

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HONOURABLE TMT.JUSTICE S. RAMATHILAGAM

C.M.A.No.1875 of 2018

1. G. Kalaiselvi
2. Minor G.K. Ashminth
3.Kamalathal ...Appellants/petitioners

Vs.

1.K. Gnanavel
2. M. Senthilkumar
3. M/s.United India Insurance Company Limited,
No.19/2, Navrang Plaza,
2nd Floor, Covai Road,
Karur-639 002. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.04.2018 made in M.C.O.P.No.1059 of 2017 on the file of the Motor Accident Claims Tribunal, (V Additional District and Sessions Judge, Coimbatore, to set aside the order and award compensation to the appellant.

For Appellants :M/s.C. Veeraraghavan

For Respondents:Mr.C.Paranthaman
for R3

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 05.04.2018 made in M.C.O.P.No.1059 of 2017 on the file of the Motor Accident Claims Tribunal, (V Additional District and Sessions Judge, Coimbatore).

2. The brief facts leading to the claim petition is as follows:

On 05.03.2017, the deceased viz., Gokul Kumar was returning from Pogalur in his TVS XL moped bearing Regn.No.TN-40-A-3011 in the Annur to Mettrupalayam Road from east to west, at that time, the first respondent who had driven the Eicher Van bearing Regn.No.TN-59-BK-3762 came in the opposite direction

has dashed on the moped and caused the accident, due to which, the said Gokul Kumar had suffered grievous injuries and immediately, he was taken to Government Hospital, Mettupalayam and he was declared dead. Subsequently, a case has been registered against the first respondent in Cr.No.46 of 2017. Aggrieved against the award of the Tribunal for a sum of Rs.10,10,000/-, the appellants have filed this appeal for enhancement of the compensation.

3. The claimants are the wife, child and mother of the deceased in M.C.O.P.No.1059 of 2017 on the file of the Motor Accident Claims Tribunal, (V Additional District and Sessions Judge, Coimbatore).

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver/first respondent of the Eicher Van bearing Regn.No.TN-59-BK 3762 belonging to the second respondent/owner and directed the Insurance Company/third respondent being insurer of the said van to pay a sum of Rs.10,10,000/- as compensation to the appellants. The sum awarded by the Tribunal is as follows:

Sl.No.	Head	Amount
1.	Loss of Income	Rs.8,40,000/-
2.	Loss of Love and Affection	Rs.1,00,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of Consortium	Rs. 40,000/-
5.	Funeral Expenses	Rs. 15,000/-
	Total	Rs.10,10,000/-

5. In the grounds of appeal, the learned counsel for the appellants contended that the Tribunal has not considered the fact properly that the deceased was a driver by profession and also possess land and as an agriculturist, together earning a sum of Rs.20,000/- p.m., He further contends that the Tribunal has not considered the future prospects of the deceased while awarding compensation and also erred in awarding a meagre sum under the heads of loss and affection and loss of consortium. Further he submitted that the Tribunal ought to have award the compensation as claimed by the appellants when there is no contra evidence produced by the respondents. It erred in considering the fact that in agricultural works, nobody can produce any document to show that the deceased is engaged in agricultural works. Aggrieved against the compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6. Per contra, learned counsel appearing for the third respondent-Insurance Company denied the mode of accident and submitted that TVS XL moped bearing Regn.No.TN-40-A-3011 driven by the deceased in a rash and negligent manner caused the accident and the nature of the injuries sustained by the deceased, age occupation and income of the deceased is not admitted and that the appellants has to prove that they are dependents of the deceased and also the claim of the petitioners under various heads is exaggerated. Moreover, the claim of the appellants is not in consonance of law. The amounts awarded by the Tribunal under different heads are very reasonable and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as third respondent/Insurance Company and perused all the materials available on record.

8. From the materials available on record, it is seen that the deceased Gokul Kumar met with death due to the accident that occurred on 05.03.2017 and he was 42 years at the time of accident and was working as an hired worker and by way of driving under one Ravichandran, earning a sum of Rs.15,000/- and he was also earning Rs.1,00,000/- per annum by doing agricultural works. The claimants are the wife, child and mother of the deceased. They were wholly dependant on the deceased since the deceased is the only bread winner of the family. Hence, they claimed a sum of Rs.30 lakhs as compensation under various heads.

9. The grievance of the appellants is that the income of the deceased as driver (Rs.15000 p.m.,) and as an agriculturists (Rs.1,00,000 p.a.,) were not properly considered by the Tribunal when it is clearly proved that the deceased family members owned an agriculture land of Acre 3.01 cents.

10. On the other hand, the third respondent contended that the regarding occupation of the deceased as a driver and income, no document was filed and no witness was examined regarding the employment of the deceased, except driving license. Mere possession of driving licence for driving a LMV would not itself lead to infer that the deceased was so working as the driver under the father of PW3.

11. In support of the contention that the deceased was looking after the agricultural operation and earning Rs.1,00,000/- the appellants had produced the Ex.P10 the settlement deed dated 09.10.2009 in favour of the third petitioner and contended that the tribunal ought to consider the managerial skills for the loss of income of the deceased as driver and agriculturist. This document shows that the family of

the deceased is possessing three acres of land and automatically the deceased family would have derived a reasonable sum by way of agricultural operations. Hence, this fact should be evidently placed before the Tribunal. The Tribunal has taken the monthly income of the deceased only at Rs.6000/- by adding future prospects at Rs.1,500, the sum has been arrived at Rs.7500/- and by deducting one-third for personal expenses ie. Rs.2,500/-, the deceased contribution to the family has been determined as Rs.5000/- p.m., (Rs.7500/- - Rs.2500/-) which is not a reasonable one. Without considering the age of the deceased and also the fact that the claimants are the dependants on the income of the deceased, the Tribunal has awarded a meagre compensation. Hence the monthly income of the deceased has to be enhanced to Rs.9500/- p.m.,

12. The sum determined by the Tribunal under the other conventional heads are also very much on the meagre side. Hence, the appellants sought for enhancement of the amount in the other heads also. Whereas the third respondent contended that the Tribunal without any relevant document and proof, fixed the income. Also, the interest ordered by the Tribunal is also very excessive and it ought to have been fixed at 7.5% p.a., instead of 9% p.a., In respect of the sum awarded under the heads of loss of love and affection of Rs.1,00,000/- is very much reasonable. It appears that the sum awarded under the loss of estate and loss of consortium are very much reasonable. Hence, in view of considering the fact that the deceased was possessing agricultural land, his income by way of driver even in the absence of non-examination of Ravichandran, his monthly income has to be taken at Rs.9500/- by adding future prospects at 25%, his annual income shall be calculated. In view of the above, the monthly income of the deceased is taken at Rs.9500/- and the rate of interest at 7.5% pa.,

Calculation of Loss of income:

Monthly income of the deceased = Rs.9500/- p.m.,
Add 25% of future prospects (9500x25%)= Rs.2375/-

Rs.11875/-

Less: one-third towards personal exp.

(Rs.11875/-x1/3=3958) (-) Rs. 3958/-

Total: Rs. 7,917/-

(Rs.7917/-x12x14=13,30,056/-). The sums awarded under the other heads are confirmed.

13. The revised compensation fixed by this court is as follows:

Sl.No.	Head	Sum awarded by the Tribunal	Sum awarded by this court
1.	Loss of Income	Rs.8,40,000/-	Rs.13,30,056/-
2.	Loss of Love and Affection	Rs.1,00,000/-	Rs. 1,00,000/-
3.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
4.	Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-
5.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
	Total	Rs.10,10,000/-	Rs.15,000,56/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,10,000/- is hereby enhanced to Rs.15,00,056/- (Rupees Fifteen Lakhs and Fifty Six only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation.

15. The third 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 three weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the enhanced award amount along with interest and costs, in the same ratio as apportioned by the Tribunal, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1.The V Additional District and Sessions Judge,
Coimbatore.

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

+1cc to Mr.C.Veeraraghavan, Advocate Sr.67517
+1cc to Mr.C.Paranthaman, Advocate Sr.67822

C.M.A.No.1875 of 2018

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