

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3102 of 2019

- 1.Sivagami
- 2.Deepa
- 3.Vanitha

... Appellants/ Claimants
Vs

- 1.R.Mariya Jeyasekar
2. The Oriental Insurance Co., Ltd.,
"Oriental House" II Floor,
New No.216, Old.No.115, Prakasam Salai,
Broadway, Chennai - 600 108.

...Respondents/ Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation against the Judgment and Decree dated 23.01.2018 in M.C.O.P.No.2131 of 2016 on the file of Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants : Ms.Ramya V.Rao

For Respondents: Mr.R.Sivakumar for R2

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimants aggrieved over the quantum of compensation of Rs.7,33,000/- towards the death of Mr.Dhayalan, aged about 52 years, doing lining works, allegedly earning about Rs.30,000/- per month in the accident occurred on 05.10.2015, when the deceased was a pillion rider in a motorcycle which was hit behind by a lorry belonging to the 1st respondent insured with the 2nd respondent, driven rashly and negligently.

2.Heard Ms.Ramya V.Rao, learned Counsel for the appellants and Mr.R.Sivakumar, learned Counsel for the 2nd respondent.

3.There is no appeal by the insurance company against the finding regarding negligence and therefore, the finding of the Tribunal that the lorry was driven rashly and negligently has attained finality.

4. Though the deceased is said to have earned about Rs.30,000/- per month as contended by the claimants, the Tribunal taking into consideration of the absence of any material documents, notionally fixed the monthly income at Rs.7,000/-. The said determination is very low as the accident occurred in the year 2015. The Honourable Supreme Court in the judgment delivered in "Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459", fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 whereas in this case, accident occurred in 2015 after seven years and therefore, Rs.7,000/- awarded by the Tribunal as monthly income is very low and the same is redetermined as Rs.12,500/- per month.

5. The age of the deceased is 52 years as per Ex.P.2 viz., postmortem certificate and therefore, 10% was rightly added towards future prospects by the Tribunal. If 10% is added towards future prospects, the monthly income would be Rs.12,500/- + 10% = Rs.13,750/-. The size of the family is 3 and therefore, 1/3rd was rightly deducted by the Tribunal towards personal expenses. If 1/3rd is deducted, the monthly income would be Rs.9166/-. The age of the deceased as already proved by Ex.P.2 is 52 years and the appropriate multiplier '11' was rightly adopted by the Tribunal. Hence, the Loss of Income would be Rs.9166/- x 12 x 11 = Rs.12,09,999/-.

6. Rs.40,000/- awarded towards Loss of Consortium to the 1st appellant is confirmed as per Pranay Sethi's case. No amount was awarded towards Loss of Love and Affection which is akin to the amount awarded towards Loss of Consortium and therefore, Rs.50,000/- is awarded under this head. No amount was awarded towards Loss of Estate and Transportation and therefore, Rs.15,000/- is awarded towards Loss of Estate and Rs.10,000/- is awarded towards Transportation. Rs.15,000/- awarded towards Funeral Expenses is confirmed. Therefore, the sum of Rs.7,33,000/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of income	12,09,999/-
2.	Loss of Love and affection	50,000/-
3.	Loss of Consortium	40,000/-
4.	Funeral Expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Transportation	10,000/-
	Total	13,39,999/-

SI.No	Head	Amount (Rs.)
	Rounded Off	13,40,000/-

7.Hence, the total compensation payable in this case is Rs.13,40,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. Additional Court fee, if any, shall be paid by the appellants within a period of two weeks from the date of receipt of the copy of this order. If the requisite court-fee is not paid by the claimants, the Tribunal is directed to deduct the requisite court fee from the compensation amount awarded to the claimants and thereafter, transfer the remaining award amount to the respective claimants' account.

8.The 2nd respondent/insurance company is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount as per the ratio fixed by the Tribunal to the respective accounts of the appellants through RTGS within a period of one week.

9. Accordingly, this appeal is partly allowed by enhancing the award of the Tribunal from Rs.7,33,000/- to Rs.13,40,000/-. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ay

To

The Judge, Court of Small causes,
Motor Accident Claims Tribunal,
Chennai.

+lcc to Mr.R.Sivakumar , Advocate SR.No. 68767

C.M.A.No.3102 of 2019

A.SK(10/02/2020)