

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A. No.2729 of 2011

1. Subramani

2. Maliga

3. Balaji (Minor)

4. Baskar (Minor)

(3rd and 4th Minors are rep by
their Mother and Natural Guardian

2nd Appellant Maliga)

.. Appellants/Claimants

Vs.

1. A.Jayasankar

2. The New India Assurance Company Ltd.,
No. 514-515, Gandhi Road,
Kanchipuram.

3.K.Krishnamoorthy

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2010, made in M.C.O.P. No. 6 of 2002, on the file of the III Judge, Court of Small Causes, Chennai.

For Appellants : Mrs. N.M.Elumalai

For Respondents: Ms. A.Salomi

for Mr. C. Ramesh Babu -R2

Notice unserved - R1&R3

J U D G M E N T

The matter is heard through "Physical Hearing".

This Civil Miscellaneous Appeal has been filed by the claimants against the judgment and decree dated 24.09.2010,

made in M.C.O.P. No. 6 of 2002, on the file of the III Judge, Court of Small Causes, Chennai.

2. The appellants are claimants in M.C.O.P. No.6 of 2008, on the file of the M.C.O.P. No. 6 of 2002, on the file of the III Judge, Court of Small Causes, Chennai. have filed the claim petition before the tribunal, claiming a sum of Rs.5,00,000/- as compensation for the death of Vijayan in the accident that took place on 25.11.2001.

3. Brief facts of the case is that on 25.11.2001 at about 9 a.m when the deceased was travelling as a pillion rider in a Bajaj Motor Cycle bearing Reg.No. TN 23-S-5393 from Arakkonam to Kanchipuram at Poiepakam bus stop near defence quarters in a rash and negligent manner endangering to the public safety and hit against the deceased and thereby causing fatal injury and succumbed to the same. The accident had occurred only due to rash and negligent on the part of the driver of the 1st respondent's vehicle. Hence the claimants/appellants herein, being legal heirs of the deceased Vijayan have filed the claim petition, claiming a sum of Rs.5,00,000/-. The tribunal after considering the oral and documentary evidence, has fixed the liability on the driver of the 1st respondent's vehicle and directed to pay a sum of Rs.2,62,000/- as compensation by the 2nd respondent/Insurance Company being insurer of the offending vehicle. Being not satisfied with the said award passed by the tribunal, the claimants/appellants herein have preferred the present appeal for enhancement of compensation.

4. The learned counsel appearing for the appellants/claimants submitted that the tribunal has not considered the evidence of PW4/mother of the deceased with regard to the income of the deceased. She had deposed that at the time of accident, the deceased was earning Rs.200/- per day as Mason. The tribunal has wrongly fixed the monthly income at Rs.3000/- and by deducting the 50% towards personal and living expenses of the deceased has calculated the loss of income to the deceased. The learned counsel for the appellants further submitted that the tribunal erred in applying the multiplier 16 instead of 14 according to the age of the mother, who aged about 38 years at the time of the accident. Therefore, the compensation awarded by the tribunal under the head of pecuniary benefits at Rs,2,52,000/- and the sum awarded under other heads viz., Loss of love and affection and Funeral expenses are very meagre are required to be enhanced.

5. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the tribunal after considering the oral and documentary evidence, has rightly fixed the monthly income and adopted the multiplier by taking

the age of the mother. Therefore, nothing warrants to interfere on these aspects, but the learned counsel for the 2nd respondent has not made any objections for adding future prospects on the loss of income calculated by the tribunal.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

7. Before the Tribunal, the claimants/appellants examined four witnesses P.W.1 to PW4 and marked 10 documents as Exs.P1 to P10. The Respondents have not examined any witnesses and not marked any documents on their side.

8. From a perusal of the award passed by the tribunal, it is seen that the tribunal without considering Ex.P9/Postmortem Certificate, which clearly shows that the deceased was aged about 25 years, has fixed the approximate age of the mother by calculating the age mentioned in the legal heirs certificated/Ex.P8. This Court is of the opinion that when there is a clear document to prove the age of the deceased, the tribunal need not go for an alternative method for fixing the age of the mother. Therefore, this Court modifies the sum awarded by the tribunal for loss of income by taking the age of the deceased.

9. Regarding the monthly income fixed at Rs.3000/- by the tribunal, this Court confirms the said amount. Accordingly, by applying the principles laid down by the Hon'ble Supreme Court in Sarala Varma's Case, this Court modifies the compensation. Taking monthly income at Rs.3000/-, adopting multiplier 18 (as per the age of the deceased), adding 40% towards Future Prospects and deducting 50% towards 'Personal and living expenses' ($3000 \times 12 \times 18 + 40\% - 50\%$), this court modifies the compensation under head 'Loss of Income' at Rs.4,53,600/- from 2,52,000/-. It is seen that the tribunal has not awarded any amount under the head 'Loss of Estate', hence by considering the claimants who lost their son and brother, a sum of Rs.15,000/- is granted by this Court under the said head. As far as compensation granted by the tribunal under the heads viz., Loss of Love and Affection and Funeral Expenses, this Court is inclined to enhance some reasonable amount under the said heads. Accordingly, the compensation awarded by the tribunal is modified by this Court as follows;

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court
Loss of Income	2,52,000/-	4,53,600/-
Loss of Love and Affection	5,000/-	20,000/-
Loss of Estate	...	15,000/-
Funeral Expenses	5,000/-	10,000/-
Total	2,62,000/-	4,98,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.2,62,000/- is awarded by the tribunal is enhanced to Rs.4,98,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

11. The 2nd respondent/insurance company is directed to deposit the entire compensation amount modified by this Court along with interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the compensation as modified by this Court as per the apportionment fixed by the tribunal along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ak

To

1. The III Judge,
Court of Small Causes,
(Motor Accidents Claims Tribunal),
Chennai.

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

+1 Cc to Mr.N.M. Elumalai, Advocate sr 8357.
+1 CC to Mr.C. Ramesh Babu, Advocate sr 8394.

C.M.A. No.2729 of 2011

LN(CO)
SP(17/03/2021)



WEB COPY