

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1280 of 2021

(Through Video Conferencing)

1.N.Sabira Begam
2.S.Beer Mohammed

...Appellants/Petitioner

vs.

1.N.Palani (Died)

2.The United India Insurance Co., Ltd.,
13-A, Nethaji Road,
Manjakuppam, Cuddalore.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.02.2019 made in M.C.O.P.No.3407 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Judge) Cuddalore.

For Appellant : M/s.Ramya V.Rao
For 2nd Respondent : Mr.J.Chandran

J U D G M E N T

The appellants are the claimants and they are aggrieved by the impugned Judgment and Decree dated 19.02.2019 passed by the learned Principal (Principal District Judge) Cuddalore in M.C.O.P.No.3407 of 2017 .

2. By the impugned Judgment and decree, the Tribunal has awarded a sum of Rs11,45,000/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit to the appellants/claimants.

3. On 30.08.2014 at about 9.45 a.m., while the deceased Nasurudeen was standing in the left side of the Bhuvangiri-Cuddalore road at Kottupulichavadi, when a bus bearing Reg.No.PY.01.BZ.7007 allegedly driven in a rash and negligent manner and knocked the deceased Nasurudeen, as a result of which, the deceased Nasurudeen sustained injuries and later died

in the hospital. Therefore, the appellants filed the above claim petition in M.C.O.P No.3407 of 2014 for compensation.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the insured car and therefore directed the 2nd respondent / Insurance Company to pay a sum of Rs.11,45,000/- as compensation together with interest and cost from the date of the claim petition till the date of deposit to the appellants/claimants. The break up of the amount awarded by the Lower Court are summarised below:-

For loss of income - Rs.6,000/- x 12x 16x1/3	Rs.10,75,000/-
Loss of consortium	Rs. 40,000/-
Loss of Estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs.11,45,000/-

5. Not being satisfied with the amounts awarded by the Tribunal, the appellants have filed the present appeal for enhancement of compensation.

6. The learned counsel for the appellants submit that the notional income of the deceased fixed by the Tribunal was too low, as a result of which, the compensation awarded was also too low. It is submitted that in the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, a vegetable vendor's income was fixed as Rs.6,500/- per month. In this case, the deceased was a Fancy Jewellery and Ornament s maker and Seller and was earning a sum of Rs.20,000/- p.m. and therefore the Tribunal ought to have atleast considered the notional income of the deceased at Rs.12,500/- p.m. It was submitted that the Tribunal has not granted any amount towards loss of love and affection. The amounts awarded by the Tribunal towards loss of consortium is meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove the avocation and income of the deceased. In absence of any material evidence with regard to avocation and income, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased cannot be said to be meagre. Therefore, he prayed for dismissal of the appeal.

8. I have considered the arguments of the learned counsel for the appellants and the learned counsel for the second respondent-Insurance Company and also perused all the materials available on record.

9. The income of the deceased fixed by the Tribunal appears to be low. Considering the fact that the appellants/claimants have not produced any evidence to substantiate the same. In Syed Sadiq Vs. United India Insurance Co.Ltd., 2014 (1) TN MAC 459, the Hon'ble Supreme Court fixed the notional income of a vegetable vendor as Rs.6,500/- per month in 2008. In the present case, the accident is of the year 2014. Therefore, the monthly income fixed by the Tribunal is disproportionately low considering the change in living standards. Therefore, I am inclined to fix the notional income of the deceased as Rs.12,500/- per month for the purpose of awarding compensation. The Tribunal has not granted any amount towards loss of love and affection.

10. It is noticed that as per the decision of the Hon'ble Supreme Court reported in Magma General Insurance Company Ltd. vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 thus the amount awarded towards filial consortium also is to be added.

11. Therefore, the amount awarded by the Tribunal towards loss of dependency is increased. The Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium and Rs.15,000/- towards loss of estate. They are confirmed. The Tribunal has not awarded any amount towards loss of love and affection to the 2nd appellant. Therefore, a sum of Rs.40,000/- is awarded. The Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses . Same is therefore confirmed.

12. Therefore, the compensation awarded by the Tribunal is modified under the various heads as follows:

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Heads and Calculation	Re-quantified amount of compensation by this Court
Loss of dependency:- Monthly Income of the deceased : Rs.12,500/- Add: Future Prospectus at 40% (12,500x 40/100) : Rs. 5,000/- ----- : Rs.17,500.00 Less: Personal Expenses at 1/3 rd (17,500 x 1/3 rd) : Rs. 5,833.33 ----- : Rs.11,666.67- ----- Annual contribution to the family (11,666.67x12) : Rs1,40,000/- Age : 32 Multiplier-16(1,40,000 x16):Rs.22,40,000/-	Rs.22,40,000/-
Loss of consortium	Rs. 40,000/-
Loss of Love and affection (filial consortium)	Rs. 40,000/-
Loss of Estate	Rs. 15,000/-
Funeral and Transport expenses	Rs. 15,000/-
Total	Rs.23,50,000/-

13. The second respondent - Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.23,50,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of such deposit to the credit of M.C.O.P.No.3407 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Judge) Cuddalore, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation.

14. On such deposit, the first appellant is permitted to withdraw Rs.15,50,000 /- and the second appellant is permitted to withdraw Rs.8,00,000/- together with interest accrued thereon, less any amount already withdrawn, by filing suitable applications before the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost.

s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

kkd

To

1. The Motor Accident Claims Tribunal
(Principal District Judge) Cuddalore.

2. The Section Officer
VR Section
High Court, Madras 104.

+2 Ccs to Mr. A.N. Viswanatha Rao, Advocate sr 23718.

C.M.A.No.1280 of 2021

RP (CO)
SP (28/06/2021)



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