

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1844 of 2014

1. M.Ramani
2. M.Elumalai
3. M.Venkatesan
4. M.Sekar &
5. M. Santhi

...Appellants

vs.

1. K.Jagannathan
2. National Insurance Co. Ltd.,
Chennai - 600 002.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.12.2005 made in MACT OP No.1338 of 2001, on the file of the Additional District Cum Sessions Judge (IV Fast Track Court) Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.R.Kalaiarasan

For Respondents : Mr.D.Bhaskaran for R2
R1- Exparte

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the appellants / claimants seeking enhancement of compensation under the impugned award dated 30.12.2005 passed by the Motor Accidents Claims Tribunal (Additional District Cum Sessions Judge, IV Fast Track Court), Chennai in M.C.O.P. No.1338 of 2001.

2. A person by name, M.Pichaiammal died on 11.01.2001 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The appellants / claimants are the legal heirs of the deceased M.Pichaiammal. They preferred a claim before the Motor Accident Claims Tribunal (Additional District Cum Sessions Judge, IV Fast Track Court) at Chennai in M.C.O.P. No.1338 of 2001 seeking compensation for the death of M.Pichaiammal.

3. The Motor Accidents Claims Tribunal (Additional District Cum Sessions Judge, IV Fast Track Court), Chennai under the impugned award directed the respondents to pay the appellants / claimants a compensation of Rs.1,50,000/- together with interests and costs, as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	1,20,000
Loss of love and affection	25,000
Funeral expenses	5,000
Total	1,50,000

4. The appellants /claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking for enhancement.

5. Heard Mr.R.Kalaiarasan, learned counsel for the appellants, Mr.D.Bhaskaran, learned counsel for the second respondent. The first respondent remained ex-parte both before the Tribunal as well as before this Court.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Before the Tribunal, the appellants / claimants have filed five documents which were marked as Exs.P1 to P5 and one witness was examined on their side viz., M.Elumalai, the son of the deceased as PW1. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

8. In the claim petition, the appellants / claimants have pleaded that the deceased Pichaiammal was aged 49 years, doing Embroidery work and was earning Rs.100/- per day. Since, no documentary evidence was produced by the appellants / claimants, the Tribunal has fixed the monthly income of the deceased on notional basis and accordingly fixed the same at Rs.1,500/-. The accident happened in the year 2001. Though the appellants / claimants are children of the deceased Pichaiammal, they are all adults and married and therefore, they cannot be considered to be dependants without any supporting evidence. No sufficient oral and documentary evidence has also been produced by the appellants / claimants to prove that they were all dependants of the deceased Pichaiammal. However, the

Tribunal ought to have considered the services rendered by the deceased to her family, who are the appellants / claimants before fixing the notional monthly income. This Court is of the considered view that the notional monthly income of the deceased will have to be enhanced to Rs.2,000/-, considering the aforementioned factor. Accordingly, the notional monthly income is enhanced by this Court from Rs.1,500/- to Rs.2,000/-. As per the Post Mortem certificate (Ex.P2), the deceased was aged 50 years. However, in the absence of any documentary evidence and considering the fact that the appellants/ claimants are all adults and married persons, the assessment made by the Tribunal that the deceased was aged 50 years cannot be considered to be correct. The appellants / claimants have also not produced any documentary evidence before the Tribunal to prove their respective ages. This Court after giving due consideration to the aforementioned factors, assesses the age of the deceased to be definitely above 50 years. The Tribunal has adopted 10 multiplier for the purpose of calculating the loss of dependency, which has to be necessarily modified to 11, since the deceased was aged above 50 years. Accordingly, the correct multiplier to be adopted for the purpose of calculating the loss of dependency is 11 instead of 10, fixed by the Tribunal.

9. Insofar as the deduction made by the Tribunal towards personal expenses of the deceased is concerned, the same is confirmed by this Court, since the claimants / appellants are all adults and cannot be considered to be dependants of the deceased. Therefore, the loss of dependency is enhanced from Rs.1,20,000/- to Rs.1,76,000, by this Court, as detailed hereunder :

$$\begin{aligned} \text{Rs.2,000/-} - 1/3 \times 12 \times 11 &= \text{Rs.1,75,956/-} \\ &\text{Rounded off to Rs.1,76,000/-} \end{aligned}$$

10. Insofar as the conventional heads of compensation awarded by the Tribunal towards love and affection and funeral expenses are concerned, the same is a just compensation and confirmed by this Court as the accident is of the year 2001.

11. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency * # 1,500/- Less 1/3 x 12 x 10 = # 2,000/- Less 1/3 x 12 x 11 = Rs.1,75,956/-, Rounded off to Rs.1,76,000/-	1,20,000 *	1,76,000 #
Loss of love and affection	25,000	25,000
Funeral expenses	5,000	5,000
Total	1,50,000	2,06,000

12. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.1,50,000/- to Rs.2,06,000/- as indicated above. No costs.

13. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.1338 of 2001, on the file of the Additional District Cum Sessions Judge (IV Fast Track Court) Motor Accident Claims Tribunal, Chennai. within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank accounts of the appellants /claimants as per the same ratio of apportionment made by the Tribunal through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellants/claimants before receiving the copy of this Judgment.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

vsi2

To

1.The Additional District cum Sessions Judge,
(IV Fast Track Court),
Motor Accident Claims Tribunal,
Chennai.

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

+1 CC to Mr.N.M. Muthurajan, Advocate sr 31191.

C.M.A.No.1844 of 2014

SSV(CO)
SP(23/04/2021)