

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 18.10.2019  
CORAM  
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE  
C.M.A.No.3945 of 2019

1.M.Thayalammal  
2.M.Raj  
3.Minor M.Poovarasam  
4.Minor M.Nanthini  
5.A.Ezhammal ... Appellants/Petitioners  
(Minor both are rep. by  
Mother 1<sup>st</sup> Appellant as  
guardian)

vs.

1.V.Mahadevan  
2.The United India Insurance Co. Ltd.,  
13-A, Nethaji Road, Manjakuppam,  
Cuddalore. ... Respondents/respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree order dated 30.01.2019 in MCOP.No.2285 of 2015 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore.

For Appellants : Mr.Ramya V.Rao

For Respondent 2 : Mr.D.Bhaskaran

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned Award dated 30.01.2019 passed by the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore in MCOP.No.2285 of 2015.

Brief facts leading to the filing of this appeal:

2. A person by name A.Mayavel died on 25.03.2015 as a result of an accident caused by a car bearing registration No.TN31-CZ-3623 owned by the first respondent and insured with the Appellant. The accident happened when the deceased was walking from South to North direction at Virudhachalam - Cuddalore Road at Pottaveli, when a car bearing registration No.TN31-CZ-3623 (Insured Vehicle) coming in the same direction hit the deceased from behind which resulted in his death.

3. The dependents of the deceased are his wife, two sons, one daughter and his mother who are the Appellants herein. They preferred a claim before the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore) in MCOP.No.2285 of 2015 seeking a compensation of Rs.25,00,000/- from the respondents for the death of A.Mayavel.

4. The Motor Accident Claims Tribunal by its Award dated 30.01.2019 passed in MCOP.No.2285 of 2015 directed the respondents to pay the Appellants/claimants a compensation of Rs.12,04,000/- together with interest at the rate of 8% per annum from the date of claim i.e., from 20.04.2015, till the date of realisation as compensation for the death of A.Mayavel. Out of the total compensation amount of Rs.12,04,000/-, the Tribunal determined the amount payable to the first Appellant/first claimant at Rs.3,04,000/-, to the second Appellant /second claimant at Rs.2,50,000/-, to the third and fourth Appellants /third and fourth claimants at Rs.2,50,000/- each and to the fifth Appellant / fifth claimant at Rs.1,50,000/- .

5. Aggrieved by the Award dated 30.01.2019 passed by the Motor Accident Claims Tribunal in MCOP.No.2285 of 2015, this Appeal has been filed by the claimants/Appellants seeking enhancement of compensation.

6. Heard Ms.Ramya V.Rao learned counsel for the Appellants and Mr.D.Bhaskaran, learned counsel for the second respondent. The first respondent has remained exparte before the Tribunal and hence, notice to the first respondent in this appeal is dispensed with.

Discussion:

7. The Appellants/claimants have filed this appeal unsatisfied with the quantum of compensation awarded by the Tribunal and they have sought for enhancement of compensation. According to them, the Tribunal has erroneously fixed the notional monthly income of the deceased at Rs.6,000/- for an accident that happened in the year 2015. According to them, the deceased being an agriculturist and a commission agent, the Tribunal ought to have fixed the notional monthly income of the deceased at Rs.15,000/-. It is also their case that the Tribunal failed to award any compensation to the claimants under the head loss of love and affection that too, when there are minor children and mother of the deceased.

8. This Court has perused and examined the impugned award as well as the materials and evidence available on record.

9. Before the Tribunal, the claimants have filed four documents which were marked as Ex.P1 to Ex.P4 and two witnesses were examined on their side viz., PW1-M.Thayalammal, the wife of the deceased and PW2-Aasaithambi, an eye-witness to the accident.

10. The insurance company has not filed any appeal against the impugned award and therefore, the findings of the Tribunal regarding the negligence of the driver of the insured vehicle has attained finality.

11. We will now have to examine only as to whether the quantum of compensation fixed by the Tribunal under the impugned award is a just compensation or not.

12. In the claim petition, the Appellants/claimants have claimed that the deceased was an agriculturist and commission agent, at the time of the accident and was earning a monthly income of Rs.15,000/-. The oral evidence of PW1, the wife of the deceased also supports the said contention. No contra evidence has been produced by the second respondent insurance company to disprove the contention of the Appellants/claimants that the deceased was an agriculturist and a commission agent, earning a monthly income of Rs.15,000/-. However, the contention of the Appellants/claimants that the deceased was earning a monthly income of Rs.15,000/- at the time of the accident cannot be

accepted in view of the fact that no documentary evidence was produced by the Appellants/claimants to prove the same. The Tribunal has rightly rejected the said contention, but however has not considered the year of the accident while assessing the monthly notional income of the deceased at the time of the accident. The avocation of the deceased has also not been disproved by the second respondent insurance company. The year of the accident is 2015. The age of the deceased was 36 years at the time of the accident which is proved through Ex.P2, the Postmortem certificate . The Tribunal has fixed only a meager sum of Rs.6,000/- as the notional monthly income of the deceased. Considering the year of the accident which is 2015, we are of the considered view that the monthly notional income of the deceased as to be fixed at Rs.10,000/- instead of Rs.6,000/- erroneously assessed by the Tribunal. Accordingly, we assess the notional monthly income of the deceased at Rs.10,000/-.

13. The Tribunal ought to have awarded loss of love and affection which the claimants 2 to 5 are entitled to as per the settled principles of law. Accordingly, we are awarding a sum of Rs.25,000/- each to the claimants 1 to 4 / Appellants 1 to 4, totally amounting to Rs.1,00,000/- towards loss of love and affection.

14. The Tribunal has rightly awarded a sum of Rs.40,000/- towards loss of consortium, a sum of Rs.15,000/- towards funeral expenses and another sum of Rs.15,000/- towards loss of estate which is in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680 and we confirm the same.

15. The Tribunal has also erroneously awarded 8% interest on the total compensation amount as it is settled practice in Motor Accident Claim cases that interest is awarded only at the rate of 7.5% per annum on the compensation amount. Accordingly, we modify the rate of interest from 8% to 7.5%.

16. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.12,04,000/- to Rs.20,60,000/- in the following manner:

| Heads                         | Amount awarded by<br>the Tribunal<br>(Rs.)                                             | Modified Award<br>Amount<br>(Rs.)                                                         |
|-------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| Loss of Pecuniary<br>benefits | 11,34,000/-<br>(6000+40% =8400 x<br>12 = 100,800 - 1/4 <sup>th</sup><br>= 75,600 x 15) | 18,90,000/-<br>(10000+40% = 14000 x<br>12 = 168000 -1/4 <sup>th</sup> =<br>1,26,000 x 15) |
| Loss of consortium            | 70,000/-                                                                               | 40,000/-                                                                                  |
| Loss of estate                |                                                                                        | 15,000/-                                                                                  |
| Funeral Expenses              |                                                                                        | 15,000/-                                                                                  |
| Loss of love and<br>affection | Nil                                                                                    | 1,00,000/-                                                                                |
| Total                         | 12,04,000/-                                                                            | 20,60,000/-                                                                               |

17. In view of the modification of the impugned award, out of the total compensation amount of Rs.20,60,000/-, the first Appellant being the wife of the deceased is entitled to Rs.4,75,000/-, the second, third and fourth Appellants being the children of the deceased are entitled to Rs.4,10,000/- each and the fifth Appellant being the mother of the deceased is entitled to Rs.3,55,000/-.

Conclusion:

18. In the result, the Appeal is partly allowed by enhancing the award amount from Rs.12,04,000/- to Rs.20,60,000/-. However, the rate of interest fixed by the Tribunal is modified from 8% to 7.5%. The second respondent insurance company is directed to deposit the entire award amount of Rs.20,60,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.2285 of 2015 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective share of award amount to the first, second and fifth Appellants through RTGS within a period of four weeks thereafter. Since the third and fourth Appellants are minors, their share of award amount shall be deposited in an interest

bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first Appellant once in 6 months. No costs.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal  
Principal District Judge, Cuddalore.

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

+2 ccs to Mr.A.N.Viswanatha Rao Advocate sr87099  
+1 cc to Mr.D.Bhaskaran Advocate sr87203

C.M.A.No.3945 of 2019

pvs (co)  
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