IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.3116 of 2019

1.Sumathi @ Periyakkal

2.Minor Kalaivani

3.Govindammal
(Second Appellant is represented by her
Guardian and Mother first appellant
Sumathi @ Periyakkal) .. Appellants/Claimants

vs.

1.Ammasi

2.United India Insurance Company Ltd.,
Represented by its Manager, residing
at No.14/1-77B, Salem Main Road,
Puduchampalli,
Ramannagar Post,
Mettur Dam,
Salem District - 630 403. .. Respondents /Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.10.2018 passed in M.C.O.P. No.371 of 2016 on the file of the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Namakkal.

For Appellants : Mr.C.Thangaraju

For Respondent No.1 : Notice sent. Service Awaited.

For Respondent No.2 : Mr.C.Paranthaman

J U D G M E N T

The judgment and decree dated 08.10.2018 passed in M.C.O.P. No.371 of 2016 by the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Namakkal is under challenge in the present Civil Miscellaneous Appeal on the ground that the quantum of compensation granted by the Tribunal is inadequate and not in commensuration with the claim set out in the claim petition.

2. The accident occurred on 12.01.2016 at about 03.00 P.M., at Wednesday Market (Pudhan Chandai) to Senthamangalam Salai, Namakkal District and the Senthamangalam Police Station registered a case in Crime No.14 of 2016 under Sections 279, 338 and 304(A) of IPC.

3. One Mr.Ravi aged about 35 years and was working as a Painter, died due to the accident. He died on the spot and the two wheeler driven by the deceased also got damaged. The claim petition was filed by the wife, minor daughter and the aged mother of the deceased person.

4. The Tribunal adjudicated the issues with reference to the documents as well as the evidences and arrived a conclusion that the lorry driver had driven the lorry in a rash and negligent manner and therefore, the driver of the lorry committed the act of negligence, resulted in an accident. Thus, the owner of the lorry is also liable as well as the Insurance Company held liable to pay compensation. In other words, both the lorry owner as well as the Insurance Company are held liable for the compensation jointly and severally.

5. As far as the quantum of compensation is concerned, the Tribunal fixed the monthly income of the deceased as Rs.6,500/- and accordingly, calculated the compensation. Thus, the total compensation of Rs.12,34,900/- is awarded by the Tribunal.

6. The learned counsel appearing on behalf of the appellants mainly contended that the notional monthly income determined by the Tribunal as Rs.6,500/- is meager and not in accordance with the cost index of the particular year when the accident occurred. The deceased was working as a Painter, which is skilled job and therefore, the Tribunal ought to have fixed at least Rs.15,000/- per month as the income of the deceased. In view of the fact that the monthly income of the deceased has not been fixed appropriately by the Tribunal, the appellants have chosen to file the present Civil Miscellaneous Appeal.

7. The learned counsel appearing on behalf of the second respondent-Insurance Company disputed the contentions of the learned counsel appearing on behalf of the appellants by stating that the claimants have not produced any documents to establish the monthly income of the deceased person. In the absence of any documents to establish the monthly income of the deceased person, the Tribunal made a finding in fixing the monthly income of the deceased person as Rs.6,500/- and

therefore, the Civil Miscellaneous Appeal is liable to be dismissed.

8. This Court is of the considered opinion that the deceased was aged about 35 years at the time of accident and he died leaving behind his wife, minor daughter and aged mother. The deceased was working as a Painter and there is no contra evidence produced by the second respondent-Insurance Company to rebut the said contention. This apart, even considering the fact that he was doing some painting work or other daily wage work, the monthly income of Rs.6,500/- fixed by the Tribunal is undoubtedly inadequate and more specifically, when the accident occurred in the year 2016, the fixation of monthly income for the deceased is not in commensuration with the cost index of the year 2016. Thus, the fixation of monthly income of Rs.6,500/- fixed by the Tribunal for the deceased is on the lesser side, which requires to be enhanced.

9. This Court is of the considered opinion that the job of Painter is skilled job and even in the absence of any Salary Certificate or proof, the person died was aged about 35 years and undoubtedly, he would be earning more than Rs.10,000/- or Rs.12,000/- per month. This apart, the young Painter died leaving behind his wife, minor daughter and the aged mother.

10. This being the factum, this Court is of the opinion that the compensation awarded by the Tribunal is inadequate and not in commensuration with the job performed by the deceased person. Accordingly, this Court arrived a conclusion that Rs.12,500/- per month would be an appropriate income to be fixed for calculating compensation. 40% future prospects is to be ordered and by deducting 1/3rd personal expenses. Thus, the loss of income is to be calculated as Rs.17,500/- per month. Thus, the total compensation of Rs.12,34,864/-, awarded by the Tribunal, is modified as detailed hereunder:-

	Rs.
Loss of income (Rs.17,500/-x12x16x2/3)	22,40,000/-
For Funeral Expenses	15,000/-
For Loss of Estate	15,000/-
Consortium to wife of the deceased	40,000/-
Love and Affection (for minor daughter and aged mother of the deceased- Rs.40,000/-x2)	80,000/-
Total	Rs.23,90,000/-

Thus, the appellants/claimants are entitled for the enhanced compensation of Rs.23,90,000/- along with interest at the rate of 7.5% per annum.

11. Accordingly, the judgment and decree dated 08.10.2018 passed in M.C.O.P. No.371 of 2016 by the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Namakkal stands modified and consequently, CMA No.3116 of 2019 is allowed in part. However, there shall be no order as to costs.

12. The second 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 major claimants are permitted to withdraw their portion of the compensation as apportioned by the Motor Accidents Claims Tribunal by filing an appropriate application before the Tribunal and as far as the minor share is concerned, the same is to be deposited in anyone of the Nationalized Bank under Interest Bearing Deposit Scheme till the minor attains the age of majority and the same should be renewed periodically. The appellants/claimants are directed to pay the additional court fee for the enhanced compensation, within a period of two weeks from the date of receipt of a copy of this judgment and payments are to be made through RTGS.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Motor Accidents Claims Tribunal,
Additional District Judge,
Namakkal.

Copy To
The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.C.Paranthaman, Advocate, S.R.No. 29185

CMA No.3116 of 2019

RSV(CO)
GN(30/04/2021)