

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4100 of 2019

1.Maharasi
W/o.Late Balakrishnan
2.Minor Arthi
D/o.Late Balakrishnan
(minor is represented by next
friend and guardian mother
first appellant Maharasi) ... Appellants/Petitioners

Vs.

1.Samynathan
S/o.Viswanathan
2.United India Insurance Company Ltd.,
Branch Office 5-B/11, State Bank
of India upstairs, Salem Main Road,
Rasipuram Post and Taluk,
Namakkal District. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2018 passed in M.C.O.P.No.125 of 2016 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Rasipuram.

For Appellants : Mr.C.Thangaraju

For Respondents : Mr.C.Paranthaman [R2]
R1-Not ready in notice

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

[Heard through Video Conference]

Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its judgment dated 18.04.2018 passed

in M.C.O.P.No.125 of 2016 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Rasipuram, appellants/claimants have filed the present appeal.

2. The brief facts of the case is as follows:

Appellants/claimants are wife and minor daughter of the deceased Balakrishnan. On 09.11.2015 at about 02.30 p.m., while the deceased was standing on the road Kovai to Kaalapatti near Chitra Police signal, a two-wheeler bearing Registration No.TN-38-BV-8385 came in a rash and negligent manner and dashed the deceased, as a result of which the deceased sustained greivous injuries. Immediately, the deceased was taken to Government Hospital and after administering first aid treatment, the deceased was shifted to a private hospital. Despite surgery and treatment, the deceased died on 22.11.2015. First respondent is the owner of the two-wheeler and second respondent is the insurer thereof. Appellants/claimants filed a claim petition seeking compensation in a sum of Rs.30,00,000/-. The second respondent insurance company has filed a detailed counter resisting the claim made by appellants/claimants.

3. To prove the claim, on the side of appellants/claimants, 2 witnesses were examined and 14 documents were marked. On the side of second respondent insurance company, one witness was examined and 2 documents were marked. On appreciation of materials, the Tribunal found that the accident had occurred due to the rash and negligent driving of the two-wheeler and held that the second respondent is liable to pay compensation indemnifying the first respondent. The tribunal awarded compensation in a sum of Rs.13,12,880/-. The break-up is as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(6500 + 25% - 1/3)*12*14]	8,40,000/-
2.	Medical expenses	4,07,880/-
3.	Loss of consortium	40,000/-
4.	Loss of funeral expenses	15,000/-
5.	Loss of love and affection	10,000/-
	Total	13,12,880/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of deposit.

4. Heard learned counsel for appellants/claimants and learned counsel for second respondent insurance company. Perused

the materials on record.

5. Learned counsel for appellants/claimants submits that though it is the case of appellants/claimants, before the tribunal, that the deceased was a driver by avocation and was earning a sum of Rs.18,000/- p.m., the Tribunal has fixed only a sum of Rs.6,000/- as the monthly income of the deceased, which has resulted in awarding an inadequate amount as compensation. Submitting as above, learned counsel prays this Court to fix the monthly income of deceased at Rs.15,000/- and thereby enhance the compensation.

6. Per contra, learned counsel appearing for second respondent insurance company submits that no document was marked before the Tribunal to prove that the deceased was earning a sum of Rs.18,000/- p.m. In the absence of any proof, fixing of Rs.6,000/- towards monthly income of the deceased cannot be found fault with. Submitting as above, learned counsel prays for dismissal of the appeal.

7. This Court has considered the rival submissions. Since only the quantum of compensation is challenged, this Court is not dealing with the aspect 'rash and negligence'.

8. It is not disputed that the deceased was a driver. Considering the fact that the accident took place in the year 2015 and the cost of living that was prevailing during such period as also the deceased's avocation, this Court is of the view that it would be appropriate to fix a sum of Rs.12,000/- as the monthly income of the deceased to arrive at a just and proper compensation under the head loss of dependency. Accordingly, the monthly income of the deceased is fixed at Rs.12,000/-. As the deceased was aged 41 at the time of accident, 25% has to be added towards future prospects and if it is so added, the monthly income works out to Rs.15,000/- (12,000+3,000). As the number of dependents are 2, 1/3 of the income has to be deducted towards personal expenses of the deceased and if it is so deducted, the total monthly income works out to Rs.10,000/- (15,000 - 5,000). The annual income would be Rs.1,20,000/- (10,000*12). The multiplier to be applied in this case is '14' and if it is so applied, the loss of dependency works out to Rs.16,80,000/-.

9. As the minor daughter of the deceased has lost her father at her tender age, a sum of Rs.50,000/- is awarded towards love and affection. This Court finds that no sum has been awarded towards loss of estate and hence, a sum of Rs.15,000/- is awarded under such head. In all other heads, the amount awarded by the tribunal is hereby confirmed.

10. Accordingly, the modified compensation payable would be:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(12000 + 25% - 1/3)*12*14]	16,80,000/-
2.	Medical expenses	4,07,880/-
3.	Loss of love and affection	50,000/-
4.	Loss of consortium	40,000/-
5.	Loss of funeral expenses	15,000/-
6.	Loss of estate	15,000/-
	Total	22,07,880/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.13,12,880/- awarded by the Tribunal is hereby enhanced to Rs.22,07,880/- [Rupees Twenty Two Lakhs Seven Thousand Eight Hundred and Eighty only]. Out of the award amount, first appellant/wife of deceased is entitled to a sum of Rs.12,07,880/- and second appellant/minor daughter of deceased is entitled to sum of Rs.10,00,000/-. Second respondent insurance company is directed to deposit the enhanced compensation of Rs.22,07,880/- together with interest at 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of this judgment. On such deposit, first appellant/wife of the deceased is entitled to withdraw her share on due application. The share of second appellant/minor daughter shall be deposited in fixed deposit in any nationalised bank, till she attains majority and first appellant, being her mother and natural guardian, is entitled to withdraw interest once in three months towards taking care of the minor daughter. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gm

To

The Motor Accident Claims Tribunal,
Subordinate Judge,
Rasipuram.

CC: The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.C.Thangaraju, Advocate, S.R.No.28565
+1cc to Mr.C.Paranthaman, Advocate, S.R.No.28288

C.M.A.No.4100 of 2019

GJ (CO)
CB (08/07/2021)



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