



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2242 of 2012

1.E.Suseela
2.G.D.Ebinesan Sugumaran .. Appellants/Petitioners

Vs.

1.P.Venkatesan
[Ex parte before the Trial Court]

2.The New India Assurance Co. Ltd.,
Saidapet Branch,
No.375, Anna Salai, II Floor
Saidapet, Chennai - 600 015. ..Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 19.01.2012 made in MACT.OP.No.4753 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.K.Ayyadurai
for Mr.N.M.Muthurajan
For Respondents : R1 - Exparte
Mr.J.Chandran [R2]

JUDGMENT

The claimants before the Tribunal below have approached this Court seeking enhancement of the compensation awarded by the MACT (Small Causes, Chennai) in MCOP. No.4753 of 2007.

2. Daniel Richard, a boy aged 19 years old and prosecuting a diploma course in Aeronautical Engineering in Hindustan Institute of Engineering, Chennai was riding his motor cycle bearing registration No.TN-07-AF-0932 along Medavakkam Main Road on 24.08.2007 at about 9.30 p.m. His journey was halted when he was fatally knocked down by a rashly and negligently driven lorry bearing registration No.TN-09-Q-7402. Seeking compensation of Rs.12,00,000/- on various heads, the appellants have approached the Tribunal, which in its impugned award has quantified its compensation at Rs.6,87,900/- payable with interest at 7.5% per annum from the date of the petition till payment. Dissatisfied with the quantum of compensation awarded, the appellants have approached this Court with the present appeal.



3. In his argument, the learned counsel for the appellants would submit that the Tribunal has not taken into consideration the future prospects of earning in terms of Sarla Verma case. Given the age of the boy, the future prospects must be reckoned at 50%, and if it is reckoned, the compensation payable on the head of "loss of support" to the family would be far in excess of what has been awarded by the Tribunal.

4. Even on the heads of conventional damages, the Tribunal has been either parsimonious or neglected the payment of compensation.

5. The learned counsel for the second respondent/Insurance Company submitted that it is palpable that the Tribunal has missed the Sarla Verma principle and therefore, necessarily the compensation of future prospects should be reckoned, taking into consideration the future earning capacity of the deceased. He however added, basic amount has to be reasonably fixed, given the fact that the boy was only a student at that relevant time and there is no pointed evidence as to how meritorious the student has been.

6. The Tribunal has reckoned the potential earning of the deceased at Rs.9,000/- per month and deducted 10% from it and further deducted 50% of the same towards the personal expenses and arrived at the monthly income receivable at Rs.4,050/- and applied a multiplier of 14 and arrived at a compensation of loss of dependency at Rs. 6,80,400/-. The other heads of compensation awarded are Rs.2,500/- towards funereal expenses and Rs.5,000/- for loss of estate. In total, the compensation determined was Rs.6,87,900/-.

7. This Court finds merit in the submissions of the learned counsel for the appellants. The Tribunal had gone wrong on two aspects; firstly and primarily, it did not take into account the future earning capacity of the victim and secondly has adopted a wrong multiplier 14. On a fair assessment, this Court reckons the monthly income at Rs.6,500/- which the victim could have made if he was alive. If another 50% is added, the total monthly income will be Rs.9,750/- This is rounded off to Rs.10,000/-. If 50% thereof is deducted towards the personal expenses of the bachelor boy, the net monthly income which may represent the monthly value of the dependency at Rs.5,000/-. Applying a multiplier of 18, the total compensation payable would be $[5,000 \times 12 \times 18] = \text{Rs.}10,80,000/-$. Funeral expenses is increased to 2,500/- to Rs.15,000/- and so was on the loss of estate which is increased from Rs.5,000 to Rs.15,000/. While nothing was awarded on the head of transport expenses, this Court grants Rs.5,000/- towards the same. Where nothing was awarded for love and affection, this Court now grants Rs.60,000/- under this head. The total compensation amount is thus increased from Rs.6,87,900/- to Rs. 11,75,000/-.



8. In the result, the appeal is partly allowed and the respondents are directed to deposit the enhanced award amount with interest, less if any already deposited, within six weeks from the date of receipt of a copy of this order, and on such deposit, the claimants are entitled to withdraw it forthwith in the same ratio in which the compensation was apportioned by the Tribunal. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To:

1.The Chief Judge
Small Causes Court
Motor Accident Claims Tribunal
Chennai.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc to Mr, J.Chandran,Advocate Sr.60698
+ 1 cc to M/s. N.M. Muthurajan, Advocate Sr.59768

CMA.No.2242 of 2012

SAI (CO)
EU(29/11/2018)