

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2603 of 2019

1.C.L.Jayanthi
2.C.L.Jayalakshmi
3.C.L.Dinesh
4.C.L.Gayathri ... Appellants

Vs

1.R.Prakasam
2.The National Insurance Company Limited,
Branch Office, MBT Road, Muthukadai,
Ranipet, Walajah Taluk,
Vellore Distirct. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.353 of 2016 dated 31.08.2018 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Ranipet, Vellore District.

For Appellants : Mr.M.Sivakumar

For Respondents : Mrs.R.Sreevidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.353 of 2016 dated 31.08.2018 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Ranipet, Vellore District. The claimants have filed the present appeal, seeking enhancement of the compensation.

2. The brief facts leading to the claim petition is that on 29.07.2016, at about 05.50 hours, when the deceased was riding his motorcycle bearing Registration No. AP 03 C 9214 on Tirupathi to Vellore road at Gandhi Junction, Chittor Town, at that time, a lorry bearing Registration No. TN 19 B 3777 belonging to the first respondent/owner of the lorry, which came in the opposite direction, driven by its driver in a rash and

negligent manner, and dashed against the deceased. As a result of which, the deceased sustained multiple injuries all over his body. Immediately, he was taken to Government Headquarters Hospital, Chittoor, thereafter, for further treatment shifted to Christian Medical College, Vellore and died on the way to Government Medical College Hospital and a criminal case in Crime No.61/2016 was also registered against the driver of the lorry by the Chittoor Traffic Police Station. Hence, the legal representatives of the deceased, viz., wife, daughters and son of the deceased, made a claim in a sum of Rs.50,00,000/- as compensation.

3. The second respondent/ Insurance Company totally denied the allegations made in the claim application. The appellant/Insurance Company further contended that the driver of the said van was having a valid driving license with badge at the time of the accident. The other aspects relating to the claim made by the claimants are highly excessive.

4.The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the lorry and awarded a sum of Rs.7,59,730/- as compensation under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Loss of pecuniary benefits	5,67,000.00
2.	Loss of income for one month	23,536.00
3.	Medical bills	1,14,194.00
4.	Loss of consortium	20,000.00
5.	Funeral expenses	15,000.00
6.	Loss of love and affection	20,000.00
Total		7,59,730.00

5.Aggrrieved against the said award, the appellants/claimants have preferred this appeal for enhancement of compensation.

6.In the grounds of the appeal, the appellants/claimants contended that the Tribunal has failed to note the deceased was an Ex-service man and drawing pension a sum of Rs.16,133/- per month and he was also working as a driver at APSRTC and earning a sum of Rs.23,536/- per month at the time of the accident. The Tribunal has taken the monthly income of the deceased only at Rs.7,000/- without considering the pension and salary of the deceased. Hence the income fixed by the Tribunal is

unsustainable in law and the same is liable to be set aside. The other grievance raised by the appellants / claimants is that the Tribunal ought to have awarded future prospects at 15% and the sum awarded under the head of love and affection is very much on the meager side. Further, it is contended by the appellant/claimant is that the Tribunal has awarded a sum of Rs.20,000/- towards consortium is also on the meager side and the Tribunal has failed to award any amounts towards loss of estate. On the whole, the appellants/claimants sought for setting aside the decree and enhancing the compensation awarded by the Tribunal.

7. Heard both sides and perused all the materials available on record.

8. On a perusal of records, it is seen that the deceased met with an accident on 29.07.2016. At the time of the accident, the deceased was aged about 58 years, which was very much observed from Ex.P5/ Post Mortem Certificate. The deceased was an Ex-service man and drawing pension for a sum of Rs.16,133/- per month, as per the Pension Account Details (Ex.P.14) and subsequently he was working as a driver at APSRTC and was earning a sum of Rs.19,420/- per month at the time of the accident, which was very much proved by the examination of PW.4. These aspects were not considered by the Tribunal and fixed the monthly income of the deceased at Rs.7,000/-, which is not a reasonable one. It is crystal clear from the documents placed before the Tribunal that the deceased was getting a monthly pension for a sum of Rs.16,133/- and monthly salary of Rs.23,536/-, totaling to Rs.39,669/-. In order to arrive a reasonable monthly income, this Court calculate the average income of the deceased at Rs.19,834/-(Rs.39,669/- / 2). It is seen that the claimants are the dependents of the deceased and they are completely depending upon the income of the deceased as per the legal heirs Certificate (Ex.P.6).

9. Now coming to the determination of compensation by the Tribunal, by virtue of the decision of the Supreme Court, the deceased is entitled to 10% towards future prospects and by taking the monthly income of the deceased at Rs.19,834/- and adding future prospects at 10% which would workout to Rs.1,983/-, the monthly income comes to Rs.21,817/- (Rs.19,834/- + Rs.1,983/-) and the annual income would be Rs.2,61,804/-. After deducting 1/4th towards personal expenses and applying the proper multiplier 9, the loss of pecuniary benefits would be Rs.17,67,177/- (Rs.2,61,804/- x 3/4 x 9), which is proper and reasonable. The Tribunal has awarded a sum of Rs.23,536/- towards loss of income for one month salary and the same is set aside by this Court and a sum of Rs.15,000/- is awarded under the head of loss of estate.

10. With regard to the other grievance raised by the appellant that the sum awarded for loss of consortium at Rs.20,000/-, is very much on the meager side, this Court modifies the said amount to Rs.40,000/-. Further, the sum awarded under the heads of loss of love and affection, funeral expenses and Medical expenses are properly considered by the Tribunal and the same does not require any modification. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
1.	Loss of pecuniary benefits	5,67,000.00	17,67,177.00
2.	Loss of income for one month	23,536.00	
3.	Loss of estate		15,000.00
4.	Medical bills	1,14,194.00	1,14,194.00
5.	Loss of consortium	20,000.00	40,000.00
6.	Funeral expenses	15,000.00	15,000.00
7.	Loss of love and affection	20,000.00	20,000.00
	Total	7,59,730.00	19,71,371.00

Thus, the appellants/claimants are entitled to a sum of Rs.19,71,371/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

11. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.7,59,730/- to Rs.19,71,371/- 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 second respondent/ Insurance Company 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. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The 1st claimant is entitled to a sum of Rs.10,71,371/- together with accrued interests and costs.

(b) The 2nd to 4th claimants are entitled to a sum of Rs.3,00,000/- each.

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The II Additional District and Sessions Court,
Ranipet, Vellore District.

+1cc to Mr.C.Prabakaran, Advocate Sr.69827
+1cc to M/s.D.Sreevidhya, Advocate Sr.70098

C.M.A.No.2603 of 2019

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