

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.08.2020

CORAM

THE HONOURABLE Mr.JUSTICE R.SUBBIAH
AND
THE HONOURABLE Mr.JUSTICE C.SARAVANAN

C.M.A. No.3951 of 2019

(Heard through video-conferencing)

1. P.Kalaivani,
W/o. Late N.A.Palanisamy
2. P.Shyamaladevi,
D/o. Late N.A.Palanisamy

Both are residing at Nalligoundanur, Ayyampalayam Post,
Kavindapadi via, Bhavani Taluk,
Erode District.

Marayal (died), wife of Arthanari Gounder.
.. Appellants/Petitioner

Versus

1. N.A.Deivasigamani,
S/o.Arthanari Gounder,
Residing at 19-C, Main Road, Ayyampalayam,
Bhavani Taluk, Erode District.
2. D.Arputharaj
S/o.Duraisamy,
Residing at No.48, Chidambaram Street,
Karumandichellipalayam, K.K.Road,
Perundurai Taluk, Erode District.
3. National Insurance Company Limited,
Divisional Office - 7(350 7000)
5, Janpath, New Delhi 110 001.
4. Gopalakrishnan,
S/o. Venkatachalam,
3/370, Somur Kudi Street,
Somur Post, Karur.
5. Oriental Insurance Company Limited,
Pla Building, 1st Floor, No.12/A, Kovai Road,
Karur 639 02.
.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 for enhancement of compensation in the judgment and decree dated 11.11.2014 made in MCOP.No.25 of 2010 on the file of MACT/Sub Court, Bhavani at Erode District.

For appellants : Mr.M.Lokesh

For respondents

for RR1 & 2 : Set ex-parte before the Tribunal
for R3 : M/s.N.B.Surekha
for R4 : Claim petition is dismissed against him by the Tribunal
for R5 : M/s.R.Sreevidhya

J U D G M E N T

(The Judgment of the Court was delivered by R.Subbiah, J)

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal / Sub Court, Bhavani at Erode District, in MCOP.No.25 of 2010 dated 11.11.2014, this appeal has been filed by the claimants for enhancement of the compensation amount.

2. It is the case of the claimants that on 11.12.2008 at about 6.30 pm., the deceased Palanisamy was riding pillion in a two wheeler bearing Registration No.TN 56 1851, insured with the third respondent / National Insurance Company Limited, which was driven by the first respondent on Pasupathipalayam - Karur Road, from East to West. At that time, the said two wheeler met with an accident due to the involvement of a Lorry bearing Registration No. TN 29 A 0995 belonging to the fourth respondent, insured with the fifth respondent / Oriental Insurance Company Limited. Hence, the appellants, who are the wife, daughter and mother of the deceased, claimed compensation for a sum of Rs.12,00,000/-.

3. The case of the claimant was resisted by the third respondent / National Insurance Company Limited and the fifth respondent / Oriental Insurance Company Limited by filing detailed counter statements.

4. The Tribunal, after analysing the evidence on both sides, has come to the conclusion that the accident had occurred due to the negligence of the rider of the two wheeler bearing Registration No.TN 56 1851, insured with the third respondent / Insurance Company. While coming to such conclusion, the Tribunal has passed award for a sum of Rs.5,21,000/- as compensation to the appellants / claimants. Both the third respondent / National Insurance Company Limited as well as the fifth respondent /

Oriental Insurance Company Limited have not preferred any appeal as against the judgment of the Trial Court. The present appeal has been filed by the claimants seeking enhancement of compensation.

5. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

Head under which the amount is awarded by the Tribunal	Amount in Rs.
Loss of dependency (Rs.4,500 x 12 x 11 x 1/3)	3,96,000
Loss of Love & Affection	75,000
Funeral Expenses	25,000
Consortium to R1	25,000
Total	5,21,000

6. The only submission made by the learned counsel for the appellants / claimants is that the deceased was carrying on agricultural operations and earning Rs.10,000/- per month. He was 54 years at the time of accident. Though the appellants / claimants claimed that the monthly income of the deceased was Rs.10,000/-, the Tribunal had taken only a meagre amount of Rs.4,500/- as monthly income and by deducting 1/3rd of the amount towards personal expenses, calculated the annual income of the deceased at Rs.36,000/- (Rs.4,500/- - Rs.1,500/- x 12). Considering the age of the deceased being 54 at the time of the accident, by adopting multiplier "11", the Tribunal awarded Rs.3,96,000/- (Rs.36,000/- x 11) under the head "loss of dependency". It is the submission of the learned counsel for the appellants / claimants that Rs.3,96,000/-, is not an adequate compensation towards the head "Loss of Dependency". Hence, the monthly income of the deceased has to be fixed at Rs.10,000/- and consequently, the compensation amount has to be enhanced.

7. Per contra, the learned counsel for both the respondent Insurance Companies made their submissions justifying the award passed by the Tribunal.

8. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

9. The accident took place in the year 2008. Considering the cost of living prevalent at the time of the accident, we are of the opinion that a sum of Rs.4,500/- fixed by the Tribunal towards monthly income of the deceased, appears to be on the lower side. Hence, it would be appropriate to fix a sum of Rs.6,500/- as monthly income of the deceased. Consequently, the compensation amount awarded by the Tribunal has to be re-calculated.

10. If Rs.6,500/- is fixed as monthly income and 10% of the same is added towards future prospects, the amount works out to Rs.7,150/-. If $1/3^{\text{rd}}$ of the said amount is deducted towards personal expenses, the annual loss of income comes to Rs.57,200/- (Rs.7150/- - Rs.2383/- x 12). Considering the age of the deceased being 54 years at the time of the accident, if multiplier "11" is applied, the amount works out to Rs.6,29,200/- (Rs.57,200/- x 11). Accordingly, the sum of Rs.3,96,000/- awarded by the Tribunal under the head "loss of dependency" is enhanced to Rs.6,29,200/-.

11. Further, Rs.75,000/- awarded by the Tribunal towards the head "love and affection" to the appellants / claimants is set aside, instead, a sum of Rs.20,000/- is awarded to the second appellant / unmarried daughter towards the head "love and affection". Similarly, a sum of Rs.20,000/- is awarded to the third appellant / mother of the deceased under the head "Filial Consortium" for the loss of her son at her advanced age. The sum of Rs.25,000/- awarded by the Tribunal towards consortium to the first appellant / wife, is hereby reduced to Rs.20,000/-.

12. Considering the fact that the sum of Rs.25,000/- awarded towards Funeral Expenses is on the higher side, the same is hereby reduced to Rs.15,000/-.

13. Further, the Tribunal has not awarded any amount under the heads "Loss of Estate" and "Transportation" and hence, a sum of Rs.10,000/- is awarded each towards the heads "Loss of Estate" and "Transportation".

14. Thus, the total compensation is tabulated below:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Dependency	3,96,000	6,29,200
2	Loss of Love and Affection	75,000	20,000

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
3	Filial Consortium	-	20,000
3	Consortium	25,000	20,000
4	Funeral Expenses	25,000	15,000
5	Loss of Estate	-	10,000
6	Transportation	-	10,000
	Total	5,21,000	7,24,200

15. Thus, the total compensation of Rs.5,21,000/- awarded by the Tribunal towards compensation is hereby increased to Rs.7,24,200/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, the claimants are not entitled for interest for the period of delay in filing the present appeal, as ordered by this Court in CMP.No.18179 of 2019 in CMA.SR.No.46097 of 2019 (CMA.No.3951 of 2019). The third respondent / National Insurance Company Limited is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares in accordance with law before the Tribunal. The apportionment of shares fixed by the Tribunal to the claimants, is hereby confirmed. As the third claimant died at the time of filing of the appeal itself, her shall be disbursed to her legal heirs, upon an application being taken out by her legal heirs.

16. With the above observations and directions, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

pvs

To

1. The Motor Accident Claims Tribunal
Sub Court, Bhavani at Erode District

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

+1 cc to M/s.N.B.Surekha Advocate sr26024

C.M.A. No.3951 of 2019

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