

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2522 of 2019

Amuthavalli

... Appellant

Vs.

1.A.Jahangeer(ex-parte)

2.United India Insurance Co Ltd.,

Third Party Service Hub,

Plot No.35,36,37

A.R.Plaza, 45 feet road

Balaji Nagar Extn, Saram

Puducherry 605 001.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.04.2019 and made in M.A.C.T.O.P.No.3088/2016 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Cuddalore.

For Appellant : Mr.S.Udayakumar

For R2 : Mr.J.Chandran\

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.3088 of 2016, dated 11.04.2019, on the file of the Special Sub Judge Cuddalore.

2. The appellant herein, who is the claimant, has filed M.C.O.P.No.3088 of 2016, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Cuddalore claiming a sum of Rs.10,00,000/- as compensation for the death of the appellant's mother in a road accident which took place on 15.06.2016 at about 17.00 hours when the deceased was walking extreme left of Bhuvanagiri to Sethiyathoppu Main Road, near Government Boys Higher Secondary School, the 1st respondent's Access Scooter/moped Reg.No.TN-31-BU-1776 came from behind, at a greater speed, in a rash and negligent manner, and dashed against the deceased, due to which the petitioner sustained fatal injuries in the accident. He was immediately taken to the Government Hospital, Chidambaram for treatment. On 23.06.2016, declared dead at Government Hospital, Chidambaram. The deceased Amirtham was a Coolie and also undertook the petitioner has lost their main bread winner

of the family, the petitioner has suffered heavy monetary loss. Being the mother of the deceased Amirtham, the petitioner has claimed a consolidated sum of Rs.10,00,000/- as compensation due to the death of mother. The 1st respondent is the owner of the Access Scooter/moped involved in the accident and the 2nd respondent is the insurer of the 1st respondent's Access Scooter/moped. Both the respondents are jointly and severally liable to pay compensation to the petitioner.

3. The Tribunal upon considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the first respondent and as insurer of the 1st respondent's vehicle, the second respondent/United India Insurance Company is directed to pay the compensation of a sum of Rs.1,25,250/- to the claimant.

4. Before the Tribunal, on the side of the claimant, witnesses P.W.1 and P.W.2 were examined and following exhibits were marked:

- (a)Ex.P1 : Xerox True Copy of FIR
- (b)Ex.P2 : Xerox True Copy of Postmortem Certificate
- (c)Ex.P3 : Death Certificate
- (d)Ex.P4 : Legal Heir Certificate of deceased Vellikanu
- (e)Ex.P5 : Xerox copy of MVI Report of the 1st respondent vehicle
- (f)Ex.P6 : Xerox copy of Alteration Report
- (g)Ex.P7 : Xerox copy of Insurance Policy of the 1st respondent vehicle
- (h)Ex.P8 : Xerox True Copy of Charge sheet

On the side of the Respondent / Transport Corporation, no one was examined and no exhibits were marked.

5. Aggrieved by the award passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act for enhancement.

6. The learned counsel for the appellant submitted that the Tribunal failed to consider the documentary evidence produced by the appellants and has not applied its mind while fixing the quantum of compensation. The income taken by the Tribunal is very low, minimum Rs.12,000/- can be taken as monthly income. The Tribunal has not adopted proper multiplier while fixing the compensation and has not given sufficient funds for future pecuniary loss and loss of love and affection. The Tribunal failed to consider that all the claimants are depending upon the income of the deceased.

7. The learned counsel appearing for the respondent/United India Insurance Company contended that the

1st respondent's scooty pep bearing Regn.No.TN-31/BU-1776 was driven by its driver in a rash and negligent manner and dashed against the deceased while he was going in front of the scooty pep. The respondent denies that the driver of the said vehicle had a valid driving license to drive the same at the time of accident and specifically denies that the petitioner is the dependant of the deceased and consolidated claim of Rs.10,00,000/- made by the petitioners under column 21-A is highly speculative and failure to categorise the loss under specific heads is against law.

8. On perusal of records, it is seen that the materials have furnished by the appellant regarding his age, income and occupation and the same are taken into consideration by the Tribunal and awarded the compensation. The petitioner contend that the deceased Amritham was a Coolie at the time of accident and was earning a sum of Rs.12,000/-, but no document for income was produced. In the absence of proof of income, considering the age of the deceased, who was 70 years as per Postmortem Certificate, a sum of Rs.3500/- was taken as notional income and adding 5% towards future prospects, applying the "5" multiplier and deducting ½ towards personal expenses, the loss of dependency in calculating by the Tribunal at Rs.1,10,250/- Rs.3,500+175 (3,675 X 12 X 5=Rs.44,100 X5-1/2). The sum awarded for funeral expenses at Rs.15,000/- is confirmed. It is seen that the Tribunal has not awarded any amount for Loss of Estate and loss of love and affection. Hence, this Court awarded a sum of Rs.25,000/- towards the loss of Estate, and Loss of love and affection.

9. Considering the evidence and documents, this Court is inclined to modify the sum under the head loss of dependency, hence this Court has fixed the notional income of the deceased at Rs.6,000/- and deducting 50% to personal expenses, adding 5% towards future prospects for calculating the sum of Rs.1,89,000/- under the loss of Dependency.

Rs.3,150/- (Rs.3,000/- X 5%) X 12 X 5 = Rs.1,89,000/-.

9. Thus, the total compensation payable to the appellant is modified hereunder;

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.1,10,250/-	Rs.1,89,000/-
2.	Funeral expenses	Rs.15,000/-	-
3.	Loss of Estate, Funeral and loss of love and affection		Rs.25,000/-

	Total	Rs.1,25,250/-	Rs.2,14,000/-
			-

11. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.1,25,250/- is enhanced to Rs.2,14,000/-. No costs.

12. The second respondent / United India 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 eight weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest for the said compensation is 7.5% per annum. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. The appellant/claimant is directed to pay the requisite court fee, if any within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Ssb

To

The Special Sub Judge,
The Motor Accident Claims Tribunal
Cuddalore.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras. (2 Copies)

+1cc to Mr.J.Chandran, Advocate, S.R.No. 51258
+1cc to Mr.S.Udayakumar, Advocate, S.R.No. 51055

C.M.A.No.2522 of 2019

SVI (CO)
GN (26/05/2020)