

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

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

C.M.A.No.3855 of 2019

1.E.Suseela  
W/o.Late M.Ellappan

2.G.Murugan  
F/o.Late M.Ellappan

3.M.Pachammai  
M/o.Late M.Ellappan

4.Minor E.Dhanalakshmi  
D/o.Late M.Ellappan

5.Minor E.Thirupathy  
S/o.Late M.Ellappan

6.Minor E.Arasu  
S/o.Late M.Ellappan

7.Minor E.Sakthivel  
S/o.Late M.Ellappan

8.Minor E.Logeshwari  
D/o.Late M.Ellappan

(minor appellants 4 to 8 represented  
by next friend and guardian mother  
Suseela, the 1st appellant herein) ... Appellants/Petitioners

Vs.

1.S.Natarajan  
S/o.Sengoda Gounder

2.The United India Insurance  
Company Ltd.,  
CB Hub, 1st Floor, 104-A,  
Peramanur High Road,  
Peramanur, Salem - 636 007.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor

Vehicles Act, 1988, against the judgment and decree dated 06.07.2018 passed in M.C.O.P.No.1085 of 2017 on the file of Motor Accident Claims Tribunal, II Additional District Judge, (FAC) Special District Judge, Salem.

For Appellants : Mr.C.Thangaraju  
For Respondents : Mr.S.Arunkumar [R2]

#### 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 06.07.2018 passed in M.C.O.P.No.1085 of 2017 on the file of Motor Accident Claims Tribunal, II Additional District Judge, Special District Judge, Salem, appellants/claimants have filed the present appeal.

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

Appellants/claimants are wife, parents and children of the deceased Ellappan. On 07.03.2017 at about 11.45 a.m., while the deceased was riding pillion in a two-wheeler bearing Registration No.TN-23-AU-8094 on the Omalur to Mettur main road near Kottai Mariamman Kovil bridge, a bus bearing registration No.TN-30-BE-1200, came in a rash and negligent manner and dashed against the two-wheeler, due to which the deceased and rider fell down and sustained grievous injuries. Immediately, both of them were taken to Government Hospital, Omalur. Despite treatment, they died on the same day. First respondent is the owner of the offending bus and the second respondent insurance company is the insurer thereof. Appellants/claimants filed a claim petition seeking compensation in a sum of Rs.40,00,000/-. The second respondent insurance company has filed a detailed counter resisting the claim made by appellants/claimants.

3. Since both appellants/claimants and legal heirs of the rider of the two-wheeler filed claim petitions, both petitions were taken together and disposed of by a common order. In both petitions, on the side of claimants, witnesses were examined and documents were marked. On the side of second respondent insurance company, one witness was examined but no document was marked.

4. On appreciation of materials, the Tribunal found that the accident had occurred due to the rash and negligent driving of the bus. Since the deceased did not wear helmet at the time of accident, the Tribunal has fixed 15% contributory negligence on the deceased and awarded compensation in a sum of Rs.10,55,700/-.

The break-up is as follows:

| Sl.No | Compensation awarded under the head     | Amount (in Rs.) |
|-------|-----------------------------------------|-----------------|
| 1.    | Loss of dependency<br>[6500*12*14]      | 10,92,000/-     |
| 2.    | Loss of love and affection<br>[10000*8] | 80,000/-        |
| 3.    | Loss of consortium                      | 40,000/-        |
| 4.    | Loss of funeral expenses                | 15,000/-        |
| 5.    | Loss of estate                          | 15,000/-        |
|       | Total                                   | 12,42,000/-     |
|       | (-) 15% contributory negligence         | 1,86,300/-      |
|       | Compensation payable                    | 10,55,700/-     |

The said sum was directed to be paid by second respondent insurance company, as insurer of the offending vehicle, together with interest at 7.5% p.a. from the date of petition till the date of deposit.

5. Heard learned counsel for appellants/claimants and learned counsel for second respondent insurance company. Perused the materials on record.

6. Learned counsel for appellants/claimants submits that it is the case of appellants/claimants before the Tribunal that the deceased was a coolie and was earning a sum of Rs.12,000/- p.m. However, the Tribunal has fixed only a sum of Rs.6,500/- as the monthly income of the deceased, which has resulted in awarding an inadequate compensation. Submitting as above, learned counsel prays this Court to fix the monthly income of deceased at Rs.12,000/- and thereby enhance the compensation.

7. 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.12,000/- p.m. In the absence of any proof, fixing of Rs.6,500/- towards monthly income of the deceased cannot be found fault with. Submitting as above, learned counsel prays for dismissal of the appeal.

8. 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'.

9. It is not disputed that the deceased was a coolie.

Considering the fact that the accident took place in the year 2017 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.10,000/- 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.10,000/-. 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.12,500/- (10,000+2,500). As the number of dependents are 8, 1/5 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/- (12,500 - 2,500). The annual income would be Rs.1,20,000/- (10000\*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/-.

10. As the children of the deceased have lost their father at their tender age and the parents of the deceased have lost their son, a sum of Rs.40,000/- each is awarded towards filial consortium to appellants 4 to 8/minor children of deceased i.e., Rs.2,80,000/-. Since filial consortium is awarded, the sum of Rs.80,000/- awarded under the head 'loss of love and affection' is set aside. The amount of Rs.15,000/- awarded towards funeral expenses is enhanced to Rs.50,000/-. Further, a sum of Rs.50,000/- is awarded towards transport expenses. In all other heads, the amount awarded by the tribunal is hereby confirmed. The contributory negligence of 15% fixed by the tribunal is hereby confirmed.

11. Accordingly, the modified compensation payable would be:

| S1. No. | Compensation awarded under the head               | Amount (in Rs.) |
|---------|---------------------------------------------------|-----------------|
| 1.      | Loss of dependency<br>[(10000 + 25% - 1/5)*12*14] | 16,80,000/-     |
| 2.      | Loss of filial consortium<br>[40000*7]            | 2,80,000/-      |
| 3.      | Loss of consortium                                | 40,000/-        |
| 4.      | Loss of funeral expenses                          | 50,000/-        |
| 5.      | Transport expenses                                | 50,000/-        |
| 6.      | Loss of estate                                    | 15,000/-        |
|         | Total                                             | 21,15,000/-     |
|         | (-) 15% contributory negligence                   | 3,17,250/-      |
|         | Compensation payable                              | 17,97,750/-     |
|         | Rounded off to                                    | 18,00,000/-     |

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.10,55,700/- awarded by the Tribunal is hereby enhanced to Rs.18,00,000/- [Rupees Eighteen Lakhs only]. Out of the award amount, first appellant/wife of deceased is entitled to a sum of Rs.6,00,000/-; appellants 2 and 3/parents of deceased are entitled to a sum of Rs.1,00,000/- each and appellants 4 to 8/minor children of deceased are entitled to sum of Rs.2,00,000/- each. Second respondent insurance company is directed to deposit the enhanced compensation of Rs.18,00,000/- 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, appellants 1 to 3/claimants are entitled to withdraw their respective shares on due application. The shares of appellants 4 to 8/minor children shall be deposited in fixed deposit in any nationalised bank, till they attain majority and first appellant, being their mother and natural guardian, is entitled to withdraw interest once in three months towards taking care of the minor children. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

gm

To

The II Additional District Judge,  
The Motor Accident Claims Tribunal,  
Special District Judge, Salem.

Copy To

The Section Officer,  
V.R. Section, High Court,  
Madras. (2 copies)

+2cc to Mr.C.Thangaraju, Advocate, S.R.No.27540  
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 27468

C.M.A.No.3855 of 2019

SSD (CO)  
GN (04/05/2021)