

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

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

C.M.A.No.880 of 2018

1.Elavarasi
2.Minor Sasi Kiran
3.Minor Gokulakannan
[Minors R2 and R3 Represented by their Natural Guardian Mother
for first Petitioner Elavarasi]
4.Malliga
5.Chinnavedi ... Appellants/petitioners

Vs.

1.The Managing Director,
TNSTC Limited,
Bharathipuram, Dharmapuri.
2.Ravi
3.The Oriental Insurance Company Limited,
Represented by its Branch Manager,
81-C, First Floor,
KRC Complex,
Chennai Road, Krishnagiri. ... Respondents /Respondents

Prayer :Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the judgment and decree
dated 30.01.2017 made in M.C.O.P.No.246 of 2015 on the file of
Motor Accidents Claims Tribunal (Special District Court for
Motor Accidents Claims Tribunal), Krishnagiri.

For Appellants : Mr.S.C.Vishwanath

For Respondents : Mr.D.Raghu for R1
Mr.V.Nithyanandam for R2
Mr.D.Baskaran for R3

JUDGMENT

(Delivered by M.M.SUNDRESH, J)

The appellants are the claimants in M.C.O.P.No.246 of 2015. Challenging the quantum awarded by the Tribunal, the present appeal has been filed. The Tribunal apportioned the liability amongst respondents 1 and 2.

2. The learned counsel appearing for the appellants submitted that notwithstanding the salary certificate produced under Ex.P8, notional income of Rs.9,000/- has been fixed by the Tribunal. The deceased was working as a Driver-cum-Supplier of Indane Gas Cylinders. Therefore, the award of the Tribunal requires interference.

3. The learned counsel appearing for the Transport Corporation submitted that the liability fastened on the Transport Corporation has been complied with.

4. The learned counsel appearing for the second respondent/owner of the vehicle, who has been set ex-parte before the Tribunal submits that he has not been given an opportunity to put forth his contentions.

5. The only question for consideration is as to whether the appellants are entitled for the enhanced compensation or not. Since no appeal has been preferred by the other respondents with respect to the apportionment and liability, we are not inclined to consider the submissions made in this regard except the quantum.

6. On the question of income, we find force in the submission made by the learned counsel appearing for the appellants. The Tribunal ought not to have fixed the notional income at Rs.9,000/-. The accident occurred in the year 2015. There is evidence to show that the deceased was working as Driver-cum-Supplier of Indane Gas Cylinders. Though there is no witness available to prove Ex.P8, the fixation of notional income by the Tribunal, cannot be sustained. Thus, we are inclined to fix Rs.12,500/- as monthly income.

7. Considering the number of claimants and the age of the deceased, we are adopting multiplier '16' while deducting one-fourth towards the personal expenses of the deceased. We are also adding 40% towards future prospects as the said exercise

has not been done by the Tribunal. Accordingly, the loss of income arrived at is Rs.25,20,000/- [(Rs.12500 + 40% F.P. = Rs.17,500 x 12 x 16= Rs.33,60,000/- - Rs.8,40,000/- - (¼th deduction)].

8. Insofar as the other conventional heads are concerned, viz funeral expenses, loss of consortium and loss of love and affection, we are inclined to award Rs.15,000/-, Rs.40,000/- and Rs.1,60,000/- respectively. The amount Rs.5,000/- awarded by the Tribunal towards the transportation is confirmed as such.

9. Thus, in total, the total compensation arrived at is Rs. 27,40,000/- with the interest at 7.5% from the date of petition till the date of realization.

10. The third respondent/Insurance Company is directed to deposit the enhanced compensation awarded by this Court, less the amount, if any, already deposited to the credit of M.C.O.P.No.246 of 2015 on the file of Motor Accidents Claims Tribunal (Special District Court for Motor Accidents Claims Tribunal), Krishnagiri within a period of six weeks from the date of receipt of a copy of the judgment.

11. We also direct the Tribunal to transfer the respective shares of the award amount by way of RTGS to the bank accounts of claimants 1,4 and 5 within a period of three weeks from the date of deposit of the award amount. On such transfer, they are entitled to withdraw the same. Insofar as the shares of minor claimants 2 and 3 are concerned, the Tribunal is directed to deposit the same in any one of the Nationalized Banks under reinvestment scheme till they attain majority. The mother of the minor claimants is entitled to withdraw the interest accrued on the minors' deposit once in three months directly from the Bank.

12. The Civil Miscellaneous Appeal stands allowed in part. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
(Special District Court for Motor
Accidents Claims Tribunal), Krishnagiri.

+lcc to Mr.D.Raghu, Advocate Sr.14622
+lcc to Mr.S.C.Vishwanth, Advoate Sr.15562
+lcc to Mr.D.Bhaskaran, Advoate Sr.15286

C.M.A.No. 880 of 2018

mr[co]
srg 31/07/2020