

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA. No.2755 of 2011

- 1.Kala,
W/o Sundaramoorthy,
- 2.Minor Pusparaj,
S/o Sundaramoorthy,
- 3.Minor Murali,
S/o Sundaramoorthy,
- 4.Minor Tamilarasi,
D/o Sundaramoorthy,
- 5.Mariammal,
W/o Kuppan, Appellants

..vs..

- 1.M/s.Indo Asian Finance Ltd.,
Chellani Plaza, 36/1, Veerappan Street,
Madras - 600079.
(was set exparte in the Trail court)
- 2.The United India Insurance Corporation Ltd.,
Park Town Branch, N.S.C.Bose Road,
IIIrd Floor, Madras-600079.
(was set exparte in the Trail court)
- 3.M.Ravikumar,
Kumaran Bus Service,
A-8, Anna Nagar, Chingleput.
(was set exparte in the Trail court)
- 4.The United India Insurance Corporation Ltd.,
Chingleput. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.09.2006 made in M.C.O.P.No.649 of 1994, on the file of the Motor Accident Claims Tribunal, Additional Sub Judge, Chengalpattu.

For Appellants : Mr.N.M.Elumalai
For Respondent No.2 : Mrs.Ratna Tara - R2

J U D G M E N T

Dissatisfied with the judgment and decree, dated 02.09.2006, passed by the tribunal in awarding compensation of Rs.1,18,000/- along with interest at the rate of 9% per annum, the claimants are before this Court for enhancement of compensation.

2. It is the case of the Appellants/Claimants that on 18.06.1994 at about 11.30 a.m, the deceased-Sundaramoorthy was traveling as load man in the lorry bearing Reg. No. TN-04-B-1755 from Chithamur towards Maduranthagam. While the said lorry proceeding on the Thatchur Kottu Road, the driver of the lorry drove rashly and negligently and dashed against the bus bearing no. TN-21-Y-7899 which came in the opposite direction. As a result of which, the lorry capsized and the said Sundramoorthy and other two person travelled as load men in the said lorry sustained fatal injuries and died on the spot. The legal heirs of the deceased Sundaramoorthy, filed a claim petition before the tribunal, claiming compensation of Rs.3,50,000/- for the death of Sundramoorthy.

3. Before the Tribunal, witnesses P.W.1 to P.W.3 were examined and Exhibits P1 to P9 were marked on the side of the claimants whereas no documents were marked and no witness were examined on the side of the respondents. After analyzing both oral and documentary evidences, the Tribunal has awarded Rs.1,18,000/- as total compensation along with interest at the rate of 9% p.a from the date of petition till realization.

4. The main contention of the learned counsel appearing for the Appellants/Claimants is that the tribunal without considering the fact that the deceased as load man was earning Rs.5000/-, and fixed monthly income at Rs.1000/-, after deducting 1/3 of the income towards personal and living expenses, applying multiplier 16, has awarded compensation at Rs.96,000/- towards Loss of dependency to the family. According to the learned counsel for the appellants the said compensation is erroneous and require to be modified. Further the sum awarded under other heads are also very less, hence sough for enhancement of compensation.

5. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company objected for enhancement of compensation and justified the award passed by the tribunal is reasonable and fair and therefore does not warrant interference by this Court.

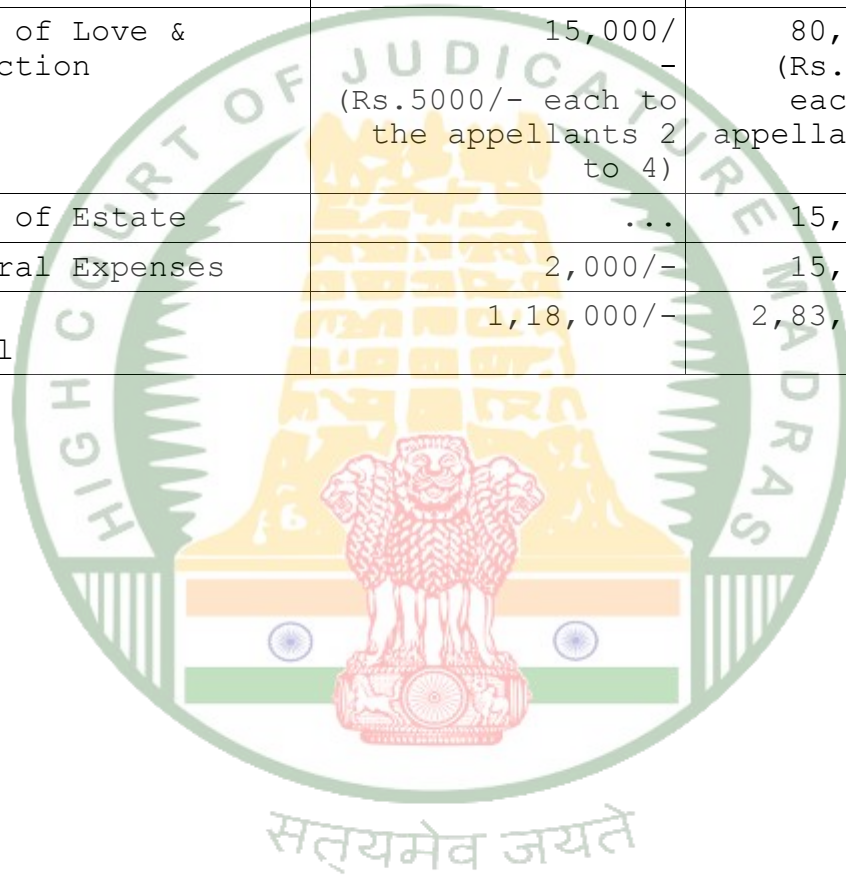
6. Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

7. From perusal of the award, it is seen that though the claimants/appellants herein have stated that the deceased was earning monthly income at Rs.5,000/-, the tribunal has fixed Rs.750/-. This Court by considering the avocation of the deceased and the year of the accident is inclined to enhance the monthly income. Accordingly, a sum of Rs.1000/- is fixed as monthly income for the deceased. Likewise, the deduction of 1/3 of income towards personal and living expenses and multiplier 16 adopted by the tribunal are also required to be modified as per the principles of law laid down by the Hon'ble Supreme Court. Considering the number of claimants, 1/4 of the income has to be deducted towards personal and living expenses, which comes to Rs.750. Further, according to the age of the deceased who was 28 years at the time of the accident, the correct multiplier to be adopted is 17. By applying the above principles, the loss of dependency is calculated to Rs.1,53,000/- ($750 \times 12 \times 17$). The tribunal has awarded a sum of Rs.5000/- towards loss of consortium to the wife of the deceased/1st appellant herein, the same is enhanced to Rs.20,000/-. The compensation of Rs.5000/- each for the claimants 2 to 4 under the head loss of love and affection is also enhanced to Rs.20,000/- each under the said head. The tribunal failed to grant compensation to the 5th appellant, who is the mother of the deceased under the head loss of love and affection, hence a sum of Rs.20,000/- is granted under the said to the 5th appellant. Likewise, a sum of Rs.15,000/- is also granted under the head 'Loss of Estate' and the compensation granted for Funeral expenses is enhanced to Rs.15,000/- from Rs.2000/-.

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8. Thus, the compensation modified by this Court under various head is as follows;

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Loss of Dependency	96,000/-	1,53,000
Loss of consortium to 1st appellant	5,000/-	20,000
Loss of Love & Affection	15,000/- (Rs.5000/- each to the appellants 2 to 4)	80,000 (Rs.20,000/- each to the appellants 2 to 5)
Loss of Estate	...	15,000
Funeral Expenses	2,000/-	15,000
Total	1,18,000/-	2,83,000/-



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9. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs. 1,18,000/- awarded by the tribunal is enhanced to Rs.2,83,000/-. The rate of interest for the enhanced compensation amount is fixed by this Court at 7.5% per annum from the date of petition till the date of deposit. This Court makes it clear that the revised rate of interest at 7.5% per annum is only for the enhanced compensation amount.

10. The 2nd respondent is directed to deposit the entire compensation amount along with interest as modified by this Court, less the amount already deposited, 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 along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The apportionment shall be as fixed by the tribunal. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Chengalpattu.

2.The Section Officer, V.R.Section,
Madras High Court, Chennai-104.

+1 cc to Mr.N.M.Elumalai Advocate sr5986

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