IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04-01-2021

Coram :

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Civil Miscellaneous Appeal No. 3100 of 2019

1. Rahamathunnisa
2. Minor. Dasthakheer
3. Minor. Raina Parveen
(Minors 2 and 3 are represented by their natural friend/mother Tmt. Rahamathunnisa)

4. Pathima
5. Minor. Pasululla @ Vagillah
6. Minor. Nasrin Banu
7. Minor. Rasheena Parveen
(Minors 5 to 7 are represented by their natural friend/mother Mrs. Pathima

8. Ramsiya
9. Minor. Raghman Bek
10. Minor. Dhaslim Banu @ Kayini Banu
11. Minor. Jamsheeth Ali
(Minors 9 to 11 are represented by their natural friend/mother Mrs. Ramsiya

12. Rasiya Sulthana
13. Ahamed Bek .. Appellants/Petitioners

Versus

1. The Managing Director
Puducherry Road Transport Corporation
No.4, Ayyanar Koil Street
Rajaji Nagar, Puducherry

2. The Divisional Manager
The Oriental Insurance Company Limited
HUB 3rd Party Claims
Vijayalakshmi Complex
First Floor, No.32/13
Phase No.2, Sathuvachari
Vellore .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.02.2018 and made in M.A.C.T.O.P. No. 1572 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai.

For Appellants : Ms. A. Subadra
For Respondents : Mr. N. Sampath for R2

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Tiruvannamalai in and by the award dated 08.02.2018, in MCOP No. 1572 of 2017, the present appeal is filed by the claimants.

2. The claimants 1, 4, 8 are the wives of the deceased Mustak Ali. The appellant Nos. 2, 3 are children born to the deceased Mustak Ali and the first claimant. The appellants 5, 6 and 7 are children born to the fourth appellant and the deceased Mustak Ali. The appellants 9, 10 and 11 are the children born to the eighth appellant and the deceased Mustak Ali. The appellant Nos. 12 and 13 are the mother and father of the deceased respectively.

3. The case of the claimants is that on 15.02.2016 at about 6.00 pm, the deceased Mustak Ali was driving the auto bearing TN 25 AP 5740 along with his two minor children namely Minor. Dasneem Banu @ Kayini Banu and Minor. Pasululla @ Vagila on the extreme left side of Vetavallam to Tiruvannamalai Main Road. When the autorickshaw driven by the deceased was running opposite to Pasungarai Bus Stop, near Venkateswara Shop, the Government bus bearing Registration No. PY 01 BV 5826 came from the opposite direction in a rash and negligent manner and dashed against the auto. In the impact, the front side of the autorickshaw was completely damaged and the two minor children were thrown out from the auto. At the same time, the deceased Musthak Ali sustained fatal injuries and died on the spot. It is the further case of the claimants that the deceased was earning income by owning auto rickshaw. That apart, it is claimed that the deceased was also running grocery shop and earning a sum of Rs.40,000/- per month. Therefore, the claimants claimed a sum of Rs.75 lakhs as compensation in the claim petition.

4. The claim petition was resisted by the second respondent/Insurance Company by filing a detailed counter. The second respondent denied the material averments contained in the claim petition and prayed for dismissal of the same.

5. In order to prove the claim, on the side of the claimants, the wives of the deceased namely appellant Nos. 1, 4 and 8 examined themselves as PWs 1 to 3 and one Elumalai was examined as PW4 and Exs. P1 to P5 were marked. Though the second respondent/Insurance Company contested the claim petition, it has neither examined any witness nor marked any document before the Tribunal. The Tribunal, after analysing

the oral and documentary evidence has come to the conclusion that the accident was as a result of rash and negligence driving of the bus bearing Registration No. PY 01 BV 5826 and thus passed an award for a sum of Rs.21,12,000/-. The break-up detail of the award amount passed by the Tribunal is tabulated hereunder:-

S.No.	Head under which awarded	Amount
1.	Loss of income	Rs.15,12,000.00
2.	Loss of consortiu8m to the claimants 1, 4 and 8 at the rate of Rs.40,000/- each	Rs. 1,20,000.00
3.	Loss of Estate	Rs. 15,000.00
4.	Funeral expenses	Rs. 15,000.00
5.	Loss of love and affection to Claimants 2, 3, 5, 6, 7, 9, 10 and 11 at the rate of Rs.50,000 each	Rs. 4,00,000.00
6.	Loss of lvoe and affection to the Claimants 12 and 13 at the rate of Rs.25,000/- each	Rs. 50,000.00
	Total	Rs.21,12,000.00

6. The compensation amount so determined by the Tribunal was directed to be paid by the second respondent/Insurance Company, with which the bus was insured.

7. As against the fastening of liability on the second respondent/Insurance Company, they have not filed any appeal. As mentioned above, the present appeal has been only filed by the claimants seeking enhancement of compensation awarded by the Tribunal.

8. The only grievance expressed by the counsel for the appellants is that while calculating the loss of income, the Tribunal had taken only a sum of Rs.7,500/- as monthly income of the deceased. In this regard, the learned counsel for the appellants invited the attention of the Court to the discussion made in the award and submitted that the Tribunal, by taking Rs.7,500/- as monthly income and adding 40% towards future prospects, arrived at Rs.8,400/- as gross loss of monthly income of the deceased. Thereafter, by applying multiplier '15' and deducting 1/5th amount towards personal expenses, awarded Rs.15,12,000/- towards loss of income of the deceased. According to the learned counsel for the appellant, the sum of Rs.7,500/- fixed by the Tribunal is extremely on the lower side, which has resulted in awarding inadequate compensation under the head of loss of income. Therefore, the learned counsel for the appellant would pray this Court to fix atleast Rs.20,000/- as monthly income of the deceased and to suitably modify the award passed by the Tribunal.

9. Countering the submissions of the learned counsel for the appellant, the learned counsel for the respondent submitted that though it was claimed that the deceased was eking his livelihood by running autorickshaw and also grocery store, absolutely, no documentary evidence was produced to prove the same. Under such circumstances, the sum of Rs.7,500/- fixed by the Tribunal towards monthly income cannot be said to be incorrect. In such circumstances, there is absolutely no need to enhance the compensation as prayed for by the appellants and prayed for dismissal of the appeal.

10. Keeping the submissions of the counsel for both sides, we have perused the materials placed on record. We find that in order to prove that the deceased was earning income by running/owning autorickshaw, the only document produced by the claimants is the copy of Motor Vehicle Inspector report. Except this document, no other document has been produced. At the same time, it has to be seen that the deceased cannot run a family consisting of three wives and eight children in the absence of a reasonable income. Further, the accident had taken place in the year 2016. Considering the cost of living prevailing during the year of accident, we are of the view that a sum of Rs.12,500/- shall be fixed as monthly income of the deceased. If so, a sum of Rs.12,500/- is fixed as monthly income and by adding 40% towards future prospectus, the gross loss of income shall be Rs.12,500 + 5000 (40%) = Rs.17,500/-. Considering the number of claimants, 1/5th amount deducted by the Tribunal is proper. If so deducted, the monthly loss of income of the deceased will be Rs.14,000/-. Thus, the annual loss of income of the deceased will be (Rs.14,000 X 12) Rs.1,68,000/-. The correct multiplier to be applied in this case, considering the age of the deceased, who was 38 years at the time of accident, is '15'. If so, the total loss of income shall be Rs.25,20,000/-, which will be the just and fair compensation to be awarded to the claimants towards loss of income. Accordingly, the sum of 15,12,000/- awarded by the Tribunal towards loss of income of the deceased is hereby enhanced to Rs.25,20,000/-. Except this modification, the amount awarded by the Tribunal under other heads, in our opinion, are fair and reasonable and therefore, they do not require any interference by us.

11. In the result, the Civil Miscellaneous Appeal filed by the appellants is partly allowed, by modifying the judgment and decree dated 08.02.2018 made in M.A.C.T.O.P. No. 1572 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai as mentioned below:-

S.No.	Head under which awarded	Amount
1.	Loss of income	Rs.25,20,000.00
2.	Loss of consortiu8m to the claimants 1, 4 and 8 at the rate of Rs.40,000/- each	Rs. 1,20,000.00
3.	Loss of Estate	Rs. 15,000.00
4.	Funeral expenses	Rs. 15,000.00

5.	Loss of love and affection to Claimants 2, 3, 5, 6, 7, 9, 10 and 11 at the rate of Rs.50,000 each	Rs. 4,00,000.00
6.	Loss of lvoe and affection to the Claimants 12 and 13 at the rate of Rs.25,000/- each	Rs. 50,000.00
	Total	Rs.31,20,000.00

12. The second respondent/Insurance Company is directed to deposit the amount, which we have determined in this appeal, to the credit of M.A.C.T.O.P. No. 1572 of 2017, on the file of Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai, with accrued interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in The Oriental Insurance Company Limited, Kannur vs. Rajesh and 2 others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1, 4 and 8 shall be entitled to withdraw a sum of Rs.3,00,000/- each with accrued interest. The claimants 12 and 13/parents of the deceased shall withdraw a sum of Rs.1,50,000/- each. The balance amount of Rs.19,20,000/- is directed to deposited in a Nationalised Bank in the name of the respective minor children being Claimants 2, 3, 5, 6, 7, 9, 10 and 11 in equal proportion, with accrued interest. The interest thereof shall be withdrawn by the Claimants 1, 4 and 8 once in three months and to utilise the same for the welfare of the minor children. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Special Sub Judge (MCOP)
   Motor Accident Claims Tribunal,
   Tiruvannamalai.

+1cc to Mr.A. Subadra, Advocate SR.No.58

CMA No. 3100 of 2019

AP(CO)
GMY(01/11/2021)