

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2475 of 2019

1.L.Dhanalakshmi
2.L.Thamarai Selvi (Minor)
3.L.Gokula Priya (Minor)
(Minor Petitioners 2 & 3 are Rep.by
their Mother & NF Mrs.L.Dhanalakshmi)
4.J.Govindammal ... Appellants/Claimant

vs.

1.A.Madhiyazhagan
2.The New India Assurance Co., Ltd.,
No.45, 2nd Line Beach,
Moore Street, Chennai - 600 001
... Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.09.2018 in M.C.O.P.No.7545 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai.

For Appellants : M/s.Ramya V.Rao

For Respondents : R1 - No appearance
R2 - M/s.K.Saraswathi
For Mr.K.Thirunavukkarasu

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 03.09.2018 passed in M.C.O.P.No.7545 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai.

2. The claimants are the appellants and the appeal is filed, seeking enhancement of compensation.

3. The learned counsel appearing on behalf of the appellants/claimants mainly contended that the accident occurred on 21.01.2015 and the Tribunal has fixed the monthly income of the deceased as Rs.8,000/- which is not correct. The deceased was employed as Rice Tractor Driver and he was possessing Heavy Motor Vehicle Licence. The Heavy Motor Vehicle Licence was marked as Ex.P5 and therefore, fixing a sum of Rs.8,000/- as monthly income is inadequate and the Tribunal has not considered the nature of the job of the deceased person. This apart, the deceased left behind his wife, two minor daughters and aged mother. The deceased was the sole breadwinner of the family and the Tribunal has failed to consider all these aspects and granted a sum of Rs.18,12,800/- towards total compensation. The two minor daughters are to be educated and wife also unemployed, aged mother has to take medical treatments and all these aspects are not considered by the Tribunal, while fixing the monthly income of the deceased as well as granting compensation under various other heads.

4. The learned counsel appearing on behalf of the 2nd respondent/The New India Assurance Company Limited, opposed the contentions by stating that the Tribunal has taken note of all these factors and fixed the compensation. There is no proof to establish the correct monthly income of the deceased person and in the absence of any acceptable document, the Tribunal has fixed the monthly income of the deceased as Rs.8,000/- and therefore, there is no perversity or otherwise.

5. The learned counsel for the 2nd respondent/The New India Assurance Company Limited, reiterated that adequate compensation has already been granted by the Tribunal and therefore, the appeal is to be dismissed.

6. The accident occurred on 21.01.2015 at about 13.00 hours near Raja Driving School, Thiruvavur to Myladuthurai Main Road. Thiruvavur Taluk Police Station registered a case in Crime No.20/2015. The deceased was a rider of Motor Cycle bearing Registration No.KA-35-K-3598. Tarus Lorry bearing Regn.No.TN 50 F 1398, dashed against the deceased and he sustained multiple injuries all over the body and died. The Claim Petition was filed. The Tribunal adjudicated the issues with reference to the facts, documents and evidences. There is no contra evidence to disprove the accident. In the absence of any contra evidence, oral evidences of P.W.1 and P.W.2 as well as the documentary evidence of P.W.1 was relied upon and the Tribunal arrived a conclusion that the driver of the Tarus Lorry bearing Registration No.TN-50-F-1398, had driven the lorry in a rash and negligent manner and caused the accident. Thus, the Lorry driver committed an act of negligence. The deceased died due to multiple injuries and head injury. The deceased was aged about

34 years at the time of accident. The date of birth of the deceased was mentioned in the driving licence as 11.06.1980 and accordingly, the Tribunal fixed the age of the deceased as 34 years. As far as the fixation of monthly income is concerned, in the Claim Petition, it is stated that the deceased was a Rice Tractor Driver and was earning a sum of Rs.15,000/- per month. However, no document has been produced regarding the income of the deceased person. Thus, the Tribunal fixed a sum of Rs.8,000/- as monthly notional income of the deceased.

7. This Court is of the considered opinion that the deceased was holding Heavy Motor Vehicle Licence. He was aged about 34 years and died, leaving behind his wife, two minor daughters and aged mother. Under those circumstances, fixing a sum of Rs.8,000/- per month is certainly unreasonable and inappropriate. With a salary of Rs.8,000/-, more specifically, during the year 2015, when the accident occurred, a family cannot meet out their livelihood. Therefore, a sum of Rs.8,000/- as monthly income fixed by the Tribunal is inadequate and the same is to be enhanced appropriately. As far as the other aspects are concerned, the Tribunal has adopted Multiplier-16, which is proper and no interference is required. In view of the fact that the monthly income of the deceased was fixed as Rs.8,000/-, which is inadequate, this Court is inclined to enhance the notional monthly income of the deceased from Rs.8,000/- to Rs.12,000/- per month. Thus, the compensation is to be enhanced by fixing the notional monthly income of the deceased as Rs.12,000/- and 40% future prospects is to be added. 1/4th deductions is to be made towards Personal Expenses and accordingly, the income to be arrived is Rs.12,600. Thus, the loss of income is to be calculated as $Rs.12,600 \times 12 \times 16 = 24,19,200/-$. In view of the enhancement made towards the loss of income, the total compensation of Rs.18,12,800/- (Rupees Eighteen Lakh Twelve Thousand and Eight Hundred only) awarded by the Tribunal stands modified as detailed hereunder:

1.	Loss of Income	: 24,19,200
2.	Loss of Consortium	: 40,000
3.	Loss of Love and Affection	: 1,20,000 (40,000x3)
4.	Loss of Estate	: 15,000
5.	Funeral Expenses	: 15,000
6.	Transportation	: 5,000
TOTAL		: 26,14,200/-

8. Thus, the appellants/claimants are entitled for a total compensation of Rs.26,14,200/- (Rupees Twenty Six Lakh Fourteen Thousand and Two Hundred only) along with the interest at the rate of 7.5% per annum.

9. Accordingly, the judgment and decree dated 03.09.2018 passed in M.C.O.P.No.7545 of 2015 stands modified and the total compensation granted by the Tribunal is enhanced to a sum of Rs.26,14,200/- (Rupees Twenty Six Lakh Fourteen Thousand and Two Hundred only) along with the interest at the rate of 7.5% annum. The 2nd respondent/The New India Assurance Company Limited is directed to deposit the entire compensation amount along with the interest at the rate of 7.5% per annum within a period of twelve (12) weeks from the date of receipt of a copy of this judgment and on such deposit, the major claimants are permitted to withdraw their respective portion of the award amount along with the interest by filing appropriate application before the Tribunal and the minor shares are concerned, the same is to be deposited in any one of the Nationalized Bank in an interest bearing deposit scheme, which is to be renewed periodically till the minors attained the age of majority. The apportionment between the appellants/claimants are to be made as per the award passed by the Motor Vehicles Claims Tribunal. The appellants are directed to pay the additional Court fee, if any, with reference to the enhanced compensation within a period of two(2) weeks from the date of receipt of a copy of this judgment and the payments are to be made through RTGS.

10. Thus, the judgment and decree dated 03.09.2018 passed in M.C.O.P.No.7545 of 2015 stands modified and consequently, the Civil Miscellaneous Appeal in C.M.A.No.2475 of 2019 is allowed in part. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Special Sub Court No.1,
Small Causes Court, Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.28871

CMA No.2475 of 2019

RP (CO)
GMY (23/09/2020)



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