

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.1802 OF 2018

1.S.Vijaya
2.S.Divakar
3.Pappa

... Appellants

Vs.

1. S.Mohammed Rafi

2. M/s.Cholamandalam MS General Insurance Co Ltd.,
No.9, 1st Floor, Rajaji Road,
Peramanoor, Near Bus Stand,
Salem - 636 007.

... Respondents

PRAYER :

Appeal filed under Section 173 of the Motor Vehicles Act, 1998 against the decree and judgment dated 01.02.2018 made in M.C.O.P.No.1667 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court), Salem.

For Appellants : Mr.R.Thirunvavukkarasu

For Respondents : R1 - Unclaimed
Mr.N.Vijayaraghavan for
M/s.M.B.Gopalan Associates
for R2

JUDGMENT
(Delivered by M.M.SUNDRESH.,J)

This appeal is preferred by claimants 1 to 3, who are the wife, son and mother of the deceased. They made a claim for a sum of Rs.10,00,00,000/-. The deceased was aged about 46 years at the time of accident. He was a proprietor of a Textile Company. The monthly income claimed is at Rs.7,00,000/- per month.

2. Before the Tribunal, the claimants marked several documents under Exs.P1 to P14 and examined four witnesses. On behalf of the respondents, no document has been marked nor any evidence let in. The Tribunal awarded a sum of Rs.33,20,104/- as compensation. Seeking enhancement of the award granted by the Tribunal, the present appeal is filed.

3. The learned counsel appearing for the appellants submitted that the Tribunal was not correct in fixing the monthly income at Rs.25,000/-. The multiplier adopted by the Tribunal is not correct. Towards the future prospects, higher percentage ought to have been awarded. Therefore, the appeal will have to be allowed particularly in the light of the evidence adduced.

4. The learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal in toto awarded a sum of Rs.32,20,104/- as compensation. The Tribunal has given its own reasoning in coming to the said conclusion. Factual finding has also been given that there is no loss of estate as claimed by the claimants. Thus, the appeal will have to be dismissed.

5. Insofar as the reasoning of the Tribunal is concerned, we are in respectable agreement. There is no substantial material to show that pursuant to the death of the deceased, the concern was closed nor the claimants have suffered with respect to the income. Thus, the Tribunal was right in holding that the amount of Rs.7,00,000/- claimed as monthly income of the deceased has got no factual basis. The income from rent also would not get reduced. However, the fact remains that the deceased was running the above said concerns. In such view of the matter, the fixation of income at Rs.25,000/- per month is too low in our considered view. The deceased was also an Income-Tax assessee and in the returns filed, he has also shown his personal income.

6. We may note that the first claimant/wife was a home-maker and the second claimant/son is aged about 20 years and the third claimant is the mother aged about 68 years at the time of the accident. Thus, considering the above said facts, we fix the monthly income of the deceased at Rs.30,000/- at the time of the accident.

7. Insofar as the future prospects, deduction towards the personal expenses and the multiplier adopted by the Tribunal are concerned, we do not find any error in the award passed by the Tribunal and the same is confirmed. Accordingly, we fix the loss of income at Rs.39,00,000/- $[30000 + (25\% \text{ of } 30000) = 37500; \text{ Less } 1/3^{\text{rd}} \text{ towards personal expenses} = 25,000; 25000 \times 12 \times 13]$. The compensation awarded by the Tribunal towards other

conventional heads such as loss of consortium, loss of love and affection, loss of estate and funeral expenses stand as such. Thus, the total just compensation is arrived at Rs.40,10,000/- with 7.5% interest from the date of the petition till the date of deposit. The enhanced compensation amount shall be apportioned amongst the claimants as per the ratio fixed by the Tribunal.

8. The second respondent/Insurance Company is directed to deposit the enhanced compensation amount as awarded by this Court along with proportionate interest, less the amount, if any, already deposited to the credit of M.C.O.P.No.1667 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court), Salem within a period of eight weeks from the date of receipt of a copy of the judgment.

9. We also direct the Tribunal to transfer the respective shares of the award amount by way of RTGS to the bank accounts of the claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same.

10. In view of the above, the Civil Miscellaneous Appeal stands allowed in part. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssm

To

1. The Motor Accident Claims Tribunal,
Special District Court, Salem.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.K.Varadha Kamaraj, Advocate in Sr.No.1475

+1cc to Mr.M.B.Gopalan Associates, in Sr.No.1539

C.M.A.No.1802 of 2018

KS(CO)
CS/17/12/2020