

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.1053 OF 2007

(THROUGH VIDEO CONFERENCING)

1.Malliga
2.Inbavalli
3.Murugamani
4.Kanimozhi

... Appellants/Petitioners

vs.

1.New India Assurance Co., Ltd.,
rep.by its Branch Manager,
39-C, Bypass Road, Dharmapuri.

2.Kamala
3.Manivannan
4.Ramajeyan
5.Kavitha

... Respondents/Respondents

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.09.2005 made in M.C.O.P.No.276/1997 on the file of the Motor Accident Claims Tribunal (Sub Court) Dharmapuri.

For Appellants : M/s.T.R.Rajaraman
For R1 : Mrs.R.Sreevidhya

J U D G M E N T

The appellants were the claimants and are aggrieved by the impugned Judgment and Decree dated 08.09.2005 passed by the Motor Accident Claims Tribunal (Sub Court) Dharmapuri in M.C.O.P.No.276/1997.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.6,84,330/- to the claimants/appellants together with interest at 9% from the date of filing of the claim petition till the date of deposit. The appellants have filed the present Civil Miscellaneous Appeal for enhancement of compensation.

3. 1st to 4th appellants /claimants are the wife and daughters and son of the deceased Venkatesan, who died in a motor accident. The accident is said to have taken place on 11.09.1996 at about 21.00 hrs., while the deceased was travelling on a motor cycle bearing registration number TN O 5523 as a pillion driver, driven by one Chenniappan. A mini lorry bearing Registration number TN-72-Z-2595 insured with the 1st respondent-Insurance Company allegedly driven by its driver in a rash and negligent manner, hit the motor cycle, as a result of which, the deceased Venkatesan sustained grievous injuries and was taken for treatment at Gokulam Hospital, Salem and thereafter died in the hospital on 20.09.1996.

4. Therefore, the appellants/claimants filed the claim petition and calculated the compensation as Rs.18,30,000/- but restricted the claim in the claim petition to Rs.10,00,000/- for paying court fee. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.6,84,330/-.

5. The break up of the amount awarded by the Tribunal are summarised below:-

Sl.No.	Heads	Award of the Tribunal
1	Loss of dependency	*Rs.5,90,510/-
2	Funeral expenses	Rs. 10,000/-
3	Loss of Love and affection in Filial consortium	Rs. 20,000/-
3	Loss of consortium	Rs. 20,000/-
4	Loss of future earning power	Rs. 20,000/-
5	Medical expenses	Rs. 16,820/-
5	Extra nourishment	Rs. 2,000/-
6	Attender charges	Rs. 2,000/-
4	Transportation	Rs. 3,000/-
	Total	Rs. 6,84,330/-

6. The learned counsel appearing for the appellants submitted that the claimants are the wife and daughters of the deceased Venkatesan who was aged about 46 years at the time of accident. The deceased Venkatesan was said to be working as a Tamil Pandit in a Government School, Kambainallur and was drawing a monthly salary at Rs.5,678/-. He further submitted that the Tribunal has wrongly deducted 1/3rd income of the personal expenses of the deceased. It is submitted that the

Tribunal ought to have deducted only 1/4th of the income towards personal expenses of the deceased. It was further submitted that the Tribunal has not granted any enhancement compensation towards future prospects of the deceased. It was further submitted that the Tribunal has also not awarded any amount towards loss of estate. The amounts awarded by the Tribunal towards loss of consortium and loss of love and affection are also stated to be meagre and therefore they prayed for enhancement of compensation

7. Per contra, the learned counsel appearing for the 1st respondent/Insurance Company submitted that the impugned judgement and decree awarding the compensation to the appellants/claimants was well reasoned and requires no interference and therefore prayed for dismissal of the present appeal.

8. I have considered the arguments advanced by the learned counsel for the appellants and the 1st respondent-Insurance Company. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

9. It is seen from the records that the 1st appellant-wife was aged about 38 years and the other appellants are the unmarried daughters were aged about 23, 21, and 19 years respectively at the time of accident. The deceased Venkatesan was working as a Tamil Pandit in Government School, Kambainallur and was drawing a monthly salary of Rs.5,678/-. The Tribunal ought to have deducted only 1/4th amount towards personal expenses of the deceased as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs.Delhi Transport Corporation and Another, (2009) 2 TAN MAC 9 as family has more than 3 members.

10. Considering the fact that the issue is no longer res integra and compensation awarded is to be enhanced in the light of the decision of the Hon'ble Supreme Court reported in Sarla Verma (Smt) and Others Vs.Delhi Transport Corporation and Another, (2009) 2 TAN MAC 9 and National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 and another decision reported in Magma General Insurance Company Ltd. vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 Online SC 1546. Thus, the amount awarded towards loss of income is re-quantified as follows:

Heads and Calculation	Re-quantified Amount by this Court
Loss of dependency i) Income of the deceased Rs.5,678.00 ii) Add 40% future prospects (5,678+2271.20= 7949.20 Rs.7,950.00 rounded off to Rs.7,950/- iii) Monthly contribution to the family after deducting 1/4 th towards personal expenses of the deceased. (Rs.7950 x 1/4) Rs.5,962.50 iv) loss of income 12 months (Rs.5962.50x12) Rs.71,550.00 v) Multiplier 13 (Rs.71,550 x 13) Rs.9,30,150.00	Rs.9,30,150
Loss of love and affection in filial consortium (Rs.40,000 x4)	## Rs.1,60,000
Medical expenses for treatment	Rs. 16,820
Extra nourishment	Rs. 2,000
Attender charges	Rs. 2,000
Transportation	Rs. 5,000
Funeral expenses	Rs. 10,000
Total	Rs.11,25,970 Rounded off to Rs.11,26,000/-

(40,000 x 4 = 1,60,000) as per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130.

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,83,330/- is hereby enhanced to Rs.11,26,000 together with interest at the rate of 7.5% per annum from the date of the

claim petition till the date of deposit. The 1st respondent/ Insurance Company is directed to deposit the enhanced amount of compensation determined by this Court along with interest and costs, less any amount already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation.

12. On such deposit, the appellants are permitted to withdraw their respective shares with accrued interest as per apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn. No cost.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal,
(Sub Court) Dharmapuri.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.T.R.Rajaraman, Advocate, S.R.No.33937

C.M.A.No.1053 of 2007

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