

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2709 of 2016

1. Vasantha,
W/o. Ramasamy
2. Minor Kanimozhi,
D/o. Ramasamy
3. Minor Sakthi,
D/o. Ramasamy

Minors represented by their next
Friend and mother Vasantha.

4. Kuppusamy,
S/o. Kali Goundar

All are residing at No.16/65A
Keeraikadu Pudhur,
Yerkadu, Salem.

...Appellants /Claimants

Vs

- 1.The Superintendent of Police,
Nethimedu, Salem.
- 2.The District Collector,
Salem.

3. Valavan Raja

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.01.2015 made in M.C.O.P.No.1012 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellants : Mr.T.Ananthasekar

For Respondents : Mr.Devnarendran

Special Government Pleader
for R1 & R2

No appearance - R3

J U D G M E N T

(The case has been heard through Video Conferencing)

Heard the learned counsel for the appellants and the learned Special Government Pleader for the respondents 1 and 2.

2. On the date of fatal accident, viz., 03.11.2007, one Ramasamy, while driving his two wheeler bearing Registration No.TN-30AA-3496, was hit by a Police Jeep bearing Registration No. TN-27G- 1426. His wife and minor children along with the father of the deceased filed a claim petition before the Motor Accidents Claims Tribunal at Salem for a sum of Rs.20,00,000/-.

3. The claimants have contended that the deceased was self employed, carrying on trade in wood and earning Rs.10,000/- per month. At the time of death, he was 23 years old. The respondents have contested the matter on the ground that the accident was caused due to the negligence of the deceased and the claim of compensation is excessive and exaggerated.

4. The Tribunal, after considering the evidence, has fixed the age of the deceased as 26 years, since the deceased had a child at the age of 3 years, when he died. So taking the minimum statutory age of marriage for a male, the Tribunal fixed the age of the deceased as 26 years and fixed the multiplier of 17. The Tribunal fixed the notional income of the deceased as Rs.6,000/- and after deducting 1/3 towards his personal expenditure, a total compensation of Rs.8,19,400/- was awarded.

5. In this appeal, the claimants seek for enhancement on the ground that the Tribunal has not considered the right age of the deceased for fixing the multiplicand and also failed to consider the income of the deceased as a sum of Rs.10,000/- per month. Further, it has not awarded any compensation for future prospectus. Therefore, they submitted that the award has to be enhanced.

6. The learned Special Government Pleader appearing for the Respondents 1 and 2 would submit that there is no proper proof for the age of the deceased. In the claim petition, the age of the deceased was shown as 23 years. But, no documentary proof to substantiate the claim produced by the the claimant. Therefore, the Tribunal has taken the tentative age of the deceased as 26 years, since the age of his first daughter was 3 years and notionally fixed the age of the deceased. Similarly, in the absence of documentary proof, notional income of Rs.6,000/- has been arrived for fixation of loss of income. Therefore, defended the quantum of the compensation awarded by the Tribunal.

7. Considering the rival submissions, and the guidelines of the Hon'ble Supreme Court laid in 2017 (2) TNMAG 609(SC) National Insurance Company Ltd., Vs. Pranay Sethi, this Court is of the view that the award passed by the Tribunal requires modification. The age of the deceased is mentioned as 23 years in the claim petition whereas, in the Post Mortem Certificate, it is approximately mentioned as 21 years. In any event, there is no reason to believe that the age of the deceased could have crossed 25 years. Age of a person cannot be fixed based on the age of his children. The Tribunal has erred by doing so. Hence by fixing the age of the claimant as 23 years, as shown in the claim petition, multiplier 18 is applied and the loss of income of the deceased computed with 40% towards future prospects. Accordingly, the award of the Tribunal is modified as below:

Compensation under Various Heads	Award passed by this Court
Loss of Income (Rs.6,000+2,400) = 8,400 - 2,800 = 5,600x18x12	Rs.12,09,600/-
Loss of consortium for the 1 st Claimant	Rs. 40,000/-
Loss of love and affection for Claimants 2 to 4 (Rs.20,000 X 3)	Rs. 60,000/-
Funeral Expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Total	Rs.13,39,600/-

8. The respondents shall pay to the claimants compensation of Rs.13,39,600/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The said compensation shall be apportioned by the claimants with proportionate interest as below.

Claimants	Apportionment of compensation
1 st Claimant	Rs.5,50,000/-
Claimants 2 and 3	Rs.3,25,000/- (each)
Claimant 4	Rs.1,39,600/-

9. The compensation of the minors shall be invested in a fixed deposit till they attain majority. The first claimant, who is the mother and the guardian of the claimants 2 and 3 is

entitled to receive the monthly interest from the deposit once in six months and utilize the same for the welfare of the minor children. Claimants 1 and 4 are permitted to withdraw their share of compensation on appropriate application.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Motor Accidents Claims Tribunal
Special District Judge,
Salem.
2. The Superintendent of Police,
Nethimedu, Salem.
3. The District Collector,
Salem.
4. The Section Officer,
V.R. Section, High Court, Madras.

CMA NO.2709 OF 2016

BS (CO)
RMP (21/04/2021)

सत्यमेव जयते

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