IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.394 of 2022

1.M.Sivagami
2.M.Satheeshkumar
3.M.Varunkumar
4.C.Kaliammal ...Appellants/Petitioners

Vs.

1. V.Vijayakumar
2. M/s.United India
Insurance Company
Micro Office, TMDM Vijayalakshmi
complex, No.3, Bazzar Street,
Indian Bank, upstairs,
Bhuvanagiri, Chidambaram taluk,
Cuddalore 608601.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 07.05.2020 in M.C.O.P.No.363 of 2018 on the file of the Motor Accidents Claims Tribunal/Additional District Judge (FAC), Namakkal.

For Appellants : Mr. C.Thangaraju

For Respondents : R1 – No Appearance
R2 - Mr.D.Venkatachalam

JUDGMENT

The claimants have preferred the instant appeal seeking enhancement of compensation.

2. The appellants filed the claim petition stating that on 30.12.2017 at about 9:00 p.m., while the deceased was travelling in a two wheeler bearing Reg.No.TN 46 C 8418, on a public road, the driver of the lorry bearing Reg.No. TN 91 0373 belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the deceased as a result of which, the deceased sustained fatal injuries.

3. The first respondent remained ex-parte before the Tribunal.

4. Before the Tribunal, the second respondent/insurance company filed a counter stating that the accident took place due to the negligence of the deceased; that in any case, the compensation claimed by the deceased was excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked twenty documents as Exs.P1 to P.20. The respondents marked Ex.R1 and did not examine any witness.

6. The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the negligence of the driver of the lorry insured with the second respondent and directed the second respondent to pay a compensation of Rs.6,74,800/- to the appellants.

7. The learned counsel for the appellants submitted that though the appellants have produced documents to show that the deceased was running a Poultry Farm and had filed Income Tax returns, the Tribunal had fixed the monthly income based on the average income shown in the three Income Tax returns and submitted that the Tribunal ought to have fixed the income based on the returns filed on 16.12.2017, for the Assessment Year 2017-18, which shows that the deceased earned Rs.1,80,000/- per annum. The learned counsel further submitted that the Tribunal had not awarded any compensation under the head "Loss of Love and Affection" to the appellants 2 to 4 and prayed for compensation under the said head.

8. Though notice has been served on the first respondent and his name is printed in today's cause list, there is no representation on his behalf.

9. The learned counsel for the second respondent per contra submitted that the award of the Tribunal is just and reasonable; that the Tribunal had deducted 1/4th towards personal expenses of the deceased which is erroneous

as appellants 2 to 4 who are married children of the deceased cannot be treated as dependents; and that therefore, the Tribunal ought to have deducted $1/3^{rd}$ towards personal expenses of the deceased; that further the Tribunal had rightly fixed the monthly income based on the average income shown in the Income Tax returns for the Assessment Years 2015-2016, 2016-2017, 2017-2018 and prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellants as well as the second respondent and perused the materials available on record.

11. The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

12. On perusal of the records, it is seen that P.W.1/son of the deceased had deposed before the Tribunal that the deceased was running a Poultry Farm. He had marked Ex.P19/Income Tax returns to prove the income earned by the deceased. The Income Tax returns for the years 2015-2016,

2016-2017, 2017-2018 shows that the deceased was running a poultry by name “Pandiyan Poultry Farm”. Therefore, the avocation of the deceased has been established. It is seen from the Income Tax returns for the Assessment Year 2017-18, the deceased earned Rs.1,80,000/- per annum. The said Income Tax returns was filed on 16.12.2017, fifteen days prior to the date of the accident. Therefore, there is no reason to reject the Income Tax return for the Assessment Year 2017-18 filed to prove the income of the deceased. Therefore, this Court is of the view that the notional income has to be fixed as Rs.15,000/- per month. The age of the deceased was fixed as 62 years based on the driving licence of the deceased filed by the appellants as Ex.P8. The said finding of the Tribunal therefore, cannot be faulted. The multiplier applicable is '7'. Thus, after deducting $1/4^{th}$ towards personal expenses of the deceased the award of compensation under the head “Loss of Income” has to be:

Rs.15,000/- X 12 X 7 X 3/4 – Rs.9,45,000/-

The Tribunal has not awarded compensation under the head "Loss of Love and Affection". The appellants 2 to 4 are each entitled to compensation Rs.40,000/- under the head "Loss of Love and Affection, hence Rs.1,20,000/- is granted under the said head. The award under the other heads is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.6,74,800/- to Rs.11,35,000/-. The break-up is as follows:-

Sl. No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or enhanced or granted**
1.	Loss of Income	6,04,800/-	9,45,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Consortium	40,000/-	40,000/-	Confirmed
5.	Loss of Love and Affection	---	1,20,000/-	Granted
	Total	**6,74,800/-**	**11,35,000/-**	**Enhanced by Rs.4,60,200/-**

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,74,800/- is hereby enhanced to Rs.11,35,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. It is submitted that the compensation awarded by the Tribunal has already been deposited by the second respondent and the same has been withdrawn by the appellants. Therefore, the second respondent/insurance company is directed to deposit the compensation now enhanced by this Court along with interst and costs within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the enhanced compensation amount is apportioned in the following manner:

(i) The first appellant shall be permitted to withdraw Rs.5,00,000/- along with interest and costs.

(ii) The remaining amount i.e., Rs.6,35,000/- shall be shared equally between the respondents 2 to 4 along with proportionate interests and costs.

The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

29.09.2023

dk

Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

Copy to:-

1.The Additional District Judge (FAC),
Motor Accident Claims Tribunal
Namakkal.

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

SUNDER MOHAN, J.

dk

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