

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1668 of 2014

1.Sudha

2.Minor Vignesh

3.Minor Logesh
(Minors 2 and 3 rep. by Next friend
Guardian Mother Sudha)

4.Hemampujam

5.Kuppusamy ...Appellants/Petitioners

.Vs.

1.Balasubramaniam

2.M/s.Oriental Insurance Co. Ltd.,
No.216, Dr.Prakasam Salai,
Broadway, Chennai.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 22.01.2014 passed in MCOP.No.215 of 2013 (Tindivanam Sub Court, MCOP.No.643 of 2011) on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tindivanam.

For Appellants : Mr.T.Dhanyakumar

For Respondents : Mr.N.Sampath for R2
No appearance for R1

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 22.01.2014 passed in MCOP.No.215 of 2013 (Tindivanam Sub Court, MCOP.No.643 of 2011) on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tindivanam.

2.The appellants are claimants in MCOP.No.215 of 2013 (Tindivanam Sub Court, MCOP.No.643 of 2011) on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tindivanam. The appellants filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Ravichandran, who died in the accident that took place

on 09.12.2010.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Indica Car belonging to 1st respondent and directed both 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said vehicle, jointly and severally, to pay a sum of Rs.7,18,000/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellants contended that the deceased was aged 42 years on the date of accident and that the Tribunal has erroneously fixed a meagre sum of Rs.5,000/- as monthly income of the deceased especially when the deceased was working as a contractor and was also doing agricultural works, earning substantial amount from agriculture. It is further contended that the deceased was also a President of the Panchayat Board and that these aspects were not considered by the Tribunal. His next contention is that the sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have failed to prove the nature of work, avocation, age and income of the deceased and in the absence of any material, the Tribunal was right in fixing the monthly income of the deceased as Rs.5,000/-. His further contention is that the sum awarded by the Tribunal under different heads are not also meagre.

6.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7.Though it is contended that the deceased was a contractor and was also an agriculturist earning a sum of Rs.20,000/- per month, the appellants/claimants have failed to produce acceptable documentary evidence to show that the deceased was earning a sum of Rs.20,000/- per month. The accident took place on 09.12.2010. Considering the year of accident, the notional monthly income of the deceased is fixed as Rs.7,500/-. As the age of the deceased was 42 years on the date of the accident, the proper multiplier to be adopted in the instant case is '14 as per the decision rendered in "Sarla Verma and others vs. Delhi Transport Corporation and another" reported in "(2009) 5 LW 561(SC)". As per decision rendered in "National Insurance Company vs. Pranay Sethi" reported in "(2017) 2 INMAC 601 (SC)" 25% of the deceased income should be

added towards future prospects. Since there are five dependents depending on the income of the deceased 1/4th should be deducted towards personal expenses of the deceased. The loss of income is calculated as follows:

$$[(Rs.7500/- + 1,875 (Rs.7,500/- of 25\%) \times 12 \times 14 \times 3/4 =$$

Rs.11,81,250/-]

8. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of consortium" and "funeral expenses" respectively as per decisions rendered in "National Insurance Company vs. Pranay Sethi" reported in "(2017) 2 TNMAC 601 (SC)". The award passed under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	Rs.6,30,000/-	Rs.11,81,250/-
2.	Love and affection	Rs.50,000/-	Rs.50,000/-
3.	Loss of consortium	Rs.30,000/-	Rs.40,000/-
4.	Funeral expenses	Rs.5,000/-	Rs.15,000/-
5.	Ambulance expenses	Rs.3,000/-	Rs.3,000/-
6.	Loss of estate	-	Rs.15,000/-
	Total	Rs.7,18,000/-	Rs.13,04,250/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,18,000/- is hereby enhanced to Rs.13,04,250/- 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. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, jointly and severally, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1, 4 & 5 are permitted to withdraw their respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with

proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st appellant being the mother of the appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mtl

To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Tindivanam.

Copy To :The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.T.Dhanyakumar, Advocate SR.No.82037

+1cc to Mr.N.Sampath, Advocate SR.No.82735

C.M.A.No.1668 of 2014

KK(CO)
GMY(03/12/2019)

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