



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA. No.3733 of 2013

Vijakumari Bellie

... Appellant/Petitioner

..VS..

1.A.Lakshmana Swamy,

2.S.Ponnan,

3.M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai.

4.Manojkumar,

5.IFFCO Tokio General Insurance Co. Ltd.,
Kalpana Road,
Udumalpet.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.08.2010 made in M.C.O.P.No.10 of 2010, on the file of the Motor Accidents Claims Tribunal, District Judge, Udthagamandalam.

For Appellants	: Mr.T.Thiyagarajan
For Respondent No.3	: Mr.E.Rajadurai for Mr.N.Vijaya Raghavan
For Respondent No.4 & 5	: Notice unserved in CMA S.R
For Respondent No.2	: Notice D/w
For Respondent No.1	: No Appearance

J U D G M E N T

Dissatisfied with the judgment and decree, dated 04.08.2010, passed by the tribunal awarding compensation of Rs.5,70,000/- along with interest at the rate of 7.5% per annum, the claimant is before this Court for enhancement of compensation.



2. It is represented by the learned counsel appearing for the appellant that the owner of the vehicle/2nd respondent was set exparte and no claim was made as against the owner of the vehicle. In view of the submissions made by the learned counsel appearing for the appellant, notice to the owner of the vehicle/2nd respondent is dispensed with.

3. It is the case of the claimant/appellant herein that on 21.11.2008 at about 7.45 p.m, the deceased-appellant's son B.Sathyamoorthy was traveling from coimbatore to Coonoor in his motorcycle bearing no. TN-41-V-4520, near Kallar Railway Junction on Ooty to Mettupalayam Road, a Lorry bearing no. TN-43-B-8058 heading towards Mettupalayam, driven by the 1st Respondent in a rash and negligent manner at high speed dashed against the deceased and caused grievous head injury and died on spot. The deceased was immediately taken to the Mettupalayam Govt. Hospital and the duty doctor has confirmed the death of the deceased. The claimant/mother of the deceased filed a claim petitioner before the tribunal, claiming compensation of Rs.62,82,000/- for the death of her son B.Sathitamoorthy.

4. The Tribunal, based on the oral and documentary evidence has awarded a sum of Rs.5,70,000/- as total compensation under various heads along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

5. The main contention of the learned counsel appearing for the appellant/Claimant is that the deceased was an engineer cum trainee drawing a salary of Rs.6,000/- per month and after the training period the deceased would have received higher salary on completion of the training period and the tribunal has not taken into consideration the prospects of higher salary while awarding compensation. Furthermore, the tribunal failed to note that, Ex.P4, the dependency certificate reflects the age of the petitioner as 50 and hence the tribunal ought to have adopted the multiplier for the age group between 46 to 50 years. The tribunal without considering the above vital aspects, has awarded a sum of Rs. 5,28,000/- under the head 'loss of dependency'. The learned counsel further contended that the compensation awarded under other heads also very less and required enhancement.

6. On the other hand, the learned counsel appearing for the 3rd respondent/Insurance Company submitted that the tribunal only after considering the documents and evidences placed on either



side, has fixed the monthly income of the deceased at Rs.6000/- and calculated the loss of dependency by adopting correct multiplier by taking the age of the claimant. Likewise, the compensation awarded under other heads are also proper and reasonable. Therefore, the compensation awarded by the tribunal does not require any interference by this Court.

7. Heard the learned counsel appearing for the appellant/claimant and the learned counsel appearing for the 3rd respondent/ Insurance Company and perused the materials available on record.

8. The main contention of the appellant is that the tribunal has not awarded adequate amount under the head loss of life. It is seen from the award, the tribunal as per Ex.P5/Salary Certificate, fixed the monthly income of the deceased at Rs.6000/- . The salary fixed by the tribunal is correct and does not require any modification by this Court. Having regard to the multiplier and addition of future prospects and deduction towards personal and living expenses in respect of bachelor, it is seen that the tribunal has taken the age of the claimant/mother of the deceased for adopting the multiplier. Accordingly, by considering the age of mother, whose age was 50 years at the time of the accident, the tribunal adopted multiplier 11 and arrived at a sum of Rs.5,28,000/- for the loss of life for the deceased. While calculating the said compensation, the tribunal has not added future prospects. Therefore, this Court, by following the principles laid down by the Hon'ble Supreme Court in Sarala Verma's Case, inclined to modify the compensation.

9. As per the age of the deceased, who was aged about 22 years at the time of the accident, the correct multiplier to be adopted is 18. Likewise, considering the undisputed fact that the deceased was a bachelor at the time of the accident, 40% of total income to be added towards future prospects and 50% has to be deducted towards personal and living expenses. Applying these principles the sum under the head loss of life awarded by the tribunal is modified as Rs.9,07,200/- ($6000 \times \frac{1}{2} \times 12 \times 18 + 40\%$). The compensation awarded by the tribunal under other head are also very meagre, hence, considering the fact that appellant/claimant had already lost her husband and due to the accident, she lost her only son, it would be appropriate to award just and fair compensation. Accordingly, this Court modifies the compensation under various heads as follows;



WEB COPY

Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
1	Loss of Life	5,28,000/-	9,07,200
2	Love & Affection	30,000/-	40,000
3	Transportation and Damage to clothes & articles	3,000/-	...
4	Loss of estate	2,000/-	15,000
5	Funeral Expenses	7,000/-	10,000
6	Transport expenses	..	5000
	Total	5,70,000/-	9,77,200/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed, by enhancing the total amount of compensation from Rs.5,70,000/- to Rs.9,77,200/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

11. The 3rd respondent/Insurance Company shall deposit the entire enhanced compensation amount, as modified by this Court, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit, the appellant /claimant is permitted to withdraw the compensation as modified by this Court along interest, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, for the enhanced amount of compensation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (CCAA)

//True Copy//

Sub Assistant Registrar

ak



To

1. The District Judge,
Motor Accident claims Tribunal,
The Nilgiris at Udhagamandalam

2. The Section Officer,
VR Section,
High Court, Madras.

+1CC to Mr.T.Thiyagarajan, Advocate, Sr.No.6951

CMA.No.3733 of 2013
and MP.No. 2 of 2014

RSI (CO)
K.RK. (16.11.2021)