



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.07.2021	Delivered on: 06.08.2021
----------------------------	-----------------------------

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.3074 of 2014

1.Seepuriappa

2.Muniamma

3.Minor. Venkatachalapathi

.. Appellants/Claimants 1 to 3

(Minor 3rd appellant represented by
his Grand Father/Next Friend,
Seepuriappa,
1st appellant herein)

Vs.

1.R.Koteeswari

.. 1st Respondent/R1 Owner of Vehicle

2.The New India Assurance Company Limited,
Branch Office, 45, 5th floor,
Moore Street,
Chennai - 600 001.

.. 2nd Respondent/Insurer

3.Indiramma

4.Minor. Pillappa

...3 & 4 Respondents/3 & 4 Claimants/
1st Respondent 1 to 4

(Minor 4th respondent represented by his next friend
and Step Mother, Indiramma, 3rd respondent herein)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.11.2005 made in M.C.O.P.No.467 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court No.II, Dharmapuri at Krishnagiri.

For Appellants	:	Mr.P.Mani
For R2	:	Mr.J.Chandran
For R3	:	Mr.V.Kumaravelan



J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

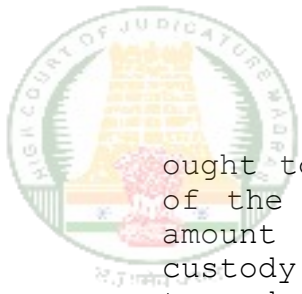
This Civil Miscellaneous Appeal has been filed by the claimants for enhancement of compensation granted by the Tribunal in the award dated 29.11.2005 made in M.C.O.P.No.467 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court No.II, Dharmapuri at Krishnagiri.

2.The appellants and respondents 3 & 4 are the claimants in M.C.O.P.No.467 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court No.II, Dharmapuri at Krishnagiri. They filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one S.Venkatesh, who died in the accident that took place on 20.01.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to 1st respondent and directed the respondents 1 & 2 jointly or severally to pay a sum of Rs.4,13,000/- as compensation to the appellants 1, 3 and respondents 3 & 4.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 35 years, was a Painter and Building Worker and was earning a sum of Rs.4,500/- per month. But, the Tribunal has fixed a meagre sum of Rs.2,500/- per month as notional income of the deceased and awarded compensation for loss of dependency. The Tribunal ought to have fixed a sum of Rs.3,500/- per month as notional income of the deceased and awarded compensation. The Tribunal ought to have awarded atleast a sum of Rs.5,50,000/- as compensation for the death of the bread winner of the family. The Tribunal ought to have awarded compensation to the 2nd claimant, who is the step mother of the deceased as she is also depending on the deceased. The apportionment of compensation made by the Tribunal is not correct as the minor sons of the deceased were given very meagre amount and the 3rd respondent, who is the step wife of the deceased was given more amount as compensation. The Tribunal erred in permitting the 3rd respondent, who is the step wife of the deceased to get the interest on the amount awarded to the 3rd claimant/minor son of the deceased who was born through the 1st wife of the deceased and being maintained and looked after by the 1st claimant/grand father of the 3rd claimant. The Tribunal



ought to have granted permission to the 1st claimant/grand father of the 3rd claimant to withdraw the interest in respect of the amount awarded to the 3rd claimant, who is under the care and custody of the 1st claimant. The amounts awarded by the Tribunal towards loss of love and affection, transportation and funeral expenses are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the claimants have not filed any documentary proof to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.2,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. He would further submit that the accident is of the year 2004 and the recent rulings cannot be taken as a precedent to the good old cases. He further contended that if the recent judgments are relied for the old cases and awarded compensation, then the Insurance Company would be put to irreparable loss by paying huge interest. In the claim petition, the claimants have not mentioned the relationship between the 2nd appellant with the deceased. Hence, she is not entitled to any compensation amount. The 3rd respondent is not the legally wedded wife and the 4th respondent is also illegitimate child and hence, they are also not entitled to any compensation amount. The Tribunal considering the entire materials on record, has awarded a sum of Rs.4,13,000/- as compensation to the claimants and the same is not meagre. The appellants and the respondents 3 & 4 have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 3rd respondent contended that the 3rd respondent is the 2nd wife of the deceased and she has proved the same by marking Ex.R2/Marriage Certificate to that effect. Therefore, the Tribunal ought to have apportioned major portion of the award amount as compensation to the 3rd respondent. The Tribunal ought to have fixed a sum of Rs.4,500/- per month as notional income of the deceased and awarded compensation for loss of dependency. The Tribunal has not awarded any amounts for loss of consortium to 3rd respondent and loss of estate. The amounts awarded by the Tribunal for loss of love and affection and funeral expenses are meagre and prayed for enhancement of compensation.

8.Though notice has been served on the 1st respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

9.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and the learned counsel appearing for the 3rd



respondent and perused the entire materials on record.

10. It is the claim of the claimants in the claim petition that at the time of accident, the deceased was aged 35 years, was a Painter and Building Worker and was earning a sum of Rs.4,500/- per month. Except oral evidence, the claimants have not produced any documentary proof like salary slip or wage register to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.2,500/- per month as notional income of the deceased. The accident is of the year 2004 and a sum of Rs.2,500/- per month fixed by the Tribunal as notional income of the deceased is meagre. Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.3,500/- per month is fixed as notional income of the deceased.

11. As far as the contention of the learned counsel appearing for the 2nd respondent-Insurance Company that the recent judgments cannot be relied for the old cases is concerned, this Court is of the view that what are all to be compensated were not compensated by ignorance earlier was found later by the Hon'ble Apex Court and awarded suitable compensation under various heads and the same is to be followed. No doubt that absolutely there would be future prospects for earning members and anybody can object about compensation towards loss of consortium and loss of love and affection were not awarded. In the past years, the Insurance Company were also free and not burdened with payment of compensation which ought to have been paid to the injured or the deceased. Civil Miscellaneous Appeal is a continuing process and hence, arguments submitted by the learned counsel for the 2nd respondent-Insurance Company would not be taken into consideration. The Hon'ble Apex Court in the judgment dated 04.09.2019 made in Civil Appeal No.7004 of 2019 in the case of [Chameli Devi Vs. Jivrail Mian], granted 40% enhancement towards future prospects, applied multiplier '16' and awarded a sum of Rs.70,000/- under non-conventional heads following another judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] for the accident that occurred in the year 2001. In view of the same, the contention of the learned counsel appearing for the 2nd respondent that recent judgments cannot be relied on for the old cases is not acceptable.

12. As per Ex.R1/postmortem certificate, the deceased was aged 35 years at the time of accident and the multiplier '17' applied by the Tribunal is not correct. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, cited supra is



WEB COPY

'16'. The deceased was aged 35 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants and respondents 3 & 4 are entitled to 40% enhancement towards future prospects of the deceased. As far as the contention of the learned counsel appearing for the appellants that the 2nd appellant is the Step Mother of the deceased and the Tribunal ought to have granted compensation for 2nd appellant is concerned, the appellants have not filed any legal heirship certificate to prove the relationship between the 2nd appellant with the deceased. Hence, in the absence of any legal heirship certificate with regard to the relationship between the 2nd appellant with the deceased, the 2nd appellant will not be considered as dependant of the deceased and hence, she is not entitled to any compensation. Thus, there are four dependants of the deceased and the Tribunal erroneously deducted Rs.500/- towards personal expenses of the deceased. The Tribunal ought to have deducted 1/4th towards personal expenses of the deceased. Thus, by fixing a sum of Rs.3,500/- per month as notional income, granting 40% enhancement towards future prospects, applying multiplier '16' and deducting 1/4th towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.7,05,600/- {Rs.4,900/- [Rs.3,500/- + Rs.1,400/- (40% of Rs.3,500/-)] X 12 X 16 X $\frac{3}{4}$ }. The 3rd respondent is the 2nd wife of the deceased and she proved the same by marking the marriage certificate as Ex.R2. The appellants have not disproved the same that the 3rd respondent is not the legally wedded wife of the deceased by producing valid documents. Therefore, the 3rd respondent, being the 2nd wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. The amount awarded by the Tribunal towards loss of love and affection is meagre. The appellants 1, 3 and the 4th respondent are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The meagre amount of Rs.2,000/- awarded by the Tribunal for funeral expenses is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and transportation. Therefore, a sum of Rs.15,000/- each is awarded by this Court towards loss of estate and transportation.

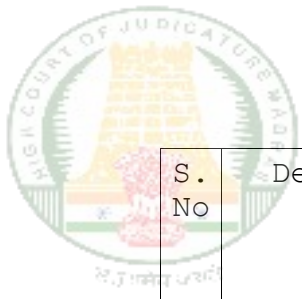
13. The learned counsel appearing for the appellants further contended that the Tribunal erred in permitting the 3rd respondent, who is the second wife of the deceased to get the interest on the amount awarded to the 3rd claimant/minor son of the deceased and ought to have granted permission to the 1st claimant/grand father of the 3rd claimant to withdraw the interest in respect of the amount awarded to the 3rd claimant, who is under the care and custody of the 1st claimant is



concerned, from the claim petition filed by the claimants, it is seen that the appellants 1 to 3 are residing at Sandampatti Village, Kodamandapatti Post, Pochampalli Taluk and the respondents 3 and 4 are residing at Thippalam Village, Thorappalli Post, Hosur Taluk. Therefore, it is clear from the claim petition filed by the claimants that the minor 3rd appellant is residing along with the 1st appellant in the same village and minor 3rd appellant is under the custody of the 1st appellant, who is his grand father. There is no proof to show that the minor 3rd appellant is under the custody of the 3rd respondent, who is the second wife of the deceased and also the minor 3rd appellant is residing with the 3rd respondent. In view of the above, the portion of the award of the Tribunal directing the 3rd respondent to get the interest on the amount awarded to the 3rd claimant/minor son of the deceased is erroneous and the same is modified as the 1st appellant, being the grand father of the minor 3rd claimant is entitled to get the interest on the amount awarded to the 3rd claimant. There is no error in the portion of the award directing the 3rd respondent to get the interest on the amount awarded to the minor 4th respondent and the same is hereby confirmed.

14.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	4,08,000/-	7,05,600/-	Enhanced
2.	Loss of consortium to 3 rd respondent	-	40,000/-	Granted
3.	Funeral expenses	2,000/-	15,000/-	Enhanced
4.	Loss of love and affection to appellants 1, 3 & 4 th respondent	3,000/-	1,20,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
6.	Transportation	-	15,000/-	Granted
	Total	Rs.4,13,000/-	Rs.9,10,600/-	Enhanced by Rs.4,97,600/-

15. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.4,13,000/- is hereby enhanced to Rs.9,10,600/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The respondents 1 & 2 are jointly or severally directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.467 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court No.II, Dharmapuri at Krishnagiri. On such deposit, the 1st appellant and 3rd respondent are permitted to withdraw a sum of Rs.1,55,300/- each as their respective share of the award amount now determined by this Court, along with proportionate interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. The share of the minor 3rd appellant & 4th respondent (i.e., Rs.3,00,000/- each) are directed to be deposited in any one of the Nationalized Banks, till the minor 3rd appellant & 4th respondent attains majority. On such deposit, the 1st appellant, being the Grand Father of the minor 3rd appellant is permitted to withdraw the accrued interest of the minor 3rd appellant's award amount and the 3rd respondent, being the Mother of the minor 4th respondent is permitted to withdraw the accrued interest of the minor 4th respondent's award amount once in three months for the welfare of the minors. It is made clear that the appellants 1, 3 and respondents 3 & 4 are not entitled to any interest for the delay period in representing the appeal on Rs.4,97,600/-, the amount now enhanced by this Court, as per the order of this Court dated M.P.No.1 of 2009 in C.M.A.SR.No.88761 of 2006. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



krk

To

1. The Chief Judicial Magistrate No.II,
Motor Accident Claims Tribunal,
Dharmapuri at Krishnagiri.

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

+1cc to Mr.P.Mani, Advocate Sr No.39202

C.M.A.No.3074 of 2014

SVI (CO)
PR (30/09/2021)