claimants
(Minors 2 to 4 Appellant rep by their father
1st Appellant)

Vs.

1. Ramachandian
2. Branch Manager,
The Oriental Insurance Company Ltd.,
Having their Office at
Door No. 75, Krishnan Road,
Thiruvannamalai. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.07.2011 made in M.C.O.P.No. 959 of 2008 on the file of the Motor Accident Claims Tribunal, District Judge, Tiruvannamalai.

For Appellant : M/s. A.Subadra
For M/s. M. Malar

For R2 : Mr S. Manohar
R1- Exparte.

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award 27.07.2011 made in M.C.O.P.No. 959 of 2008 on the file of the Motor Accident Claims Tribunal, District Judge, Tiruvannamalai.

Brief facts:

2.1 On 20.05.2008 at 4.pm, the deceased Sivakumari



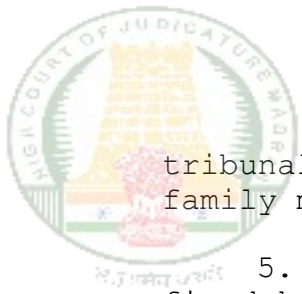
after finishing her personal work at Polur was returning to her village, she was travelled as one of the passengers in the 1st respondent's Renugambal Mini Bus bearing Reg.No. TN 25 -A 0238, when the bus was nearing Pattarai Kadu Pudur Bust Stop, the bus driven by its driver in a rash and negligence manner and dashed against the tree and capsized the bus and caused the accident. Due to the accident, the deceased Sivakumari and others sustained grievous injuries and fracture all over the body. The deceased Sivakumari sustained injuries on her head, hand, leg and sustained fracture all over the body and she was taken to the Jamunamaruthur Primary Health Centre and there she died inspite of treatment. The accident was taken place only due to the rash and negligent driving of the first respondent's bus driver. The legal heirs of the deceased have claimed a sum of Rs.10,000/- as compensation.

2.2 The Insurance Company in their counter statement denied the possession of valid driving licence by the driver of the vehicle at the time of the accident. It is further stated that driver of the alleged vehicle bearing reg. no. TN 25 A 0238 is also a necessary party to the proceedings and hence the petition is liable to be rejected in limine for non-joinder of the alleged vehicle.

2.3 The tribunal upon analysing the oral pleadings and documents, has come to the conclusion that the accident has taken place only due to the rash and negligent driving of the 1st respondent's bus driver and since the said vehicle is insured with the 2nd respondent insurance company, both the 1st and 2nd respondents are liable to pay the compensation jointly and severally. The tribunal has awarded a sum of Rs.5,55,360/- as compensation under various heads. Aggrieved against the said award the claimants have preferred this appeal for enhancement.

3. Heard both sides and perused the documents available on records.

4. The learned counsel for the appellants contended that the tribunal has not considered the income of the deceased who was working as Child Development Officer at Jamunamarathur and earning a sum of Rs.3573/- per month, for which Ex.P9 - Salary Certificate was also produced. But the tribunal has fixed the monthly income only at Rs.2,335/- which is very meagre. Further, the tribunal ought to have deducted 1/4 towards personal expenses and ought to have added 50% of the income towards future prospects. It is further contended by the appellants that though the claimants have submitted documents, the tribunal without considering the same, has awarded very less compensation under the other heads viz., loss of love and affection, funeral expenses, damaged to cloths. It is further contended that the



tribunal failed to award compensation for mental agony to the family members and loss of estate.

5. On perusal of records, it is seen that the liability fixed by the tribunal is purely based on the evidence of the PW1 & PW2 and the documents relating to the FIR. Further it is also seen that the tribunal by relying upon the Ex.P9 - Salary certificate issued by the Child Development Project Officer, Jamunamarathur, has fixed the income of the deceased at Rs. 2,335/- after deducting the personal expenses. This Court also confirms the said monthly income fixed by the tribunal. But, the tribunal has taken multiplier 18 which is against the guidelines and it is also seen that the tribunal has not added future prospects. Hence, as per the guidelines issued by the Apex Court in Sarla Varma's Case, the multiplier 17 has to be taken in the case of the where the deceased was between the age group of 26 to 30 years. Here the age of the deceased is 28 at the time of the accident, hence it would be proper to modify the sum awarded under the head loss of earning by applying proper multiplier 17 and adding 40% of the income towards future prospects. Accordingly, the loss of earning is modified as Rs.6,66,876/- (2335+40% x12x17). Considering the claimants who are the Husband and the minor children of the deceased, this Court inclined to modify the sum under the head 'Loss of Love and affection. Accordingly, a sum of Rs.25,000/- is awarded to the 1st claimant and Rs.30,000/- (Rs.10,000/- each) to the claimants 2 to 4. Similarly, the sum awarded at Rs.10,000/- under the head Funeral expenses & Transport charges is also enhanced at Rs.15,000/- towards Funeral expenses and Rs.5000/- towards Transport charges. Since no sum is awarded under the head 'Loss of estate', a sum of Rs.10,000/- is awarded under the said head. The sum awarded for damage to cloth and articles is confirmed.

Thus, the sum awarded by the tribunal is modified by this Court as follows;

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	5,04,360	6,66,876/-	enhanced



interest for the said delay period, the appellants/claimants are not entitled for interest amount for 946 days.

Sd/-

Assistant Registrar(CS-VI)

WEB COPY

//True Copy//

Sub Assistant Registrar

ak

To
The District Judge,
(Motor Accident Claims Tribunal)
Tiruvannamalai.

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

+1cc to M/s.M.Malar, Advocate, S.R.No.60197
+1cc to Mr.S.Manohar, Advocate, S.R.No.60130

C.M.A.No.758 of 2015

RR(CO)
CB(15/07/2021)