



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4420 of 2019

(Through Video Conferencing)

1.Chitra
2.Manimegalai
3.Thamizh Selvan (Minor)
4.Sarulatha (Minor)
5.Santhosh (Minor)
(Minor Appellants 3 to 5 are represented
by their mother and natural guardian
Chitra)
6.Pattammal ... Appellants/Petitioners

Vs.

1.G.Bala Murugan
2.The New India Assurance Company Limited,
Motor Third Party Cell Office,
No.1, 5th Floor, Moore Street,
Parrys, Chennai - 600 001. ... Respondents/Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 03.01.2019 made in M.C.O.P.No.7616 of 2014 on the file of Special Subordinate Judge No.1, Small Causes Court, Chennai.

For Appellant : Mr.Amar.D.Pandiya

For R1 : No Appearance

For R2 : Mr.G.Anandan

JUDGMENT

The claimants are the appellants in this Civil Miscellaneous Appeal. They are aggrieved by the impugned order and decree dated 03.01.2019 passed by the Motor Accident Claims Tribunal, Special Court No.1, Small Causes Court, Chennai in M.C.O.P.No7616 of 2014.



2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.15,60,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellants/claimants.

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3. The break up of the amount awarded by the Lower Court are summarised below:-

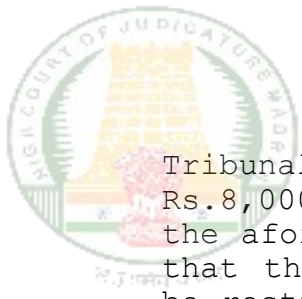
S.No .	Heads of compensation	Amounts awarded by the Tribunal
1	Total loss of dependency	Rs.12,60,000/-
2	Loss of Consortium	Rs.40,000/-
3	Loss of Love and Affection	Rs.2,25,000/-
4	Loss of Estate	Rs.15,000/-
5	Transport charges	Rs.5,000/-
6	Funeral expenses	Rs.15,000/-
	Total	Rs.15,60,000/-

4. Aggrieved by the said compensation, the appellants/claimants have filed this Civil Miscellaneous Appeal for enhancement of compensation.

5. It is the case of the appellants that on 07.09.2014 at about 07.00 hrs. while the deceased Ramesh returning to his house from MRF to Itchiputtur at Arakkonam to Thiruthani road opposite to Annamalai puram Petrol Bunk, a insured motor cycle bearing Reg.No.TN.21.AP.9456 came in same direction in a rash and negligent manner and knocked him down, as a result of which, he was thrown out and sustained multiple injuries and admitted in the Govt. General Hospital and later died on 10.09.2014. Therefore, the appellants-claimants filed the above claim petition in M.C.O.P No.7616 of 2014 for compensation.

6. The learned counsel for the appellants submits that the Tribunal has considered the notional income of the deceased as Rs.8,000/- against Rs.9,000/-. He further submits that the deceased was aged about 43 years and working as a labour in Madras Rubber Factory MRF and supporting a large family. Hence, prays for enhancement of compensation.

7. Defending the impugned Judgment and decree, the learned counsel for the 2nd respondent Insurance Company submits that the Tribunal has come to the fair conclusion on facts and awarded just compensation. It is further submitted that the



Tribunal has correctly considered a notional income of Rs.8,000/- per month of the deceased for determining and awarding the aforesaid compensation to the claimants. He further submits that the amount awarded towards loss of love and affection can be restricted to Rs.2,00,000/- (Rs.40,000 x 5). Hence, he prays for dismissal of this appeal.

8. I have considered the arguments advanced by the learned counsel for the appellants and the 2nd respondent Insurance company and I have also perused the impugned Judgment and decree passed by the Tribunal and exhibits filed in support of the claim petition.

9. The Tribunal has determined the income of the deceased as Rs.8,000/- p.m. as against the claim of the appellants that the deceased was earning a sum of Rs.9,000/- per month. In my view, the Tribunal has wrongly considered the notional income of the deceased as Rs.8,000/- p.m. The deceased is said to have been working as a Labour in Madras Rubber Factory MRF. Considering the fact that the deceased was aged about 43 years and the accident is of the year 2014. Therefore, in absence of direct evidence to show that the deceased was earning a sum of Rs.8,000/- p.m, this Court is inclined to assume the notional income of the deceased as Rs.9,000/- for determining just compensation. Accordingly, the compensation awarded by the Tribunal is re-computed as follows:-

Sl. No.	Heads of Compensation	Amount Awarded by the Tribunal	Amount awarded by this Court	Award Confirmed or enhanced
1.	Total loss of dependency	Rs.12,60,000/-	*Rs.14,17,500/-	enhanced
2.	Loss of Consortium	Rs.40,000/-	Rs.40,000/-	confirmed
3.	Loss of Love and Affection	Rs.2,25,000/-	Rs.2,25,000/-	confirmed
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	confirmed
5.	Transport charges	Rs.5,000/-	Rs.5,000/-	confirmed
6.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	confirmed
	Total	Rs.15,60,000/-	Rs.17,17,500/-	Rs.15,60,000/- enhanced to Rs.17,17,500/-

* (9000 x 25% x 3/4 x 12 x 14)



10. Therefore, the 2nd respondent -Insurance Company is directed to deposit the enhanced compensation of Rs.17,17,500/- together with interest at 7.5% from the date of claim petition till the date of such deposit, less any amount already deposited, to the credit of M.C.O.P.No.7616 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai, within a period of six weeks from the date of receipt of a copy of this Judgment.

11. On such deposit being made by the learned counsel for the 2nd respondent - Insurance Company, the 1st, 2nd and 6th appellants are permitted to withdraw their respective shares in the same proportion as was ordered by the Tribunal, together with interest accrued thereon, less any amount already withdrawn, by filing suitable application before the Tribunal.

12. Since the appellants 3 to 5 are aged about 16, 14, and 12 years respectively at the time of filing of the claim petition and they would have attained the age of majority, the appellants 3 to 5 are permitted to file appropriate application for recording the age of majority and to withdraw the compensation amount together with interest thereon, less any amount already withdrawn, by filing suitable application before the Tribunal. However, there were no interest during the delay of 101 days in preferring this appeal.

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

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

drl
To:

1.The Motor Accidents Claims Tribunal,
Special Sub Court No.1,
Small Causes Court, Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras
+1 cc to Mr.Amar.D.Pandiya ., Advocate Sr.NO.24139
+1 cc to Mr. G.Anandan, Advocate Sr.NO. 24396

C.M.A.No.4420 of 2019

AJS (CO)

A.SK(02.12.2021)