

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1671 of 2016

(Heard through video conferencing)

1.M.Backrudeen Ali,

2.M.Jahubhar Ali

3.M.Abhushali ... Appellants/Claimants

Vs.

1.Velammal Matric Hr. Sec. School
No.21, Velammal Gardens, T.S.Krishna Nagar,
Chennai - 50.

2.Royal Sundaram Alliance Insurance Co. Limited,
No.45 and 46, Sundaram Towers, Whites Road,
Chennai - 14. ... Respondents/Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 28.08.2014 made in M.C.O.P.No.444 of 2011 on the file of the Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.N.Raja Senthoo Pandian [R1]
Mr.M.B.Raghavan [R2]

JUDGMENT

This civil miscellaneous appeal has been filed by the claimants against the award passed by the Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai in M.C.O.P.No.444 of 2011 dated 28.08.2014.

2. Heard the learned counsel appearing for the claimants/appellants and the learned counsel for the first respondent and the learned counsel for the second respondent/Insurance Company.

3. On 30.06.2010, one A.M.Mohideen was travelling on the pillion in the motorcycle bearing registration No.TN-01-Y-8418 driven by A.Sirajudeen. A Tanker lorry bearing registration No.TN-02-Q-4659 knocked the two wheeler from behind near Puzhal Retteri. A.M.Mohideen and A.Sirajudeen died in the accident. The dependants of A.M.Mohideen preferred M.C.O.P.No.444 of 2011, seeking compensation of Rs.10 Lakhs. According to the claimants, A.M.Mohideen - the deceased, was about 58 years old earning his livelihood as a four wheeler Mechanic and Vehicle broker. His monthly income was around Rs.15,000/-. Due to the negligence of the Eicher Van, the accident has occurred and therefore, the Insurance Company of the Eicher Van is liable to indemnify the loss.

4. The Tribunal in a common award, ordered compensation of Rs.3,94,000/- for the claimants with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

5. The present appeal is preferred by the claimants for enhancement on the ground that the Tribunal has erroneously fixed the income of the deceased at Rs.4,500/- per month as against the claim of Rs.15,000/- per month. Towards love and affection and funeral expense, the award of the Tribunal is very less and below the standard prescribed by the Apex Court.

6. Further, the claimants would also submit that at the time of death, A.M.Mohideen was 58 years old, no additional compensation towards future prospects was considered by the Tribunal.

7. On perusing the award and the material evidence, this Court finds that the fixation of the monthly income of the deceased at Rs.4,500/- is low considering his avocation as four wheeler Mechanic. Hence, his monthly income is fixed at Rs.6,000/- notionally. Further, the Tribunal has also not taken note of the future prospects of the deceased which according to the Hon'ble Supreme Court, even a self employed is entitled for future prospects as per the judgment in National Insurance Co.Ltd., Vs. Pranay Sethi and others (2017 (2) TN MAC 609 (SC)) case. Considering the age and avocation of the deceased, 10% is fixed as future prospects. The multiplier adopted by the Tribunal is 9. As per the said judgment and considering the age of the deceased, multiplier 9 fixed by the Tribunal is confirmed and 1/3rd amount will be deducted towards his personal expenses. Accordingly, the award of the Tribunal is enhanced as below:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed/enhanced/modified/not granted
1.	Loss of pecuniary benefits	$4500 \times 2/3 \times 12 \times 9 = 3,24,000/-$	$6000 + 600 \times 2/3 \times 12 \times 9 = 4,75,200/-$	enhanced
2.	Love and affection	$10,000 \times 3 = 30,000$	$40,000 \times 3 = 1,20,000$	enhanced
3.	Funeral Expenses	25,000	15,000	modified
4.	Loss of Estate	10,000		Not granted
5.	Transport Expenses	5,000		Not granted
	Total	3,94,000	6,10,200	

8. The award of the Tribunal is enhanced to Rs.6,10,200/- with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of realisation. The award amount shall be deposited within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount if any already deposited. The award amount shall be apportioned between the claimants equally by filing proper petition before the Tribunal.

9. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

sni/jbm

To

1. Teh Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

+1cc to Mr. Mohan Choundar Raj, Advocate SR.27962

C.M.A.No.1671 of 2016

TM(CO)
CB(10/02/2021)