

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.537 OF 2014

Sivakami

... Appellant/Petitioner

Vs.

1. Kumaresan
2. Senthil Kumar
3. The National Insurance Company Limited
No.403, Mettur Road,
Bhavani. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the final order dated 28.09.2012 on the file of Motor Accidents Claim Tribunal and Chief Judicial Magistrate Court, Tiruppur in M.C.O.P.No.471 of 2006.

For Appellant : Mr.A.Selvendran

Respondents : Served
No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the final order dated 28.09.2012 passed in M.C.O.P.No.471 of 2006 on the file of Motor Accidents Claim Tribunal (Chief Judicial Magistrate Court), Tiruppur.

2. It is the case of the appellant is that on 21.06.2003 at about 6.30 p.m., her son, namely, Mr.Kumaresan (deceased) aged about 22 years was travelling as pillion rider in a Motor Cycle bearing Registration No.TN-38-Z-0907 with his friend one Saravanan towards West on the left side of the Perundurai to Coimbatore NH 47 Main Road, near I.O.C. Petrol Bunk, Sengapalli. At that time, a Van bearing Registration No.TN-67-Z-0432 belonged to the second respondent and driven by the first respondent came towards East with rash and negligent manner dashed against the Motor Cycle. As a result of which, the Kumaresan was thrown out on the road, sustained greivous

injuries all over the body and died on the way to hospital. At the time of accident, he was doing Banian Business in the name of M/s.Nava Brite Garments and he was earning Rs.7,000/- per month. Since he died in the accident, her mother who is the appellant herein had filed a Claim Petition before the Motor Accidents Claim Tribunal (Chief Judicial Magistrate Court), Tiruppur, claiming Rs.5,00,000/- as compensation.

3. Denying the age, occupation, monthly income of the deceased and alleged accident, the third respondent who is the insurer of the Vehicle which made accident filed a counter affidavit before the Tribunal and sought for dismissal of the petition as they are not liable to pay any compensation to the claimant.

4. During the trial before the Tribunal, the respondents 1 and 2 were absent and therefore, they were set exparte. On the side of the claimant, she herself examined as P.W.1 and filed certain documents, they are as follows:

Ex.P1 : FIR copy

Ex.P2 : Postmortem Certificate

Ex.P3 : Charge Sheet

Ex.P4 : Death Certificate

Ex.P5 : Legal Heir Certificate

One Mr.Anandhan was examined as P.W.2 and One Mr.Palanisamy was examined as P.W.3 on the side of the claimant. There was no oral or documentary evidence let in on the side of the respondents.

5. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.3,27,000/- as compensation to the claimant. Aggrieved by the award, the appellant/claimant has filed this appeal before this Court.

6. The learned counsel for the appellant would submit that the deceased had been doing a Banian Business and had earned not less than Rs.7,500/- per month. But, the Tribunal has wrongly fixed the monthly income of the deceased as Rs.4,500/- and awarded just Rs.3,27,000/- as compensation.

7. On perusal of the award dated 28.09.2012 passed by the Tribunal, it is seen that Mr.Palanisamy, who examined as P.W.3

on the side of the claimant, had given evidence that the deceased had been running a Company in the name of Nava Bright Garments and he used to supply yarn to his company. However, there was no document filed before the Tribunal to prove the same. In the absence of any documentary evidence, the Tribunal has fixed the monthly income of the deceased as Rs.4,500/-, which is not much less. Since the deceased was a bachelor at the time of accident, the Tribunal has deducted 50% of the monthly income i.e. Rs.2,250/- for personal expenses of the deceased, and fixed the annual income as Rs.27,000/- (2250 x 12).

8. As per the case Sarla Verma and others vs Delhi Transport Corporation and another reported in 2009 ACJ 1298, the multiplier to be adopted as 18 for a person aged 22 years whereas under the impugned Award, the Tribunal has taken the 11 multiplier to find out the total income of the deceased. The amount awarded towards Funeral Expenses, Loss of Estate, and Loss of Love and Affection is also a meagre.

9. For the aforesaid reasons, this Court is of the considered view that the Award passed by the Tribunal shall be modified in the following manner:

Income to be taken	- Rs. 4,500/-
Deductions of 50% for personal expenses of the deceased (4500-2250/-)	- Rs. 2,250/-
Loss of Income of the claimant (2250x12x18)	- Rs.4,86,000/-
Funeral Expenses	- Rs. 10,000/-
Loss of Estate	- Rs. 20,000/-
Loss of Love and Affection	- Rs. 25,000/-
	- Rs.5,41,000/-

10. This Court is of the considered view that Rs.5,41,000/- shall be awarded to the Appellant instead of Rs.3,27,000/- awarded by the Tribunal under the impugned Award. Since the Appellant has paid Court fee only for Rs.3,27,000/- in this appeal, this Court directs the the Appellant to pay the Court fee for the balance amount of Rs.2,14,000/- (Rs.5,41,000-Rs.3,27,000/-), which the Registry shall collect before drafting the decree.

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,27,000/- is hereby enhanced to Rs.5,41,000/- with interest

at the rate of 6% per annum from the date of petition till the date of deposit. The respondent insurance company is directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.471 of 2006 on the file of Motor Accidents Claim Tribunal (Chief Judicial Magistrate Court), Tiruppur, along with interest and costs as determined by this Court, 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 being made, the appellant is permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Motor Accidents Claim Tribunal
(Chief Judicial Magistrate Court),
Tiruppur.
2. The National Insurance company Ltd.,
No.403, Mettur Road,
Bhavani.
3. The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.A.Selvendran, Advocate, S.R.No.52421

C.M.A.No.537 of 2014

RSV(CO)
CS/06/09/2019

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