

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2848 of 2007

Annalakshmi ... Appellant/2<sup>nd</sup> Claimant

Vs

1.Meena laksmi

2.The United India Insurance Company Ltd.,  
Divisional Office, Temple's Square,  
No.82, North Mada Street, Mylapore,  
Chennai - 600 004.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decreetal order in M.C.O.P.No.733 of 2005 dated 31.08.2007 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.R.Chandira Kumar

For Respondent 2 : Mrs .R.Sreevidhya

For R1 : No Appearance

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 31.08.2007 passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur in MCOP. No.733 of 2005.

Brief facts leading to the filing of the instant appeal:

The Appellant is the second claimant and she is the mother of the deceased Vetriselvan who died as a result of an accident that took place on 01.05.2005 caused by an Ambassador Car bearing registration No.TN07-AZ-4594 owned by the first respondent and insured with the second respondent. The parents of the deceased Vetriselvan made a compensation claim before the

Motor Accident Claims Tribunal, Perambalur in MCOP.No.733 of 2005 seeking a compensation of Rs.5,00,000/- for the death of their son Vetriselvan. The Motor Accident Claims Tribunal by its award dated 31.08.2007 in MCOP.No.733 of 2005 directed the second respondent, insurance company to pay the claimants a sum of Rs.2,81,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and also awarded a costs of Rs.8,963/-.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the second claimant who is the mother of the deceased Vetriselvan has preferred this instant appeal seeking enhancement of compensation. The first claimant/father of the deceased Vetriselvan died during pendency of the claim petition.

4. Heard Mr.R.Chanthirakumar, learned counsel for the Appellant and Mrs.R.Sreevidhya learned counsel for the second respondent. Despite service of notice on the first respondent, there is no representation on his side. The first respondent has remained ex parte before the Tribunal.

#### Discussion:

5. As seen from the impugned Award, the deceased Vetriselvan was a Mechanic and a water service boy and was aged 17 years at the time of the accident that took place on 01.05.2005 which resulted in his death. Even though the claimants in their claim petition had claimed that the deceased Vetriselvan was earning a monthly income of Rs.3,000/- at the time of accident, based on the oral evidence of the employer of the deceased, the Tribunal has assessed the monthly income of the deceased at Rs.2,000/- per month. This Court is in agreement with the assessment of the monthly income of the deceased by the Tribunal, but the Tribunal has erroneously applied 16 multiplier instead of 18 multiplier as the deceased was admittedly 17 years at the time of his death as a result of the accident caused by the vehicle insured with the second respondent. The Tribunal has not followed the Judgment of the Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC) while applying the multiplier. Under the impugned award, the Tribunal has also not awarded any compensation towards loss of future prospects which the appellant/claimant is entitled to 40% as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in (2017) 16 SCC 680. Therefore, this Court deems it fit to grant compensation to the Appellant towards loss of future prospects. The deceased being a bachelor, 50% will have to be deducted towards personal and living expenses of the deceased, as per the decision of Sarla Verma's case.

6. As per the dictum of Pranay Shethi's case, Rs.15,000/- will have to be awarded towards funeral expenses, Rs.40,000/- towards Love and Affection and Rs.15,000/- towards loss of estate, but instead the Tribunal has erroneously awarded only a sum of Rs.5,000/- towards Funeral Expenses, Rs.20,000/- towards Love and Affection and no compensation has been awarded towards loss of estate.

7. This Court is of the considered view that the amount awarded by the Tribunal under various heads has to be enhanced in the following manner:

| Heads              | Amount awarded by the Tribunal | Modified Award amount                          |
|--------------------|--------------------------------|------------------------------------------------|
| Loss of Dependency | Rs.2,56,000/-                  | Rs.3,02,400/-<br>(2000 x 12 x 18<br>x1/2 +40%) |
| Funeral            | Rs. 5,000/-                    | Rs. 15,000/-                                   |
| Love & Affection   | Rs. 20,000/-                   | Rs. 40,000/-                                   |
| Loss of Estate     | Nil                            | Rs. 15,000/-                                   |
| Total              | Rs.2,81,000/-                  | Rs.3,72,400/-                                  |

Conclusion:

8. In the light of the above observations, the compensation awarded by the Tribunal under the Award dated 31.08.2007 in MCOP.NO.733 of 2005 is enhanced from Rs.2,81,000/- to Rs.3,72,400/-. It is represented that the second respondent has already deposited the amount awarded by the Tribunal and hence, the second respondent is directed to deposit the enhanced Award amount of Rs.91,400/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant is permitted to withdraw the amount together with accrued interest lying to the credit of MCOP.NO.733 of 2005 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur by filing an appropriate application.

9. The appeal is partly allowed. However, there shall be no order as to costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate, Perambalur

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

+1 CC to Mrs.R.Sreevidhya, Advocate sr 8290.

+1 CC to Mr.S.Kamaladevan, Advocate sr 7681.

C.M.A.No.2848 of 2007

NMI (CO)  
SP(06/05/2019)