

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.3141 of 2019

1.Pragadambal @ Padmavathi

2.Ramachandran

3.Manikandan

4.Raj Kumar

5.Minor Gayathri

(Fifth appellant is represented by her mother
first appellant Pragadambal @ Padmavathi)

.. Appellants/Claimants

vs.

1.Doss

2.Abelraj

3.ICICI Lombard General Insurance Company Ltd.,

Represented by its Divisional Manager,

ICICI Lombard House,

414, Veer Sarkar Marg,

Near Siddhi Vinayak Temple,

Prabhadevi,

Mumbai - 400 025.

.. Respondents /Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.10.2018 passed in M.C.O.P. No.139 of 2016 on the file of the learned District Judge, District Court-cum-Motor Accidents Claims Tribunal, Karaikal.

For Appellants : Mr.S.Sounthar
For Respondents-1&2 : No Appearance
For Respondent No.3 : Mr.K.Poomalai

J U D G M E N T

The Civil Miscellaneous Appeal on hand is preferred against judgment and decree dated 26.10.2018 passed in M.C.O.P. No.139 of 2016 by the learned District Judge, District Court-

cum-Motor Accidents Claims Tribunal, Karaikal.

2. The accident occurred on 07.03.2016 at about 21.30 hours at Puduthurai Main Road, near Puduthurai Hospital, Karaikal. The Karaikal Traffic Police Station registered a case in Crime No.32 of 2016 under Sections 279 and 337 of IPC.

3. One Mr.Arumugam sustained grievous injuries and died due to accident. The claim petition was filed by wife, three sons and one minor daughter of the deceased person.

4. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

5. As far as the negligence is concerned, PW-1, who is none other than one of the sons of the deceased, clearly deposed the scene of accident. The FIR Ex.P-1 also corroborates with the deposition.

6. The Tribunal further considered the Postmortem Report and accordingly, arrived a conclusion that the accident occurred due to rash and negligent driving of the rider of the motorcycle bearing Registration No.PY-01-CH-5220.

7. The fact regarding the accident was not disputed between the parties. The grievance of the appellants-claimants is that the quantum of compensation granted by the Tribunal is inadequate. The deceased was an experienced Carpenter and skilled worker and was earning more than Rs.1,000/- per day. This being the factum, the Tribunal has fixed the monthly income of the deceased as Rs.7,000/-, which is improper and is on the lesser side.

8. The learned counsel appearing on behalf of the third respondent-Insurance Company disputed the contentions of the learned counsel appearing on behalf of the appellants-claimants, by stating that there is no proof to establish the monthly income of the deceased person. In the absence of any such proof, the Tribunal is right in fixing the monthly income of the deceased as Rs.7,000/- and therefore, the said contention of the learned counsel for the appellants-claimants is liable to be rejected.

9. The fact remains that the accident is not disputed. The wife of the deceased was aged about 48 years, three sons and one minor daughter aged about 15 years are claimants. The appellants/claimants established before the Tribunal that the deceased was working as Carpenter. The evidence of PW-2, employer of the deceased, categorically

deposed that he was paying a sum of Rs.1,000/- per day to the deceased person. When the employer itself was examined as a witness, then there is no reason to disbelieve the contentions. This apart, the evidence of PW-2 was not rebutted by the third respondent-Insurance Company before the Tribunal. Thus, the Tribunal ought to have fixed a fair amount towards the loss of income and contrarily, the Tribunal has taken a sum of Rs.7,000/- as monthly income of the deceased person, which is improper and is on the lesser side.

10. The Court is of the considered opinion that based on the evidence of PW-2, who is the employer of the deceased person and considering the fact that the deceased person was an experienced Carpenter, which is skilled job, the monthly income of the deceased is fixed as Rs.15,000/- per month and by deducting 1/4th towards personal expenses, the total sum of Rs.12,375/- is to be taken for the purpose of calculating compensation.

11. Considering the facts and circumstances of the case, this Court is of the considered opinion that the quantum of compensation granted under the head of loss of income is inadequate and cannot be construed as just compensation. Thus, this Court is inclined to enhance the total compensation of Rs.7,84,700/-, awarded by the Tribunal, as per the details given below:-

	Rs.
Loss of income (Rs.12,375/-x12x9)	13,36,500/-
Loss of consortium to wife	40,000/-
Love and Affection (Rs.40,000/-x4)	1,60,000/-
For Funeral Expenses	15,000/-
For Transportation Charges	10,000/-
For Loss of Estate	15,000/-
Total	Rs.15,76,500/-

Thus, the appellants/claimants are entitled for the enhanced compensation of Rs.15,76,500/- along with interest at the rate of 7.5% per annum.

12. The third respondent-Insurance Company is directed to deposit the entire award amount along with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellants-claimants are permitted to withdraw their respective portion of compensation as apportioned by the Tribunal in its award by filing an appropriate application

before the Tribunal. As the fifth appellant-claimant attained the age of majority and therefore, she is also entitled to withdraw her portion of compensation and payments are to be made through RTGS.

13. Accordingly, judgment and decree dated 26.10.2018 passed in M.C.O.P. No.139 of 2016 by the learned District Judge, District Court-cum-Motor Accidents Claims Tribunal, Karaikal stands modified and consequently, CMA No.3141 of 2019 is allowed in part. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Svn

To

The District Judge,
District Court-cum-Motor Accidents Claims Tribunal,
Karaikal.

+1cc to Mr.S.Sounthar, Advocate, S.R.No. 29165

CMA No.3141 of 2019

RSV(CO)
GN(23/04/2021)

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