

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3480 of 2004
and
C.M.P.No.19850 of 2004

1.Kutty Isabella
2.Minor. Joe Alansingh
3.Rukmani
4.Rathinavel
5.Minor. Jasper Jayaseeli .. Appellants/Petitioners

(Minor appellants 2 and 5 are represented
by their next friend, mother Kutty Isabella,
1st appellant herein)

Vs.

1.K.Deivasigamani
2.The Manager,
United India Insurance Company Limited,
38, Anna Salai,
Chennai - 600 002. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of the Motor Vehicles Act, 1988, against the
Judgment and Decree dated 21.03.2003 made in M.C.O.P.No.433
of 1997 on the file of the Motor Accidents Claims Tribunal,
Additional District Judge, Fast Track Court No.V, Sub Court,
Tiruvallur.

For Appellants : Mr.S.Lakshmanasamy

For R2 : Mr.D.Bhaskaran

R1 : No Apperance

WEB COPY
J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for
enhancement of compensation granted by the award dated
21.03.2003 made in M.C.O.P.No.433 of 1997 on the file of the
Motor Accidents Claims Tribunal, Additional District Judge,
Fast Track Court No.V, Tiruvallur.

3.The appellants are the claimants in M.C.O.P.No.433 of 1997 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.V, Sub Court, Tiruvallur. They filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Jaisingh, who died in the accident that took place on 09.10.1997.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the van to pay a sum of Rs.2,33,000/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the deceased was working as Catering Supervisor in M.R.F. Pace Foundation, Anna Nagar, Chennai and was earning a sum of Rs.7,000/- per month and appellants produced Ex.P5/salary certificate to substantiate the same. The Tribunal erred in rejecting the same and fixed a meagre sum of Rs.1,500/- per month without any basis. The deceased was an Income tax assessee before his death. The Tribunal erred in not properly calculating the compensation for loss of dependency. The deceased was aged 29 years at the time of accident and the multiplier adopted by the Tribunal is not correct. The Tribunal also has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased. The appellants have not examined the author of Ex.P5/salary certificate and P.W.3 has admitted that the deceased was only a contract worker. The Tribunal considering all the materials on record, fixed notional income of the deceased at Rs.1,500/- per mont, which is not meagre. The Tribunal erroneously applied multiplier '18' and awarded compensation for loss of dependency excessively. In view of the same, the appellants are not entitled to any enhancement and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on recod.

9. From the materials available on record, it is seen that it is the contention of the appellants that the deceased was working as Catering Supervisor in M.R.F. Pace Foundation, Anna Nagar, Chennai and was earning a sum of Rs.7,000/- per month. To substantiate this contention, the appellants have examined one Ganesh as P.W.3, who is a co-worker of the deceased and filed salary certificate, which was marked as Ex.P5. The appellants have not examined the author of Ex.P5 and failed to prove the same as per law. In view of the same, the Tribunal did not accept Ex.P5/salary certificate. The Tribunal considering the evidence let in before it, fixed notional income of the deceased at Rs.1,500/- per month. The accident occurred in the year 1997 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.2,500/- per month is fixed as notional income of the deceased. The deceased was aged 29 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. There are 5 dependants of the deceased who made claim petition. The Tribunal instead of deducting 1/4th erroneously deducted 1/3rd towards personal expenses of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], the correct multiplier applicable is '17', but the Tribunal erroneously adopted multiplier '18'. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.5,35,500/- {Rs.3,500/- [(Rs.2,500/- + Rs.1,000/- (40% of Rs.2,500/-))] x 12 x 17 x 3/4}. The Tribunal has awarded a sum of Rs.5,000/- towards loss of consortium to the 1st appellant, Rs.10,000/- towards loss of love and affection and Rs.2,000/- towards funeral expenses. Considering the date of accident, the amounts awarded by the Tribunal under conventional heads are not meagre and hence the same are hereby confirmed. The appellants are not entitled to any enhancement under conventional heads. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	2,16,000/-	5,35,500/-	Enhanced
2.	Loss of love and affection to appellants 2 to 5	10,000/-	10,000/-	Confirmed
3.	Funeral expenses	2,000/-	2,000/-	Confirmed

4.	Loss of consortium to the 1 st appellant	5,000/-	5,000/-	Confirmed
	Total	Rs.2,33,000/-	Rs.5,52,500/-	enhanced by Rs.3,19,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,33,000/- is hereby enhanced to Rs.5,52,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.433 of 1997 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.V, Sub Court, Tiruvallur. On such deposit, the appellants 1, 3 and 4 are permitted to withdraw the respective share of the enhanced award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 and 5 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 5 attain majority. On such deposit, the 1st appellant, being the mother of the minor appellants 2 and 5 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 5. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

krk

To

1. The Additional District Judge,
Fast Track Court No.V,
Motor Accidents Claims Tribunal,
Tiruvallur.

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

C.M.A.No.3480 of 2004

PM(CO)

GMV (05/05/2021)