IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2647 of 2008

1.Mageswari
2.Minor.Vanaja
3.Minor.Gokulakannan
4.Salammal ...Appellants/Petitioners
(Minors 2 & 3 are rep by their
Mother of Next Friend Mageswari)

Vs

1.C.P.Usharani
2.The Regional Manager,
The New India Assurance Company Ltd.,
Motor III Party Claims Office,
No.69/70, Shekkupettai Nadu Street,
Kanchipuram. ...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, Additional District Judge, Fast Track Court No.II, Kanchipuram in M.C.O.P.No.97 of 2005 dated 28.06.2007.

For Appellants : Mr.S.Sankaralingam

For Respondents : R1- Not Ready in notice
Mr.S.Manohar for R2

JUDGMENT

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The instant appeal has been filed by the claimants seeking enhancement of compensation under the Award dated 28.06.2007 passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II, Kanchipuram in M.C.O.P.No.97 of 2005.

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

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(i) One Elumalai died on 22.12.2004 as a result of an accident caused by a lorry bearing Registration No.TCA-3096 owned by the first respondent and insured with the second respondent.

(ii) The Appellants who are the dependents of the deceased Elumalai preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.97 of 2005 seeking compensation of Rs.10,00,000/-.

(iii) The Motor Accident Claims Tribunal, by its Award dated 28.06.2007 passed in M.C.O.P.No.97 of 2005, directed the second respondent Insurance Company to pay the Appellants, a sum of Rs.1,89,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of the realisation and also awarded costs.

(iv) Aggrieved by the quantum of compensation awarded by the Tribunal, under the Award dated 28.06.2007 passed in M.C.O.P.No.97 of 2005, the instant appeal has been filed by the claimants seeking enhancement of compensation.

3. Heard, Mr.S.Sankaralingam, learned Counsel for the Appellants and Mr.S.Manohar, learned Counsel for the second respondent.

4. According to the learned Counsel for the Appellants, the deceased was aged about 26 years and running a cycle shop at the time of accident and was earning a monthly income of Rs.10,000/-.

5. According to him, the Tribunal has erroneously assessed the monthly income of the deceased at the time of the accident at Rs.15,000/- per annum without any basis. The accident had happened in the year 2004. The learned Counsel for the Appellants contended that the assessment of the annual income of the deceased was too low. The learned Counsel further contended that the Tribunal has not awarded any amount towards loss of future prospects.

6. Per contra, learned Counsel for the second respondent would contend that no proof was submitted before the Tribunal by the Appellants to prove that the deceased at the time of accident was earning a monthly income of Rs.10,000/- at the time of the accident. According to him, the compensation awarded to the Appellants is a just compensation.

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7. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

(a) There is a clear finding given by the Tribunal that only due to the rash and negligent driving by the driver of the lorry insured with the second respondent, the accident had happened,

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which resulted in the death of the deceased.

(b) The Appellants are the dependants of the deceased which is also not been disputed by the second respondent before the Tribunal.

(c) The accident happened in the year 2004. Even though the Appellants have claimed that the deceased was having a cycle shop and earning a monthly income of Rs.10,000/- at the time of the accident, no documents were produced before the Tribunal by them to prove that he was earning a monthly income of Rs.10,000/-. But the Tribunal has assessed the annual income of the deceased at Rs.15,000/-, which in the considered view of this Court, is too low, considering the fact that the accident happened in the year 2004.

(d) In the considered view of this Court, a sum of Rs.4,500/- per month will have to be fixed as the notional income of the deceased at the time of the accident.

(e) The deceased was aged 26 years at the time of his death and as rightly contended by the learned Counsel for the Appellants, no loss of future prospects was awarded by the Tribunal under the impugned Award.

8. In the considered view of this Court, following the decision 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) 40% will have to be awarded to the Appellants towards loss of future prospects.

8.1 By taking into account the monthly income of the deceased as Rs.4500/- and adding 40% towards future prospects, the total income would be Rs.4500 + 1800 = Rs.6300/-.

8.2 After deducting 1/4th towards personal expenses of the deceased, the monthly contribution towards the family of the deceased would be Rs.4,725/-. Applying 17 multiplier, the total loss of income would be calculated as follows;

Rs.4725/- x 17 x 12 = Rs.9,63,900/-

Thus a sum of Rs.9,63,900 /- will have to be awarded under the head 'loss of income'.

9. The Tribunal has also awarded only a sum of Rs.5000/- towards loss of consortium. In the considered view of this Court, following the pranay sethi's case cited supra, a sum of Rs.40,000/- will have to be awarded to the first respondent towards loss of consortium, instead of Rs.5000/-.

10. The Tribunal has also awarded only a sum of Rs.2500/- towards loss of estate. In the considered view of this Court, following the judgment of the Supreme Court in Pranay sethi's case, cited supra, a sum of Rs.15,000/- will have to be awarded to the Appellants for loss of Estate and further the amount awarded for funeral expenses also is meagre and hence the same is enhanced to Rs.15,000/-, instead of Rs.2,000/-.

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11. In the result, the Award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.97 of 2005 is enhanced in the following manner:

Sl. No.	Amount awarded by the tribunal	Amount Awarded by this Court
Loss of Income	Rs. 1,80,000/-	Rs.9,63,900/-
Funeral Expenses	Rs. 2,000/-	Rs.15,000/-
Loss of Consortium	Rs. 5,000/-	Rs.40,000/-
Loss of Estate	Rs. 2,500/-	Rs.15,000/-
Total	Rs. 1,89,500/-	Rs.10,33,900/-

12. In the result,

i) The Civil Miscellaneous Appeal is allowed. No costs.

ii) The compensation awarded by the Tribunal is enhanced from Rs.1,89,500/- to Rs.10,33,900/- along with interest at the rate of 7.5% from the date of claim, till the date of realisation.

iii) It is represented that the entire Award amount has already been deposited before the Tribunal. The Insurance company is directed to deposit the enhanced compensation amount awarded by this Court along with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation to the credit of M.C.O.P.No.97 of 2005 before the Tribunal within a period of four weeks from the date of receipt of copy of this order.

iv) 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 and 4 are permitted to withdraw their respective shares on making appropriate application. 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 1st Appellant/mother of the minors is permitted to withdraw the interest accrued once in six months.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

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arb/msr
To
1. Motor Accident Claims Tribunal,
Additional District Judge,
Fast Track Court No.II,
Kanchipuram.

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

+1cc to Mr.S.Manohar, Advocate SR.No.65092

+2cc to Mr.J.Mahalingam, Advocate SR.No.64869

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