

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4567 OF 2019

1.Palaniammal
2.Thavamani
3.Muniappan

.. Appellants/Petitioners

Vs.

1.Vanajakshiamma M.B.

2.Liberty Videocon General Insurance Company Limited,
No.39/4166-A, II Floor,
Shema Building, M.G.Road,
Ravipuram, Ernakulam - 682 016,
Kerala State.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.12.2018 made in M.C.O.P.No.493 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellants : Mr.S.Sathiaseelan

For R2 : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 20.12.2018 made in M.C.O.P.No.493 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

2.The appellants are the claimants in M.C.O.P.No.493 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Munusamy, who died in the accident that took place on 22.04.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.4,34,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was an agriculturist, milk vendor and also working as Security in Sudarma Spinning Mills, Baisuhalli, Dharmapuri District and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal erred in taking the age of the deceased as 63 years as mentioned in Ex.R1/Ration Card and applied multiplier '7'. The deceased was aged 57 years as per Ex.P2/copy of post-mortem certificate and the Tribunal ought to have applied multiplier '9'. The Tribunal ought to have granted 10% enhancement towards future prospects. In the absence of any material evidence to prove the age, the Tribunal ought to have fixed the age of the deceased based on the post-mortem certificate as held by the Hon'ble Apex Court. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation. In support of his contention, the learned counsel relied on the following judgments:

(i) 2018 (2) TNMAC 221 (Cholamandalam MS General Insurance Co. Ltd., vs. K.Rukmani and others);

"12. ... The contention of the learned counsel for the appellant is that the deceased was aged 65 years at the time of the death and Tribunal had erred in fixing the age at 55. In the post-mortem certificate marked as Ex.P2 and in the death certificate marked as Ex.P3, the age of the deceased is shown as 52. In the documents filed by the learned counsel for the respondents, as per the ration card, the age of the deceased is 68 years, voter identity card reflects the age as 64 years and as per aadhar card, he is aged 68 years. Considering the contention of the learned counsel for the appellant and the judgment of this Court dated 29.11.2016 made in Divisional Manager, Oriental Insurance Co. Ltd. v. K.Veeralakshmi, CDJ 2017 MHC 382 (C.M.A.(MD).No.758 of 2015) relied on by the appellant, the age of the deceased is

fixed at 60 years based on the documents filed by the respondents 1 to 5 and hence, the multiplier is modified to 9 from 11. . . . "

(ii) C.M.A.No.2034 of 2016, dated 14.09.2016 (The Manager, Reliance General Insurance Company Limited vs. Begari Nagamma and others);

"11. Entry in the adhar card has been taken. Needless to state that determination of the age as per the entry in Ex.P4 Post Mortem Certificate, also cannot be found to be fault with, in view of the decision of this Court in The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515], wherein, this Court has held that in the absence of proof relating to the age, such as birth extract or any supporting document, entry in the Postmortem Report, can always be considered for the purpose of computation of compensation."

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal fixed the age of the deceased as 63 years as per Ex.R1/copy of the Ration Card produced by the 2nd respondent and applied multiplier '7', which is proper. The 2nd respondent/Insurance Company produced a copy of the Aadhar card issued for the deceased in which his date of birth was shown as 1953. In the death certificate of the deceased, the age of the deceased is mentioned as 62 years. Relying on Aadhar card and death certificate, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the 2nd respondent has proved that the deceased was aged only 63 years at the time of accident. The Tribunal has fixed age of the deceased correctly and applied correct multiplier by giving valid reasons. Therefore, the appellants are not entitled to any enhancement towards future prospects of the deceased. The appellants have not proved the avocation and income of the deceased. In the absence of any proof with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the deceased, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

8. It is the contention of the learned counsel appearing for the appellants that the deceased was aged 57 years as per Ex.P2/post-mortem certificate at the time of accident and the Tribunal erroneously fixed the age of the deceased as 63 years at the time of accident as per Ex.R1/copy of the Ration Card and applied multiplier '7'. Before the Tribunal, the appellants/claimants did not file any document to prove that the deceased was aged 57 years at the time of accident. On the other hand, the 2nd respondent/Insurance Company has produced Ex.R1/ration card of the deceased. Based on the age mentioned in the ration card, the Tribunal fixed age of the deceased as 63 years and applied multiplier 7. At the time of hearing the appeal, the 2nd respondent/Insurance Company has produced Aadhar card as well as death certificate of the deceased. The said documents are not disputed. As per the Aadhar card, the deceased was aged 63 years at the time of accident. In the judgment relied on by the learned counsel appearing for the appellants in C.M.A.No.2034 of 2016, dated 14.09.2016 (The Manager, Reliance General Insurance Company Limited vs. Begari Nagamma and others) referred to above, the Division Bench of this Court held that in the absence of any documents like birth extract or any supporting document, the age mentioned in post-mortem certificate can be considered. In the present case, the learned counsel appearing for the 2nd respondent/Insurance Company produced the ration card before the Tribunal and produced Aadhar card and death certificate of the deceased before this Court, wherein the age of the deceased was shown as 63 years at the time of accident. In view of the above, fixing the age of the deceased as 63 years as per Ex.R1/ration card of the deceased and applying multiplier '7' by the Tribunal are proper and the same does not warrant any interference by this Court.

9. It is the contention of the appellants that the deceased was an agriculturist, milk vendor and Security in Sudarma Spinning Mills and was earning a sum of Rs.15,000/- per month. They failed to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident occurred in the year 2016 and the notional income of the deceased fixed by the Tribunal is meagre. Therefore, a sum of Rs.11,000/- per month is fixed as notional income of the deceased. By deducting 1/3rd towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.6,16,000/- (Rs.11,000/- x 12 X 7 x 2/3). The Tribunal has not awarded any compensation towards loss of love & affection to the appellants 2 & 3 and hence, a sum of Rs.40,000/- is awarded towards loss of love & affection. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus the compensation awarded by the Tribunal

is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	3,64,000/-	6,16,000/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of love & affection	-	40,000/-	Granted
	Total	Rs.4,34,000/-	Rs.7,26,000/-	Enhanced by Rs.2,92,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,34,000/- is hereby enhanced to Rs.7,26,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by making necessary applications before the Tribunal. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

krk/kj

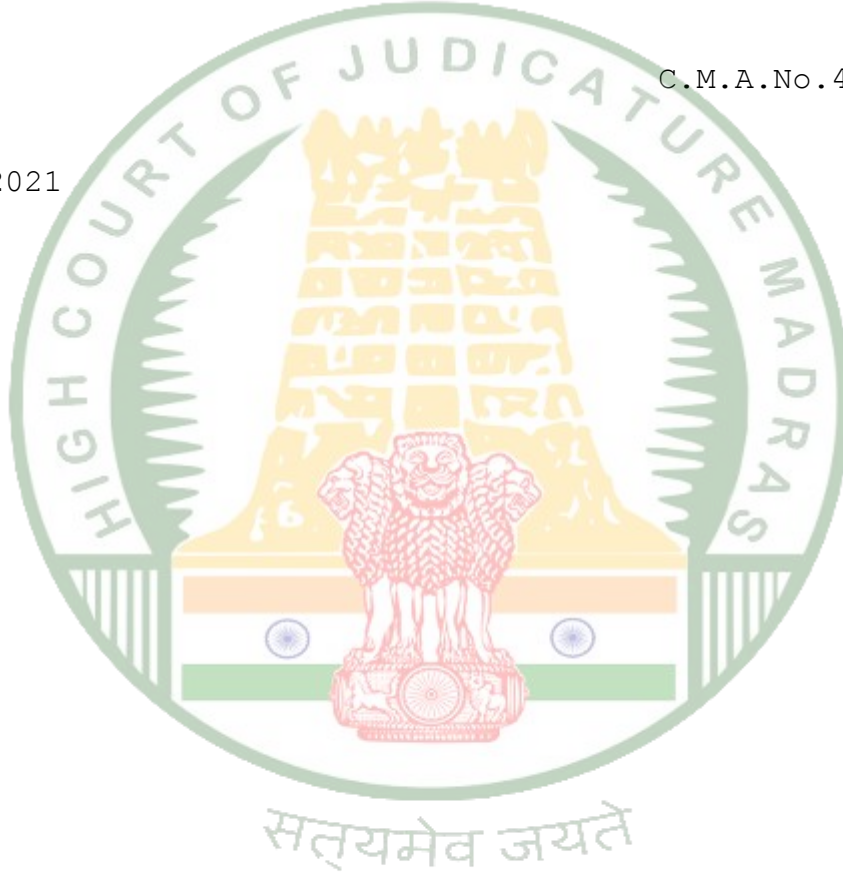
To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.
2. The Section Officer,
VR Section, High Court,
Madras.

+lcc to M/s.M.B.Gopalan Associates, Advocate, S.R.No.16333
+lcc to Mr.S.Sathiaseelan, Advocate, S.R.No.15090

C.M.A.No.4567 of 2019

MG(CO)
CS/08/01/2021



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