

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.652 of 2016

1.S.Mallika
2.Minor S.Maheshkumar
(represented by his mother and natural guardian, S.Mallika)
3.Janakiammal ... Appellants/Petitioners

Vs.

1.P.Poomalai
2.S.Rajagopal
3.United India Insurance Company Limited,. 280, Ooty Main Road,
Mettupalayam - 641 301. ... Respondents/Respondents

(Notice to the 1st and 2nd Respondents herein may be dispensed with since they remained Exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment made in M.C.O.P.No.1250 of 2010 dated 29.10.2014 on the file of the Motor Accident Claims Tribunal, the III Additional District Court, Coimbatore.

For Appellants : Mr.P.M.Duraiswamy

For R1 & R2 : Ex-parte

For R3 : Mr.J.Chandran

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been preferred by the claimants against the judgment and decree made in M.C.O.P.No.1250 of 2010 dated 29.10.2014 on the file of the Motor Accident Claims Tribunal, the Additional District Court, Coimbatore.

2. The claimants/petitioners are the appellant herein, who have preferred this appeal for enhancement of compensation awarded by the Tribunal.

3. The brief case leading to the claim application is as follows:

On 03.02.2010 at about 2.15 p.m., M.Selvaraj, husband of the first appellant, was carefully riding the new motor cycle at the road junction of Arumuga Gounder street No. 2 with Ondipudur-Inrugur road, Coimbatore from west to east. At that time, the goods carriage bearing registration No. TCB 4154, driven by the first respondent herein in a rash and negligent manner, came from east to west in the same road and hit against the motor cycle driven by the said M.Selvaraj. Due to which, he sustained grievous injuries all over his body and he was immediately taken to C.M.C. Hospital for first aid and subsequently he was shifted to G.Kuppusamy Naidu Memorial Hospital, Coimbatore and there he was admitted as inpatient for treatment. In spite of the best treatment given to him in the said hospital, he died on 08.02.2010. The appellants herein/petitioners, therefore claimed Rs.18,50,000/- as compensation under various heads as follows.

4. The learned counsel for the appellants contended that at the time of the accident, the deceased was 38 years old and he was also working as a watchman in South India Textile Research Association. The first appellant herein is the wife of the deceased, who is aged about 29 years, the second appellant herein is the minor son, who is aged about 9 years and third appellant herein is the mother of the deceased, and claimed a sum of Rs.18,50,000/-. The Tribunal on considering the oral and documentary evidence, has awarded a sum of Rs.14,15,600/- as compensation under the various heads as follows:

Sl.No.	Heads	Amount Awarded by the Tribunal
1.	Loss of income	10,80,000.00
2.	Medical expenses	1,00,600.00
3.	Loss of love and affection	1,00,000.00
4.	Loss of consortium for the 1st petitioner/wife	1,00,000.00
5.	Funeral expenses	25,000.00
6.	Transport expenses	5,000.00
7.	Attender expenses	5,000.00
8.	Total	14,15,600.00

Being not satisfied with the said compensation, the claimants/appellants herein have preferred this appeal for enhancement.

5. The learned counsel for the appellants contended that the Tribunal has not considered the proof of income/ Salary Certificate vide Ex.P.11. The deceased was 38 years at the time of accident. In the petition, it was averred that the deceased was working as a watchman in South India Textile Research Association and he was earning a sum of Rs.7,600/- per month. The Tribunal, however, taken the monthly income at Rs.6,000/-. The appellants contend that it is very much on the meagre side. It is also contended that the Tribunal has not fixed any sum towards Future Prospects of the deceased. Hence, under the head "loss of income", the compensation fixed by the Tribunal is without any justification.

6. The appellants also contended that the Tribunal has not considered the fact that after the accident, the deceased was under treatment for six days and he was fighting for his life and underwent not only pain and suffering but also underwent mental agony, which requires proper compensation.

7. Heard both sides and perused the documents available on record.

8. The Tribunal, while assessing the compensation, verified the documents related to the avocation of the deceased and also his monthly income by examining the first claimant, who is none other than the wife of the deceased, who deposed before the Tribunal that he was working as Watchman in the concern M/s.SITRA. PW3/Ravichandran, the officer from the said concern viz., M/s.SITRA was also examined and Ex.P11/Salary Certificate of the deceased was filed before the Tribunal. The said witnesses clearly spoken before the Tribunal that the deceased joined in the Institution on 01.07.1999 and he would have retired from the said institution on 30.09.2029 and his probable income at the time of the filing the application in the year 2014, his income would have been Rs.11,217/-. Further, regarding the avocation as well as pay particulars, the said witness spoken before the Tribunal along with sufficient documents particularly Ex.P17/Certificate of the Institution where the deceased worked .

9. The grievance of the appellants is that in spite of the evidence as well as documents placed before the Tribunal, the Tribunal has taken the monthly income at Rs.6,000/-, which is not a reasonable one.

10. Taking note of the oral and documentary evidence placed before the Tribunal regarding occupation under PW3 and the document Ex.P17/Certificate of the Institution where the deceased worked, this court takes Rs.7,000/- as monthly income of the deceased. Following the decision of Apex Court in

National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% of the above said income is taken towards future prospects. Further, following the decision Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)], multiplier 15 is adopted, to arrive the loss of income.

Rs.7,000/- + 40% of 7,000/- = Rs.9,800/-

Rs.9,800/- x 15 x (2/3) x 12 = Rs.11,76,000/-.

11. Taking note of the sufferings underwent by the young widow, minor son and the aged mother of the deceased who was the sole bread winner of the family who died due to the accident and also considering the facts and circumstances of the case, just and reasonable modifications in the compensation given by the Tribunal under various heads is as under:-

Sl. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of income	10,80,000.00	11,76,000.00
2.	Medical expenses	1,00,600.00	1,00,600.00
3.	Loss of love and affection/Care and guidance to the second and third petitioners.	1,00,000.00	75,000.00
4.	Loss of consortium for the first petitioner/wife	1,00,000.00	40,000.00
5.	Funeral expenses	25,000.00	15,000.00
6.	Transport expenses	5,000.00	10,000.00
7.	Attender charges	5,000.00	25,000.00
8.	Total	14,15,600.00	14,41,600.00

From the above enhanced amount, the third respondent is entitled to a sum of Rs.3,00,000/- and the first and second respondents are entitled equally for the remaining amount i.e., Rs.11,41,600/-. The minor/second respondent share will be deposited in any nationalized bank until he attains majority.

12. In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.14,15,600/- to Rs. 14,41,600/- which shall carry

interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The 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 third respondent/ United India Insurance Company Limited, is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the appellant/claimant's bank account through RTGS within a period of two weeks thereon as apportioned by the Tribunal.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1.The III Additional District Court,
Motor Accident Claims Tribunal,
Coimbatore.

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

+lcc to Mr.P.M.Duraiswamy, Advocate Sr.77573

+lcc to Mr.J.Chandran, Advocate Sr.78550

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