

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.944 of 2015

1.Madhammal

2.Kanagaraj

3.Meenakshi

4.Gandhimathi

5.Sakthivel

... Appellants

Vs.

1.Kulandaivelu

2.The Branch Manager,
ICICI Lombard General Insurance Co. Ltd.,
Near Ramesh Theatre,
Trichy Road,
Namakkal.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.03.2014 made in M.C.O.P.No.29 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellants : Mr.N.Manoharan

For R2 : Ms.R.Sreevidhya

For R1 : No appearance

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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 26.03.2014 made in M.C.O.P.No.29 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.29 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Bommanaicker, who sustained injuries in the accident that took place on 27.04.2008 and died on 30.06.2009. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tipper lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.3,25,200/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants/claimants contended that the Tribunal has failed to consider that the deceased had sustained injuries in the accident which took place on 27.04.2008 and he died while was in treatment on 30.06.2009. Ex.P4 and Ex.P7 shows that the accidental injuries were the cause for the death. From the evidence of PW2/Doctor, the deceased was under continuous treatment as in-patient between 28.04.2008 and 10.07.2008. Further contended that the Tribunal fixed the income of the deceased as atleast Rs.4,500/- in the light of oral evidence of P.W.1. The Hon'ble Supreme Court in 2011(13)SCC 236 has fixed Rs.4,500/- for a coolie and in 2014(2)SCC 735 has fixed Rs.6,500/- for a vegetable vendor in the absence of any proof. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not proved the avocation and income of the deceased. Further contended that the accident has occurred on 27.04.2008, the deceased was aged about 63 years. The deceased died on 01.07.2009. The postmortem certificate was not conducted. The deceased was not died due to accidental injury. The petitioners are not entitled for the death claim. The petitioners are only entitled to medical expenses. The compensation awarded by the Tribunal are not meagre and prayed for dismissal of the appeal.

5.Heard Mr.N.Manoharan, learned counsel appearing for the appellants as well as Ms.R.Sreevidhya, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

6.On perusal of records, it is observed that the deceased was aged about 63 years at the time of accident. He was doing agricultural work and business of selling the crops and thereby

he was earning a sum of Rs.15,000/- per month. The Tribunal has observed the fact that since it is a agricultural income and there is no loss of income due to the death of the deceased. The Tribunal has awarded a sum of Rs.15,000/- towards injuries sustained by him, Rs.10,000/- towards transportation, Rs.36,000/- towards extra nourishment, Rs.40,000/- towards pain & sufferings and Rs.2,24,162 towards medical bills as per Ex.A8. Whereas it is observed that the injured person also died on 01.07.2009. Hence, the Tribunal has considered these facts and awarded a sum under the above heads. Hence this Court fixed Rs.5,000/- as notional income of the deceased. Considering the age of the deceased, multiplier '7' is correct. There are five claimants 1/4th of the income has to be deducted towards personal expenses. Hence this Court awards a sum of Rs.3,15,000/- (Rs.5,000/- x 12 x 7 x 3/4). This Court grants a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The sum awarded by the Tribunal towards transportation and medical bills are proper and reasonable and does not require any modification. The sum awarded by the Tribunal towards compensation for injury, nourishment and pain & sufferings are to be set aside. 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.	Compensation for injury	Rs.15,000/-	Set aside
2.	Nourishment	Rs.36,000/-	Set aside
3.	Pain and sufferings	Rs.40,000/-	Set aside
4.	Medical bills	Rs.2,24,162/-	Rs.2,24,162/-
5.	Transportation	Rs.10,000/-	Rs.10,000/-
6.	Loss of dependency	-	Rs.3,15,000/-
7.	Loss of consortium	-	Rs.40,000/-
8.	Loss of estate	-	Rs.15,000/-
9.	Funeral expenses	-	Rs.15,000/-
	Total	Rs.3,25,162/- rounded off to Rs.3,25,200/-	Rs.6,19,162/- rounded off to Rs.6,19,200/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,25,200/- is enhanced to Rs.6,19,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

8. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

mtl

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1cc to Mr.N.Manoharan, Advocate SR.No.79070

+1cc to Ms.R.Sreevidhya, Advocate SR.No.79781

C.M.A.No.944 of 2015

RR(CO)
GMY(15/06/2020)