

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.651 of 2009

(Through Video Conferencing)

1.Malliga

2.Gowthami

3.Minor Rajeshwari

4.Minor Magesh

5.Minor Magendran ... Appellants/ Petitioner
(Minors 3rd to 5th appellants represented
by their mother and natural guardian 1st
appellant.)

Vs.

1.A.Pithan

2.The Branch Manager,
United India Insurance Co. Ltd.,
Motor 3rd Party Cell,
38,Anna Salai,
Chennai - 2. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award passed by the learned Principal District Judge at Tiruvallur, in M.C.O.P.No.1058 of 2007, dated 29.08.2008.

For Appellants : No appearance

For R1 : Mr.K.Raja for
Mr.N.Kolandaivelu

For R2 : M/s.R.Sree vidhya

J U D G M E N T

Though the learned counsel for the appellants is not present, since no adverse orders are proposed to be passed against the appellants, this Civil Miscellaneous Appeal is taken up for final disposal as prejudice is caused to the appellants and repeatedly there is no representation for the appellants.

2. The appellants were the claimants and are aggrieved by the impugned Judgment and Decree dated 29.08.2008 passed by the learned Principal District Judge, Tiruvallur in M.C.O.P.No.1058 of 2007.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,00,000/- together with interest at 7.5% from the date of filing of the claim petition till the date of deposit to the claimants/appellants. Aggrieved by the same, the appellants have filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4. It is the case of the appellants that the deceased G.Jayapal was a hairdresser and was running his own saloon shop in Sriperumbudur Road, Manavala Nagar. The deceased G.Jayapal met with a fatal accident on 22.11.2006 at about 16.30 hours, near Pithavelpattarai, Manavala Nagar, when a Tractor bearing reference No.TMJ 9961 driven by its driver belonging to the 1st respondent in a rash and negligent manner, hit the deceased G.Jayapal, as a result of which, he suffered grievous injuries and later died in the hospital.

5. Therefore, the appellants/claimants filed the claim petition for compensation of Rs.21,65,000/- but restricted the claim to Rs.10,00,000/- for paying court fee. In the claim petition, after considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.3,00,000/-.

6. I have considered the arguments advanced by the learned counsel for the 2nd respondent Insurance Company and the 1st respondent. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

7. While calculating the aforesaid compensation, the Tribunal has considered the income of the deceased G.Jayapal as Rs.3,000/- per month considering the fact that there were no evidence furnished by the appellants/claimants to substantiate that the deceased was owning a saloon under the name and style of M/s.Mahesh Hair Dresses and was earning a sum of Rs.12,000/- per month. The accident is of the year 2006. Therefore, the notional income of the deceased G.Jayapal is fixed as Rs.6,500/- per month in absence of documents and evidence to substantiate the income of the deceased of Rs.15,000/- per month, as per the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735.

8. In the light of the decisions of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12 and National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, there shall be further enhancement of compensation.

9. Therefore, the compensation awarded by the Tribunal in the impugned Judgment and Decree is re-quantified as follows:-

Calculation of Pecuniary loss of estate:-

Notional income of the deceased : Rs.6,500.00 p.m

Add: Future Prospectus at 10% : Rs. 650.00 +

: Rs.7,150.00

Deduction: Personal Expenses 1/4th : Rs.1,787.50 -

: Rs.5,362.50

Annual Income (5,362.50 x 12) : Rs.64,350.00

Multiplier 11 (64,350 x 11) : Rs.7,07,850/-

Heads	Award amount of the Tribunal	Re-quantified amount by this Court	Status (Confirmed or Enhanced or reduced or granted or deleted)
Pecuniary loss of estate	Rs.2,64,000/-	Rs.7,07,850/-	Enhanced
Funeral Expenses	Rs. 6,000/-	Rs. 15,000/-	Enhanced
Loss of Consortium	Rs. 10,000/-	Rs. 40,000/-	Enhanced
Loss of Love and Affection for 4 children	Rs. 10,000/-	Rs.1,60,000/-	Enhanced
Loss of happiness	Rs. 10,000/-	-	Deleted
Total	Rs.3,00,000/-	Rs.9,22,850/-	Enhanced by another sum of Rs.6,22,850/-

The enhanced amount of compensation of Rs.6,22,850/- is rounded off to Rs.6,50,000/-.

10. Therefore, the 2nd respondent Insurance Company is directed to deposit the enhanced amount of compensation of Rs.6,50,000/- together with interest at 7.5% from the date of filing of the claim petition till the date of such deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

11. If the amount of compensation awarded by the Tribunal has not been deposited by the 2nd respondent Insurance Company, it is directed to deposit the same together with interest as directed by the Tribunal, less the amount already deposited if any, within the aforesaid period.

12. On the enhanced amount of compensation, the 1st appellant/1st claimant is entitled for a sum of Rs.1,50,000/- together with interest thereon at 7.5% p.a and the 2nd to 5th appellants / 2nd to 5th claimants are entitled for a sum of Rs.1,25,000/- each out of the balance amount of Rs.5,00,000/- together with interest thereon at 7.5% p.a. The 1st and 2nd appellants/1st and 2nd claimants are permitted to withdraw their shares awarded by this Court and by the Tribunal together with interest at 7.5% p.a, by filing suitable application before the Tribunal.

13. Since the 3rd to 5th appellants / 3rd to 5th claimants are minors, their shares shall be deposited in any one of the Nationalised Bank under reinvestment scheme till they attain age of majority. The 1st appellant/1st claimant, who is the guardian of the minor, is permitted to withdraw the accrued interest from the deposit of the minors once in three months directly from the said Bank. On attaining age of majority, the 3rd to 5th appellants / 3rd to 5th claimants are to be permitted to withdraw their share, by filing suitable application before the Tribunal.

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

Sd/-
Assistant Registrar(CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To
The Judge,
Motor Accidents Claims Tribunal,
(Principal District Court, Tiruvallur.

Copy to:
The Section Officer, VR Section, High Court, Madras.

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A.SK(15.04.2021)