

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3284 of 2012

(Through Video Conferencing)

1.Chitra
2.Padmini
3.Minor Iswarya Lakshmi
D/o.Suresh
4.Minor Archana
D/o.Suresh
Minors represented by their first friend
and mother Chithra
All residing at
No.67, Pallavan Nagar,
Near Railway Station,
Thiruvannamalai. Appellants/ Petitioners

Vs.

1.Jeyabalan
2.The Divisional Manager,
The Oriental Insurance Co.Ltd.,
No.75, Krishnan Street,
Thiruvannamalai.
R1 remained exparte in lower court
.... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.08.2007 made in M.A.C.T.O.P.No.851 of 2005, on the file of the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Ms.A.Subadra
For Respondents:
For R1 : Set exparte
For R2 : Mr.M.Krishnamoorthy

JUDGMENT

The claimants are the appellants in this appeal. They are aggrieved by the impugned Judgment and Decree dated 14.08.2007 passed by the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai in M.C.O.P.No.851 of 2005.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.8,06,824/-. The Tribunal has passed the impugned Judgment and Decree as per the law as it stood at that point of time as was settled by the Hon'ble Supreme Court. It appears that the appeal has been filed to take advantage of the clarification in the law in the light of the decision of the Hon'ble Supreme Court in the case of Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12.

3. The learned counsel for the respondents submit that the impugned Judgment and Decree passed by the Tribunal was well-reasoned and in accordance with law and the issue had attained finality. Hence, the appeal was liable to be dismissed and the amount of compensation awarded by the Tribunal ought to be confirmed. It is further submitted that the impugned Judgment and Decree was passed in accordance with law as per the understanding and interpretation and of law as declared by the Hon'ble Supreme Court for compensation .

4. I have considered the arguments advanced on behalf of the appellants and the second respondent/Insurance Company.

5. A perusal of the salary certificate (Ex.P7) of the deceased, an employee of Thiruvannamalai Sub-Court as a Junior Assistant, reveals that the monthly gross salary of the deceased was Rs.6994/- and after deduction of Rs.3135/- the net take home was Rs.3859/-. While awarding the aforesaid compensation, the Tribunal has considered the net income of the deceased as Rs.3859/- ie., $6994 - 3135 = \text{Rs.}3859/-$.

6. The Tribunal has awarded as compensation by applying 17 multiplier instead of 16. At the same time, the Tribunal has deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased though the number of members who are dependants on the deceased were four.

7. In my view, the Tribunal has erred in deducting a sum of Rs.3135/- while awarding compensation as they were nothing but contributions under various heads by the deceased. They were his savings. In my view, the entire amount of salary of Rs.6994/- drawn by the deceased as salary ought to have been considered by the Tribunal for awarding compensation.

8. Accordingly, the compensation awarded to the appellants/claimants under the head of loss of dependency is liable to be increased. The Tribunal has also erred in deducting $1/3^{\text{rd}}$ of the amount towards personal expenses of the deceased as four persons were the dependant on the deceased. The Tribunal therefore ought to have deducted only $1/4^{\text{th}}$ for the aforesaid amount of Rs.6994/- towards personal expenses of the deceased.

9. The Tribunal has also erred in applying the multiplier 17 instead of 16, as the age of the deceased was 31 years at the time of the accident on 06.10.2005. Accordingly, the compensation to be awarded to the appellants/claimants shall stand requantified as follows:-

Monthly income of the deceased = Rs.6994/-

Future Prospects = 50% add

Deduction towards personal expenses (1/4th)

Proper Multiplier 16%

Therefore, the total amount to be awarded towards loss of dependency is as follows:-

= Rs.6994+Rs.3497 (Rs.6994/- x 50%) = Rs.10,491/-

= Rs.10491x12x16x3/4 = Rs.15,10,704/-

Towards Loss of Consortium for the 1st appellant = Rs.25,000/-

Towards Loss of Filial Consortium for the 2nd appellant = Rs.10,000/-

Towards Loss of Parental Consortium for the 3rd & 4th appellants = Rs.25,000/- + Rs.25,000/-
= Rs.50,000/-

Towards Loss of Estate = Rs.15,000/-

Towards Funeral Expenses = Rs.7,500/-

Towards Transportation = Rs.5,000/-

Sl.No .	Heads of Compensation	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or reduced or granted or set aside
1.	Loss of Dependency	Rs.7,96,824/- (5859x12x17x1/3)	Rs.15,10,704/-	Enhanced
2.	Funeral Expenses	Rs.7,500/-	Rs.7,500/-	Granted
3.	Loss of Consortium	Rs.5,000/-	Rs.25,000/-	Enhanced
4.	Loss of Love & Affection	Rs.5,000/-	----	Set aside
5.	Loss of Filial Consortium	----	Rs.10,000/-	Granted
6.	Loss of Parental Consortium	----	Rs.50,000/-	Granted

Sl.No .	Heads of Compensation	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or reduced or granted or set aside
7.	Loss of Estate	----	Rs.15,000/-	Granted
8.	Transportation Charges	----	Rs.5,000/-	Granted
	Total	Rs.8,06,824/-	Rs.16,23,204/-	Enhanced by Rs.8,16,380/-

10. Since the award was dated 14.08.2007 and the appeal was filed only on 13.08.2012, the appellants/claimants will not be entitled to interest on the enhanced amount of compensation of Rs.8,16,380/- for the aforesaid period. Barring the aforesaid period, the 2nd respondent/Insurance Company shall pay interest at 7.5% from the date of claim petition till the date of deposit.

11. The 2nd respondent/Insurance Company is therefore directed to deposit a sum of Rs.16,23,204/- less any amount already deposited before the Tribunal together with interest 7.5% per annum on Rs.8,06,824/- from the date of claim petition till the date of deposit and cost awarded by the Tribunal within a period of 6 weeks from the date of receipt of this Judgement. On the enhanced amount of compensation of Rs.8,16,380/-, there shall be no interest only for the period between 14.08.2007 and 13.08.2012.

12. The above compensation of Rs.16,23,204/- shall be apportioned in the same proportion between the appellants/claimants as was apportioned by the Tribunal.

13. On such deposit being made by the 2nd respondent/Insurance Company, the 1st & 2nd appellants/1st & 2nd claimants are permitted to withdraw their share together with interest accrued thereon, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

14. The 3rd appellant/3rd claimant was aged about 5 years at that time, when the claim petition was filed. Another 15 years have lapsed since then. Therefore, the 3rd appellant/3rd claimant would have attained the age of majority as on date. Therefore, the 3rd appellant/3rd claimant is permitted to file appropriate application before the Tribunal for recording the age of majority to withdraw her share.

15. The 4th appellant / 4th claimant would still to be a minor. The 4th appellant / 4th claimant was aged only 2 years

at the time of filing of the claim petition. Therefore, the 4th appellant/4th claimant's share shall be deposited in an interest bearing account and the interest shall be allowed to be withdrawn by the 1st appellant/1st claimant for the benefit of the minors. On attaining the age of majority, the 4th appellant/4th claimant may also file appropriate application for withdrawing her share of compensation.

16. This Civil Miscellaneous Appeal stands partly allowed with the above observation. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

arb

To:
The District Judge,
Motor Accidents Claims Tribunal,
Thiruvannamalai.

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

+1cc to M/s.M.Malar, Advocate SR.No. 29067

C.M.A.No.3284 of 2012

A.SK(20.04.2021)

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