



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No.3818 of 2019

1. S.Veeramani
 2. Minor S.Rothishya
 3. Minor S.Prathish
(Minor appellants 2 and 3 represented
by their mother/Guardian
S.Veeramani-first appellant)
 4. S.Pappathi
 5. P.Sampath ..Appellants/Petitioners
- Versus
1. Jesus Redeems Religious &
Charitable Trust
Nalumavadi,
Kurambur Post
Tiruchendur Taluk & District.
 2. United India Insurance Co. Ltd.,
No.63 C, Palayamkottai Road
Behind Government Hospital
Tiruchendur Post, Taluk & District. ..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.01.2009 made in M.C.O.P.No.283 of 2014 on the file of the Motor Accident Claims Tribunal/Sub Court, Rasipuram, Namakkal District.

For Appellants	:	Mr.Ma.P.Thangavel
For Respondent-1	:	No appearance
For Respondent-2	:	Mr.S.Arunkumar



JUDGMENT

(Judgment of the Court was delivered by S.KANNAMMAL, J.)
(Heard through video-conferencing)

This Civil Miscellaneous Appeal is filed seeking for enhancement of compensation granted by the Tribunal in the award dated 08.01.2009 made in M.C.O.P.No.283 of 2014 on the file of the Motor Accident Claims Tribunal/Sub Court, Rasipuram.

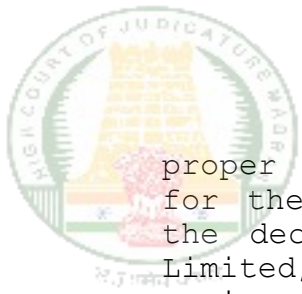
2. The appellants are claimants in M.C.O.P.No.283 of 2014 on the file of the Motor Accident Claims Tribunal/Sub Court, Rasipuram. The claimants are the wife, minor children and parents of the deceased, claiming a sum of Rs.25,00,000/- as compensation for the death of the deceased Sathishkannan in the accident that took place on 07.09.2014.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of Eicher van belonging to the first respondent and directed the second respondent/Insurance company to pay a sum of Rs.29,79,452/- as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal under various heads, appellants have come out with the present appeal seeking enhancement of compensation. In this regard, they filed a petition in CMP No.13395 of 2019 in CMA (SR) No.76372 of 2019 to amend the claim made in MCOP No.283 of 2014 on the file of the Motor Accident Claims Tribunal/Sub Court, Rasipuram, as Rs.55,00,000/- (Rupees Fifty Five Lakhs only) instead of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) claimed before the Tribunal and that petition was allowed by this Court on 01.07.2019 and accordingly, the claim was amended as Rs.55,00,000/-.

5. The learned counsel for the appellants contended that the Tribunal has not taken into account the gross income of the deceased, but calculated the compensation by taking the net salary of the deceased. It is also contended that towards future prospectus, as per the judgment of the Hon'ble Apex Court reported in 2017 ACJ 2700 / 2017(2)TNMAC 609 (SC) [National Insurance Company vs. Pranay Sethi], 50% is to be added, whereas the Tribunal has taken only 40%, which is not correct. The learned counsel further submitted that the compensation awarded under the head 'love and affection' is very meagre and unreasonable and that has to be enhanced.

6. Per contra, learned counsel for the second respondent/Insurance Company would concede that the compensation awarded under the head 'love and affection' is very meagre and



proper compensation is to be awarded. But the learned counsel for the second respondent/Insurance Company would contend that the deceased is not an employee under Indian Oil Corporation Limited, New Delhi, but he is doing 'Courier Service Job' in various branches of Indian Oil Corporation Limited, New Delhi, on 'contract basis' under a contractor, viz., M/s.OYNX Management Services Private Limited, which is a private concern. He would further submit that 40% future prospectus taken by the Tribunal cannot be interfered. It is his further contention that as per Ex.P3, wages for OT has been given, which may not be permanent and the salary of Rs.13,536/- taken by the Tribunal for calculating the compensation need no interference.

7. Heard both sides and perused the materials available on record.

8. At the time of accident, the deceased was aged 30 years and working in a private concern. The Tribunal, without considering the gross income of the deceased, has taken the net income of Rs.13,536/- as monthly income of the deceased. The monthly gross income of the deceased is Rs.15,029/-, which includes OT wages of Rs.3,791/-. It is the contention of the learned counsel for the second respondent/Insurance Company that OT wage is not permanent and therefore, the same has to be deducted from the monthly income. This Court cannot imagine that OT wage is not permanent, since in most of the private companies/concerns, all the employees are given OT duty and hence, the same is shown in wage slip of the deceased. Therefore, this Court is of the view that the gross income of the deceased at Rs.15,029/- (Rounded off at Rs.15,000/-) should be taken as monthly income of the deceased. The Tribunal has taken 40% for calculating future prospectus, which, in view of this Court is correct. Therefore, the total income of the deceased comes to Rs.42,84,000/- ($\text{Rs.15,000} + 15,000 \times 40\% + 12 \times 17$). Since there are 5 dependants of the deceased, after deducting $\frac{1}{4}$ th income towards personal expenses of the deceased, the pecuniary loss of income to the dependants comes to Rs.32,13,000/- ($\text{Rs.42,84,000} \times \frac{3}{4}$). As per Pranay Sethi case, the Tribunal ought to have awarded Rs.40,000/- each for consortium to wife and for love and affection to other dependants. The Tribunal awarded a sum of Rs.15,000/- towards funeral expenses, which is just and reasonable and the same is hereby confirmed. The Tribunal awarded a sum of Rs.40,000/- towards loss of filial relationship, which is hereby set aside. The Tribunal ought to have awarded under the heads 'transportation' and 'loss of estate'. This Court awarded a sum of Rs.15,000/- and Rs.15,000/- towards 'transportation' and 'loss of estate' respectively.

9. Thus, the award passed by the Tribunal is modified as



follows:

Sl.N o	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Pecuniary loss of earning	28,99,452	32,13,000
2	For consortium to wife and loss of love and affection to children and mother	25,000	2,00,000
3	Funeral Expenses	15,000	15,000
4	Loss of Filial relationship	40,000	NIL
5	Transportation	-	15,000
6	Loss of Estate	-	15,000
	Total	29,79,452	34,58,000

10. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the amount of compensation awarded by the Tribunal at Rs.29,79,452/- to Rs.34,58,000/- (Rupees Thirty Four Lakhs Fifty Eight Thousand only), with interest at 7.5% per annum from the date of claim petition till the date of realization, excluding the default period, if any. The order and decretal order dated 08.01.2009 made in M.C.O.P.No.283 of 2014 on the file of the Motor Accident Claims Tribunal/Sub Court, Rasipuram is set aside. Out of the total compensation of Rs.34,58,000/-, the first claimant/wife of the deceased is entitled to a sum of Rs.14,50,000/- (Rupees fourteen lakhs and fifty thousand only) together with proportionate interest and cost awarded in MCOP; the second and third minor claimants/daughter and son of the deceased are entitled to a sum of Rs.8,00,000/- (Rupees eight lakhs only) each with proportionate interest; fourth claimant/mother of the deceased is entitled to a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) with proportionate interest and fifth claimant/father of the deceased is entitled to a sum of Rs.1,58,000/- (Rupees one lakh and fifty eight thousand only) with proportionate interest. The second respondent/Insurance Company is directed to deposit the entire award amount together with interest at 7.5% p.a. as assessed by this Court, less the amount, if any, already deposited to the credit of M.C.O.P.No.283 of 2014 on the file of the Motor Accident Claims Tribunal/Sub Court, Rasipuram, within a period of four weeks from the date of receipt of a copy of this Judgment. On such



deposit being made, the Tribunal is directed to transfer the award amount with accrued proportionate interest directly to the bank accounts of the appellants 1,4 and 5/claimants 1,4 and 5, through RTGS within a period of two weeks thereafter. The share of the minor appellants 2 and 3 with accrued interest thereon shall be deposited in Fixed Deposit in any one of the nationalised banks, proximate to the residence of the minors, till they attain majority and the mother of the minors/first appellant herein is entitled to withdraw the interest once in three months. The requisite Court fee, if any, has to be paid by the appellants before receiving the copy of this Judgment. No costs in this CMA.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mra

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Rasipuram.
2. The Section Officer
Vernacular Records Section
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.25084/21

CMA. No. 3818 of 2019

RLD(CO)
RGA(13/09/2021)