



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.357 of 2012

1. V. Sumathi
  2. V.Naveenraj
  3. Ammaniammal
- Vs
1. V.Yesudas
  2. A.Jaganathan
  3. Cholamandalam MS General Insurance Co. Ltd.  
Dare House, 2<sup>nd</sup> floor, NSC Bose Road,  
Chennai 600 001.
  4. Reliance General Insurance Co. Ltd.  
408, III Floor, Perundurai Road,  
Erode 638 011.
- ... Appellants/ Claimants
- ... Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29.07.2011 passed in MCOP No.531 of 2009 by the Principal District Judge, Motor Accident Claims Tribunal, Erode.

For Appellants : Ms.R.Raja Sharma Gayathri  
For respondents : Notice unserved to R1  
Notice served to R2 to R4.

J U D G M E N T

Dissatisfied with the compensation awarded by the Tribunal, the claimants have filed the present appeal seeking enhancement of compensation.

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.10,00,000/- for the death of one Venkidusamy, husband of the first claimant, father of the second claimant and son of the third claimant, in a road accident that took place on 09.05.2009.

3. The brief case of the claimants is as follows: On



09.05.2009, the deceased Venkidusamy was riding a motorcycle bearing Registration No.36-W-0390 along Erode-Sathy Road and while nearing Kandasamyur, the first respondent driven a van bearing registration NO.TN-36-J-3030 rashly and negligently and dashed against the motorcycle, thereby the deceased sustained grievous injuries all over his body and the motorcycle was heavily damaged and he was taken to Erode Government Hospital, where from he was taken to KMCH hospital, Erode, however, he succumbed to the injuries on the same day. According to the claimants, the rash and negligent driving of the driver of the van was the cause of accident and since the second respondent/owner of the van, insured his vehicle with the third respondent, and at the time accident the motorcycle was insured with the fourth respondent, all of them are liable to pay compensation to the claimants.

4. The claim petition was resisted by the respondents 2 to 4 by filing their respective counter affidavit.

5. Before Tribunal, on the side of the claimants, the first claimant and one another witness were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P15 were marked. On the side of the respondents, one witness was examined as RW1 and Ex.R1 and Ex.R2 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.4,23,774/- as compensation to the claimants under various heads as extracted hereunder.

| Sl No | Heads                                       | Amount in Rs. |
|-------|---------------------------------------------|---------------|
| 1     | Loss of income (150-25= 125 x23=2875x12x10) | 3,45,000      |
| 2     | Loss of consortium to the first claimant    | 25,000        |
| 3     | Loss of love and affection                  | 20,000        |
| 4     | Funeral expenses                            | 5,000         |
| 5     | Transportation charges                      | 5,000         |
| 6     | Medical bills                               | 8,774         |
| 7     | Pain and sufferings                         | 15,000        |
|       | Total                                       | 4,23,774      |

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the appeal seeking enhancement.

7. Heard the learned counsel for the appellants/ claimants and I have perused the materials on record.



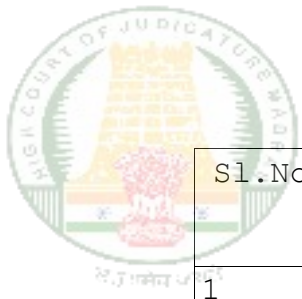
8. The learned counsel appearing for the appellants/claimants submitted that the Tribunal has awarded a meagre amount of Rs.4,23,774/- whereas, the claim amount is Rs.10,00,000. He also submitted that the Tribunal has adopted the multiplier of 10, considering the age of the mother of the deceased and not adopted proper multiplier by taking into account the age of the deceased, by following the decision of the Honourable Supreme Court. He also submitted that while calculating monthly income, the Tribunal has taken only 23 days, without considering the fact that an agriculturist has no holidays and hence he prayed for enhancement of compensation.

9. Notice served to the respondents R2 to R4, however none appeared on behalf of him. This appeal is of the year 2012. Hence, this case is taken up for final disposal.

10. Now the point for determination is whether the compensation awarded by the Tribunal has to be enhanced.

11. Point:

It is the contention of the claimants that the deceased was an agriculturist and to prove the same, sale deeds of the land Ex.P11 to Ex.P14 and the kist receipt Ex.P15 were marked. According to the claimants, the deceased was earning a sum of Rs.10,000/- per month by doing agriculture work and vending milk. However, no document was produced for such milk vending. Therefore, after deducting personal expenses from the income, the Tribunal has rightly fixed the monthly income of the deceased as Rs.2,875/-. The deceased was aged 52 years and therefore, proper multiplier to be adopted in the instant case is ' 11 ', as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. But the Tribunal has wrongly adopted multiplier '10' by taking into account the age of the mother of the deceased. Thus, loss of dependency is calculated as  $2,875 \times 12 \times 11 = 3,79,500/-$ . As far as the other heads are concerned, the Tribunal has rightly awarded a sum of Rs.25,000/- towards "Loss of consortium" to the first claimant and Rs.20,000/- towards "Loss of love and affection" and Rs.5,000/- each towards "Funeral expenses" and "Transportation charges". The Tribunal has awarded a sum of Rs.15,000/- towards "Pain and sufferings", which would not arise. However, no amount was awarded towards "Loss of estate". and hence, Rs.15,000/- is awarded for the above said head. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.



WEB COPY

| Sl.No | Heads                                   | Compensation<br>Awarded by the<br>Tribunal | Compensation<br>enhanced/ Awarded<br>by this court |
|-------|-----------------------------------------|--------------------------------------------|----------------------------------------------------|
| 1     | Loss of income                          | 3,45,000                                   | 3,79,500                                           |
| 2     | Loss of consortium<br>to first claimant | 25,000                                     | 25,000                                             |
| 3     | Loss of love and<br>affection           | 20,000                                     | 20,000                                             |
| 4     | Funeral expenses                        | 5,000                                      | 5,000                                              |
| 5     | Transportation<br>charges               | 5,000                                      | 5,000                                              |
| 6     | Medical bills                           | 8,774                                      | 8,774                                              |
| 7     | Pain and sufferings                     | 15,000                                     | -                                                  |
| 8     | Loss of estate                          | -                                          | 15,000                                             |
| 9     | Total                                   | 4,23,774                                   | 4,58,274                                           |

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.4,23,774/- to Rs.4,58,274/-. No costs.

(ii) The third respondent/insurance company is directed to deposit the revised compensation of Rs.4,58,274/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Mst



To

1. The Principal District Judge,  
Motor Accident Claims Tribunal,  
Erode.

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

+lcc to Mr.K.Goviganesan, Advocate, S.R.No.17221

CMA. No.357 of 2012

LN(CO)  
GN(12/10/2021)