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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.965 of 2013

1. Kannammal
2. Tamilselvi
3. Pandian
4. Chitra
5. Muruganantham
6. Kumutha
7. Sivakumar

... Appellants/ Claimants

Vs.

1. R.Dhanapal
2. The national Insurance Co. Ltd.,
First floor 638, Cuddalore Main Road,
Attur Taluk, Salem District.

... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 27.04.2007 passed in M.C.O.P.No.726 of 2006 by the Principal District Judge, Motor Accident Claims Tribunal, Namakkal.

For Appellants : Mr.N. Manokaran

For II respondent : Mrs. N.B. Surekha

J U D G M E N T

Not satisfied with the quantum of compensation, the claimants are before this court to enhance the compensation awarded by the Tribunal.

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.7,00,000/- for the death of one Veeramuthu, wife of the first claimant and father of the



claimants 2 to 7, in a road accident that took place on 30.06.2006.

3. The brief case of the claimants is as follows: On 30.06.2006, at about 2.15 p.m., the deceased Veeramuthu was riding a motorcycle bearing registration No.TN-27-R-8790 along Salem-Attur main Road and one Krishnasamy was travelling as a pillion rider and while nearing Narasingapuram in front of Subhulakshmi Lorry Work shop, a lorry bearing registration No.TN-28-B-9126 coming from opposite side hit the motorcycle, thereby he sustained multiple injuries all over his body and the pillion rider also sustained grievous injuries and immediately they were admitted to Government Hospital, Attur, where from, referred to Palaniyandi Hospital, Salem and there, the rider namely Veeramuthu and the pillion rider namely Krishnasamy died. According to the claimants, the rash and negligent driving of the driver of the lorry was the cause of accident and since the first respondent/ owner of the vehicle insured his lorry with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the insurance company by filing counter affidavit.

5. Before Tribunal, two claim petitions were filed in MCOP No.723 of 2006 and MCOP No.726 of 2006 for the death of Krishnasamy and Veeramuthu respectively and in both the cases, three witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P11 were marked. On the side of the respondents, no oral and documentary evidence was adduced. In so far as the case in hand namely MCOP No.726 of 2006 is concerned, the first claimant was examined as PW2.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.70,500/- to the claimant. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency (1250-400 x12x5	51,000
2	Loss of expectation to life	10,000
3	Funeral expenses	2,000
4	Loss of Estate	2,500
5	Loss of Consortium	5,000
	Total	70,500



Not satisfied with the compensation awarded by the Tribunal, the claimants have filed the present appeal to enhance the compensation.

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7. Heard the learned counsel for the appellant and the learned counsel for the insurance company and I have perused the materials on record.

8. The learned counsel appearing for the appellants submitted that the deceased was a retired person, who had worked as a Live Stock Senior Supervisor in Salem Milk Dairy and was earning a sum of Rs.10,000/- per month, however, without appreciating the oral and documentary evidence, the Tribunal has fixed very meagre amount of Rs.1,250/- as monthly income. He also submitted that the compensation awarded under the other heads also very meagre and hence, prayed for enhancement of compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted that after analysing the evidence on record, the Tribunal has rightly fixed the income of the deceased and the award passed by the Tribunal is just and reasonable and the same does not warrant any interference by this court.

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

11. Point

The learned counsel appearing for the appellants submitted that an appeal in CMA No.2836 of 2010 was filed by the claimants against MCOP No.723 of 2006 for the death of one Krishnasamy, who died in the same road accident that took place on 30.06.2006. He further submitted that the above said Krishnasamy also a retired Live Stock Senior Supervisor in the Salem Dairy Unit and in the above appeal, this court has fixed the monthly income of the deceased Krishnasamy as Rs.3,000/- and hence, in this case also, monthly income of the deceased Veeramuthy may be fixed at Rs.3,000/-. He also produced the order copy of the CMA No2836 of 2010 dated 30.11.2011.

12. Taking note of the above said Order, this court safely fixed the monthly income of the deceased Veeramuthu at Rs.3,000/-. However, it is contended by the learned counsel for the insurance company that in the above said order, no amount was deducted towards personal expenses. Therefore, 1/3 of income should be deducted towards personal expenses. The age of the deceased was 62 years on the date of accident and



therefore, proper multiplier to be adopted in the instant case is '5', as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus, loss of dependency is calculated as $3000 - 1000 \times 12 \times 5 = 1,20,000/-$. Accordingly a sum of Rs.1,20,000/- is awarded towards "Loss of dependency". Apart from this amount, the first claimant is entitled to Rs.20,000/- towards "Loss of consortium" and the other claimants are entitled to Rs.60,000/- towards "Love and affection". Further, the compensation awarded under the head "Funeral Expenses" and "Loss of Estate" by the Tribunal are enhanced to Rs.15,000/- each. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of dependency	51,000 (1250-400 $\times 12 \times 5$)	1,20,000 (3000- $1000 \times 12 \times 5$)
2	Loss of expectation to life	10,000	-
3	Funeral expenses	2,000	15,000
4	Loss of Estate	2,500	15,000
5	Loss of Consortium	5,000	20,000
6	Loss of love and affection for children	-	60,000
	Total	70,500	2,30,000

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

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.70,500/- to Rs.2,30,000/-. No costs.

(ii) The insurance company is directed to deposit the revised compensation of Rs.2,30,000/- 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-V)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Principal District Court,
Motor Accident Claims Tribunal,
Namakkal.

+1cc to Mr.N.Manokaran , Advocate, S.R.No.11030

+1cc to M/s.N.B.Surekha , Advocate, S.R.No.10975

CMA. No.965 of 2013

NMI (CO)
SU(13/09/2021)