

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3463 of 2019

1. Mrs. Uma Maheswari
2. V.Naveen Kumar
3. V.Praveen Kumar
4. V.Pavithra

... Appellants/Petitioners

Vs

1. K.Subramani
2. Iffko Tokio General Insurance Co., Limited.,
KSCMF Building, 3rd floor, 3rd Block,
No.8, Cunningham Road, Bangalore.

... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.03.2017 made in M.C.O.P.No.2244 of 2013 on the file of the Court of the Chief Judge, Court of Small Causes Motor Accident Claims Tribunal, Chennai.

For Appellants : Mr. S. Ravikumar

For R2 : Mr.Michael Visuvasam

JUDGMENT

According to the appellants/claimants, they are the wife, sons and daughter of one Vemachalam, who died in a motor vehicle accident that had occurred on 31.01.2013. While the deceased was going on paper Mill Road, in front of Hotel Sindhu Bhavan, Perambur, Chennai, a Car bearing registration No.TN-05-AA-1166 belonging to the first respondent and insured with the second respondent, came from the opposite direction in a rash and negligent manner and dashed against the pedestrian. As a result of the same, the deceased sustained grievous injuries and he later on, died in the hospital. Stating so, the appellants filed a claim petition seeking compensation of Rs.50,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has come to the conclusion that the accident had occurred due to the rash and negligent driving of

the driver of the car and awarded a total compensation of Rs.26,50,890/- with interest at the rate of 7.5% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellants have preferred this appeal seeking enhancement of the same.

2. The learned counsel for the appellants /claimants has submitted that considering the evidence of P.W.3, the Tribunal ought to have taken the income of the deceased at Rs.34,194/- and awarded higher compensation. It is also submitted that the amounts awarded towards loss of consortium and loss of love and affection are very meagre. Hence, the learned counsel prayed for enhancement of compensation.

3. Per contra, the learned counsel for the second respondent/ insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

4. Heard the learned counsel on either side and perused the materials available on record.

5. This is a claimants' appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal with respect of negligence as well as the liability of the second respondent insurance company to pay compensation.

6. As regards the quantum of compensation, it is seen that the wife of the deceased was examined as P.W.1, who deposed in her evidence that the deceased was aged about 53 years and was earning Rs.25,000/- per month by working as carpenter in Southern Railways, Chennai. The pay drawn particulars of the deceased was marked as Ex.P8, in which, the gross income for the months of October, November and December 2012, were mentioned as Rs.43,448/-, Rs.34,755/- and Rs.34,194/- respectively. To prove the avocation and income of the deceased, P.W.3 Superintendent attached to Southern Railways, Chennai was examined and he deposed about the service condition of the deceased. The Tribunal after taking note of evidence of PW3 and Ex.P8, has taken the monthly income of the deceased as Rs.34,194/-. The Tribunal has made necessary deduction and addition towards future prospects and has arrived at the compensation for the

loss of pecuniary benefits at Rs.25,70,890/-, which in the opinion of this Court, is fair, just and reasonable and hence, the same need not be interfered.

7. However, the award of Rs.10,000/- towards loss of consortium and Rs.40,000/- towards loss of love and affection, appear to be on the lower side. Taking note of the fact that 'consortium' is one of the most valuable rights of spouses and when such right is destroyed or impaired, ordinarily it does cause serious and substantial loss to the other spouse, this Court is inclined to enhance the compensation for loss of consortium to Rs.50,000/- and is accordingly enhanced. Similarly, keeping in view the nature of the relationship between the deceased and the claimants, this Court deems it just and proper to enhance the compensation towards loss of love and affection to Rs.1,00,000/- and is accordingly, enhanced. But, there is no modification with regard to the award of Rs.5,000/- towards Transport expenses and Rs.25,000/- towards Funeral Expenses. Thus, the compensation awarded by the Tribunal is enhanced from Rs.26,50,890/- to Rs.27,50,890/-, the breakup details of which, read as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Loss of Income	25,70,890/-	25,70,890/-
Loss of consortium	10,000/-	50,000/-
Loss of love and affection to the appellants 1 to 4	40,000/-	1,00,000/-
Transport Charges	5000/-	5,000/-
Funeral Expenses	25,000/-	25,000/-
Total	26,50,890/-	27,50,890/-

However, it is made clear that the enhanced sum of Rs.1,00,000/- (Rs.27,50,890/- (-) Rs.26,50,890/-) shall carry interest at 7.5% pa only from the date of filing of this appeal.

8. In fine, this appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the entire compensation amount, as awarded by this Court, 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 judgment. On such deposit being made,

the appellants 1 to 4 are permitted to withdraw their respective shares as per the ratio of apportionment made by the Tribunal, on making proper application. It is needless to state that the appellants shall pay the necessary court fee for the enhancement compensation, if not, already paid.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Chief Judge, Court of Small Causes
The Motor Accidents Claims Tribunal,
Chennai.

2 The Section Officer,
VR Section, Madras High Court.

+1 CC to Mr.S. Ravikumar, Advocate sr 92049

+1 CC to Mr.J.Micheal Visuvasam, Advocate sr 92056.

C.M.A.No.3463 of 2019

RJI (CO)
SP(10/09/2020)