



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	20.07.2020
Pronounced On	03.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.476 of 2013

(Through Video Conferencing)

1.V.Kaliammal @ Kalinga

2.V.Lakshmanan

3.Minor V.Radhika

4.Minor V.Suganya

5.N.Krishnaveni ... Appellants/Petitioners

(Minors 3rd and 4th appellants rep. by
Mother and Next Friend 1st appellant
V.Kaliammal)

Vs.

1.Sankaraiya Naidu

2.M/s.United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 600 002.

... Respondents/Respondents

(R1- Exparte in the Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.2513 of 2006 on the file of the Motor Accidents Claims Tribunal, Chennai, Additional District Judge, II Fast Track Court at Chennai, dated 11.04.2011.

For Appellants : Mr.T.G.Balachandran

For R2 : Mr.Michael Visuvasam

R1 : Exparte



J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the impugned Common Judgment and Decrees dated 11.04.2011, passed by the Motor Accidents Claims Tribunal, Chennai, Additional District Judge, II Fast Track Court at Chennai, in M.C.O.P.No.2513 of 2006.

2. By the impugned Common Judgment and Decree, the Tribunal has awarded a sum of Rs.6,34,940/- as compensation together with interest at 9% per annum from the date of filing of the claim petition till the date of deposit, to the 1st appellant for the death of the husband of the 1st appellant N.Vijayan and to the 2nd to 4th appellants their children and to the 5th appellant the mother of the deceased N.Vijayan.

3. The brief facts of the case are that on 23.05.2006 at 11.15 p.m when the deceased N.Vijayan was proceeding on the GST Road with his wife 1st appellant Mrs.V.Kaliammal @ Kalinga on their motor cycle bearing registration No.TN.22-D-4372, a lorry bearing registration No.TN.20-U-0733 insured with the 2nd respondent belonging to the 1st respondent driven in a rash and negligent manner came from the wrong side of the road and hit them and caused the fatal injury to the deceased rider and 1st appellant who was the pillion rider in the motor cycle, as a result of which, the said Vijayan died on the spot of accident. The 1st appellant wife had suffered injuries. Under these circumstances, two separate claim petitions were filed for the death of deceased Vijayan and for the injury of the 1st appellant which was the subject matter of C.M.A.No.477 of 2013.

4. After considering the evidence on record, the Tribunal has disposed the both M.C.O.P.Nos.2513 & 2514 of 2006 by a common Judgment and separate Decrees dated 11.04.2011. This Civil Miscellaneous Appeal arising out of the M.C.O.P.No.2513 of 2006, in which, the Tribunal has awarded the aforesaid compensation to the dependents of the deceased Vijayan, who are the appellants (claimants). In the present appeal, the appellants have prayed for enhancement of compensation.

5. It is contention of the learned counsel for the appellants that the Tribunal has awarded the aforesaid compensation by fixing the income of the deceased as Rs.5,000/- though he was running an Electrical Shop under the name of Vijayan Electrical Shop and was earning a sum of Rs.7,500/- per month by selling electrical items and from wiring contract. It is further submitted that the Tribunal has wrongly deducted 1/3rd of the deceased income towards personal expenses though the Tribunal ought to have deducted only 1/4th towards personal expenses of the deceased.

6. It is further submitted that the Tribunal ought to have at least fixed the income of the deceased as Rs.6,500/-



per month instead of Rs.5,000/-. In this connection, the learned counsel for the appellants relied on the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735. It is further submitted that the Tribunal ought to have awarded the amount towards future prospectus and loss of consortium and towards loss of love and affection to the 2nd to 5th appellants.

7. Per contra, the learned counsel for the 2nd respondent Insurance Company submitted that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned and requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

8. I have considered the arguments advanced by the learned counsel for the appellants and the 2nd respondent. I have also perused the evidence on record and the impugned Judgment and Decree awarding the aforesaid compensation to the appellants/claimants.

9. The income of the deceased Vijayan has been fixed by the Tribunal as Rs.5,000/- as no evidence has been produced by the appellants/claimants that the deceased was indeed earning a sum of Rs.7,500/- per month as the proprietary of the Vijayan Electricals, Chennai. At the same time, the 2nd respondent Insurance Company has also not produced any documents before the Tribunal to show that the deceased Vijayan was not a proprietor of Electrical Shop. It has merely stated that the claim for compensation claimed by the appellants/claimants was excessive and therefore, the claim was liable to be rejected.

10. It is noticed that the deceased along with the 1st appellant in the pillion was riding the motorcycle which was hit by a lorry belonging to the 1st respondent owner, insured with the 2nd respondent Insurance Company. The income of the deceased, that has been arrived by the Tribunal as Rs.5,000/- for awarding compensation, appears to be low.

11. The Tribunal ought to have considered the fact that the deceased was riding motorcycle belonging to him and that he was supporting for the appellants/claimants. Therefore, considering the fact that the deceased was a self employed person, the notional income of the deceased ought to have been fixed as Rs.6,000/- per month. That being the case, the Tribunal ought to have fixed the income of the deceased as Rs.6,000/- per month also considering the fact that the date of accident that took place in May 2006 to arrive the compensation.

12. The Tribunal has awarded the interest on the aforesaid compensation at 9% per annum from the date of the claim petition. However, over a period there has been a rationalised interest. Considering the same, the interest on



the enhanced amount is to be restricted to 7.5% per annum.

13. Therefore, the compensation awarded by the Tribunal to the appellants arising out of the M.C.O.P.No.2513 of 2006, is re-quantified as follows:-

Heads and Calculation	Re-quantified amount of Compensation by this Court
Age of the deceased : 42 Years Notional income fixed by this Court : Rs.6,000/- P.M (instead of Rs.5,000/- fixed by the Tribunal) Less: Personal Expenses - 1/4th (6,000 - 1,500 = 4,500) : Rs.4,500/- P.M Add: Future Prospectus - 25% (4,500 x 25% = 1,125) : Rs.1,125/- ----- Total : Rs.5,625/- ----- Per Annum - 5,625 x 12 : Rs.67,500/- Multiplier : 14 67,500 x 14 : Rs.9,45,000/-	Rs.9,45,000/-
Loss of Love and Affection to children and mother (40,000 x 4)	Rs.1,60,000/-
Loss of Consortium to Wife *	Rs.40,000/-
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.10,000/-
Transport Expenses	Rs.10,000/-



WEB COPY

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

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

jen

To:

The Additional District Judge,
II Fast Track Court at Chennai,
Motor Accidents Claims Tribunal, Chennai,

C.M.A.No.476 of 2013

MG(CO)
GMY(17/08/2021)