

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2629 of 2010

1.K.A.Basha
2.Aisha Bee
3.Nazheema
4.Minor Amrintaj
5.Minor Moobintaj ...Appellants / Petitioner

Vs

1.H.Srinivasan
2.The Branch Manager,
Oriental Insurance Company Ltd.,
20, Jalahalli Cross,
Chockachandra,
Bangalore - 560 057. ...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accident Claims Tribunal, (First Additional District Judge), Dharmapuri District at Krishnagiri in M.C.O.P.No.1607 of 2003 dated 27.04.2005.

For Appellant : Mr.V.Kumaravelan

For Respondents: R2- Mr.J.Chandran

JUDGMENT

The instant appeal has been filed by the claimants seeking enhancement of compensation under the award dated 27.04.2005 passed by the Motor Accident Claims Tribunal, Krishnagiri at Dharmapuri District, (First Additional District Judge) in M.C.O.P. No. 1607 of 2003.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) One Mahaboob Ali died on 04.09.2002, while he was driving a lorry bearing registration No.KA-01-2441 which collided with another lorry bearing registration No. KA-02-C-4569 owned by the 1st respondent and insured with the 2nd respondent.

(ii) The appellants are the dependants of the deceased Mahaboob Ali in this appeal. They preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No. 1607 of 2003 seeking a compensation of Rs.10,00,000/-.

(iii) The Motor Accident Claims Tribunal by its award dated 27.04.2005 in M.C.O.P No.1607 of 2003 fixed 50% of negligence on the drivers of both vehicles involved in the accident respectively and assessed Rs.5,33,400/- as total compensation, out of which, the 2nd respondent was directed to pay Rs.2,66,700/- being the half of the amount of total compensation, along with interest at the rate of 9% per annum from the date of claim till the date of realisation. The 2nd respondent was also granted pay and recovery rights and was permitted to recover the abovesaid amount from the 1st respondent.

(iv) Aggrieved by the quantum of compensation awarded by the tribunal, the instant appeal has been filed by the claimants seeking enhancement of compensation.

3. Heard, Mr.V.Kumaravel, learned Counsel for the Appellant and Mr.J.Chandran, learned Counsel for the 2nd respondent. The 1st respondent has remained ex-parte, both before the Tribunal as well as this Court.

4. According to the learned counsel for the appellants, the tribunal has erroneously assessed the monthly income of the deceased at Rs.3,000/- only, even though, the deceased at the time of the accident was earning a monthly income of Rs.7,000/- as a driver.

5. According to him, the accident having taken place in the year 2002, the tribunal ought to have assessed the monthly income at a higher sum. Further, he would contend that the tribunal has not awarded any compensation towards 'loss of Future Prospects' under the impugned award. He also contended that the compensation awarded under various heads by the tribunal is low.

6. Per contra, learned counsel for the 2nd respondent insurance company would submit that the tribunal has awarded a just compensation to the appellants under the impugned award. He also contended that no documentary evidence was produced by the appellants before the tribunal to establish that the deceased was earning a monthly income of Rs.7,000/- at the time of the accident.

7. Considering the year of the accident and also based on the materials available on the record, the tribunal has assessed the compensation payable to the appellants which according to the learned counsel for the appellant is a just compensation.

8. This court, after considering the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

(a) The tribunal under the impugned award, has given a finding that the lorry in which the deceased was a driver as well as the other lorry which collided with it are both at fault and attributed contributory negligence on the part of the driver of both the vehicles in the ratio of 50:50.

(b) No documentary evidence has been produced by the appellants, to establish that the deceased was earning a monthly income of Rs.7,000/- as a driver at the time of the accident. Considering the fact that the accident happened in the year of 2002 and being the driver of a lorry holding heavy vehicle licence, the tribunal ought to have assessed the monthly income of the deceased on notional basis at a higher sum. In the considered view of this Court, the monthly income of the deceased, at the time of the accident has to be assessed at Rs.3,500/- instead of Rs.3,000/- assessed by the tribunal under the impugned award.

(c). Under the impugned award the tribunal has not granted any compensation towards loss of Future Prospects. As per the Constitution Bench judgment of the Honourable Supreme Court, in the case of National Insurance Company Limited versus Pranay Sethi and others reported in 2017(2) TN MAC 609(SC), "future Prospects" at the rate of 40% will have to be paid to the appellants as compensation. Thus, after adding future prospects at 40% to the income of the deceased and after deducting 1/3rd towards his personal expenses, the loss of income for the dependants would be calculated as below;

Rs.3500 x 12 x 18	= Rs. 7,56,000/-
future prospects at 40%	= Rs. 3,02,400/-
	= Rs.10,58,400/-
1/3rd deduction	= Rs. 3,52,800/-

Loss of income	Rs. 7,05,600/-

(d) The tribunal also has erroneously not awarded any compensation towards loss of consortium and loss of

estate to which the appellants are entitled to, as per National Insurance Company Limited versus Pranay Sethi and others referred to supra.

(e) The compensation awarded by the tribunal towards funeral expenses and transportation cost as well as love and affection is also low, but the tribunal ought not to have awarded any compensation under the head loss of property. Hence the compensation granted under the head loss of property is hereby cancelled. Instead a sum of Rs.40,000/- is granted towards loss of Consortium and Rs.15000/- towards loss of estate. The compensation awarded under the head loss of love and affection is enhanced to Rs.45,000/- (15000 x 3 = Rs.45,000) and for funeral expenses, the compensation is enhanced to Rs.7500/- and apart from that, Rs.7500/- is awarded as compensation under the head transportation.

9. In the light of the above observations, this court is of the considered view that the compensation awarded by the tribunal under the impugned award is enhanced from Rs.5,33,400/- to Rs.8,20,600/- as tabulated hereunder;

Sl. No.	Amount awarded by the tribunal	Amount Awarded by this Court
Loss of income (after adding future prospects)	Rs.5,18,400	Rs.7,05,600/-
Funeral expenses	Rs.2,500/-	Rs.7,500/-
Transportation	--	Rs.7,500/-
Love and affection (15,000 x 3)	Rs.10,000/-	Rs.45,000/-
Loss of Estate	Rs.2,500/-	Rs.15,000/-
Loss of consortium	--	Rs.40,000/-
Total	Rs.5,33,400/-	Rs.8,20,600/-

The enhanced amount shall carry interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

10. Out of Rs.8,20,600/-, the appellants are entitled to receive only 50%, as 50% contributory negligence is attributed on the deceased for the said accident.

11. In the result,

i) the Civil Miscellaneous Appeal is partly allowed.
No costs.

ii) the compensation awarded by the tribunal is enhanced from Rs.5,33,400/- to Rs.8,20,600/- . The enhanced amount shall carry interest at the rate of 7.5% p.a., from the date of claim, till the date of realisation.

iii) The appellants are entitled to receive 50% of the compensation granted by this Court along with interest as stated above.

iii) The Insurance company is directed to deposit 50% of the compensation awarded by this Court along with interest as stated above, less the amount, if any, already deposited, to the credit of MCOP.No.1607 of 2003 before the tribunal, within a period of four weeks from the date of receipt of a copy of this order.

v) On such deposit being made, the appellants are entitled to receive their respective shares as per the ratio apportioned by the tribunal. The appellants 1 to 3 are permitted to withdraw their respective shares on making appropriate applications. As far as, minor appellants are concerned, their respective shares will be deposited in any one of the Nationalised Banks till they attain majority and the 3rd appellant/mother of the minors is permitted to withdraw the interest accrued once in six months.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

msr/sbn

To

1. Motor Accident Claims Tribunal,
First Additional District Judge,
Krishnagiri.

2.The Record Clerk,
Vernacular Section,
High Court, Madras.

+1cc to Mr.V.Kumaravelan , Advocate SR.No. 70953

C.M.A.No.2629 of 2010

ASK(10/12/2018)