

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2400 of 2009

(Through Video Conferencing)

1.Rasu (Died)

2.Anjammal (Died)

3.Koumar

4.Danabal

5.Tendabany

6.Govindasamy

7.Kaliyamoorthy ...Petitioners/Appellants
(The 3rd to 7th appellants brought on record as legal
representatives of the deceased 1st and 2nd appellants vide
order of this Court dated 18.08.2020 made in
C.M.P.Nos.23394, 23397 & 23400 of 2019)

Vs.

1.Haridasan

2.K.Sathyavathy

3.The New India Assurance Company Limited,
represented by its Branch Manager
Karaikal.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the Award dated 06.01.2006 in
M.A.C.T.O.P.No.123 of 2005 on the file of the court of the Motor
Accident Claims Tribunal at Karaikal.

For Appellants	: Mr.T.Susindran
For 3 rd Respondent	: Mrs.R.Sreevidhya
For R1 and R2	: Not Ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal was filed by the claimants. They (1st and 2nd appellants) died during the pendency of this appeal. Therefore, the 3rd to 7th appellants, who are the legal representatives of the 1st and 2nd appellants, were impleaded in this appeal vide order dated 18.08.2020 in C.M.P.Nos.23394, 23397 & 23400 of 2019.

2. The 1st and 2nd appellants (since deceased) were aggrieved by the impugned Award dated 06.01.2006 passed by the Motor Accident Claims Tribunal at Karaikal in M.A.C.T.O.P.No.123 of 2005.

3. By the impugned Award, the Tribunal has awarded a sum of Rs.1,54,500/- together with interest at 7.5% p.a. from the date of the claim petition till the date of deposit and costs to the 1st and 2nd appellants (since deceased). Aggrieved by the said amount of compensation, the 1st and 2nd appellants had filed this appeal for enhancement of compensation.

4. I have considered the arguments advanced by the learned counsel for the appellants and the 3rd respondent Insurance Company. I have also perused the evidence on record.

5. In Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, the Hon'ble Supreme Court has considered the notional income of a vegetable vendor as Rs.6,500/- during the year 2008. The notional income of Rs.2,500/- per month of the deceased considered by the Tribunal appears to be correct as the deceased was LPG Gas Stove Service Mechanic. Therefore, the notional income of Rs.2,500/- per month of the deceased fixed by the Tribunal is confirmed.

6. The Tribunal ought to have considered the age of the deceased and not the age of the parents of the deceased for applying the correct multiplier. Since the age of the deceased was 19 years at the time of the accident, the multiplier to be taken is 18 for awarding the compensation as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12.

7. Further, there has to be an addition of 40% towards future prospectus since the deceased was aged 19 years. At the same time, there has to be a deduction of 50% towards personal expenses since the deceased was a bachelor as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

8. 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 : 2018 OnLine SC 1546, a sum of Rs.50,000/- (25,000 x 2) is to be awarded towards filial consortium since the accident has taken place in the year 2005. The compensation awarded towards funeral expenses appears to be low and therefore, same is enhanced to Rs.5,000/-.

9. Accordingly, the compensation to be awarded to the appellants is re-quantified as follows:-

Heads and Calculation	Re-quantified amount of this Court
Loss of dependency:- Monthly Income of the deceased - Rs.2,500/- Annual Income (2,500 x 12) : Rs.30,000/- Add: Future prospectus 40% (30,000 x 40/100) : Rs.12,000/- ----- : Rs.42,000/- Less: Personal Expenses 50% (42,000 x 50/100) : Rs.21,000/- ----- : Rs.21,000/- Multiplier - 18 (21,000 x 18) : Rs.3,78,000/-	
Loss of filial consortium to the 1 st and 2 nd appellants	Rs. 50,000/-
Funeral Expense	Rs. 5,000/-
Loss of Estate	Rs. 2,500/-
Total	Rs. 4,35,500/-

Thus, a sum of Rs.1,54,500/- as compensation awarded by the Tribunal is enhanced to Rs.4,35,500/-.

10. Though the parents of the deceased who were the original claimants (1st and 2nd appellants) have since deceased, just compensation was to be awarded to them and such compensation would be the estate to be inherited by the surviving appellants as they are the legal representatives of the 1st and the 2nd appellants as per Section 2(11) of CPC.

11. It is noticed that this appeal has been filed belatedly

with delay of 131 days and therefore, the appellants are not entitled to the interest for the period of delay (i.e. 131 days).

12. Therefore, the 3rd respondent Insurance Company is directed to deposit the above re-quantified amount of Rs.4,35,500/- together with interest at 7.5% per annum from the date of the claim petition till the date of deposit except the period of delay of 131 days in filing this appeal, less any amount already deposited, within a period of six weeks from the receipt of a copy of this Judgment.

13. Since the 1st and the 2nd appellants died during the pendency of this appeal, the 3rd to 7th appellants are permitted to withdraw the compensation together with interest and costs equally, by filing suitable applications before the Tribunal, less any amount already withdrawn by the 1st and the 2nd appellants during their lifetime.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:-

Motor Accident Claims Tribunal at Karaikal,
Karaikal.

RMP (20/01/2021)

C.M.A.No.2400 of 2009