IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.344 of 2013

Mamtha ...Appellant/Claimant

..Vs..

1.S.Syed Salia Musthan

2.Iffco Tokio General Insurance
Company Limited,
No.28, 2nd floor,
North Usman Road,
T.Nagar, Chennai 17.
... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 25.07.2012, passed in M.C.O.P.No.2605 of 2008, on the file of the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.N.Vijayaraghavan for R2,
R1 – Ex-parte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.2605 of 2008 on the file of the Chief Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai. She filed the above said claim petition under Section 166 of the Motor Accident Claims Tribunal, seeking compensation of Rs.6,00,000/- for the death of one Maboo bee, who died in a road accident that took place on 07.05.2008.

2.The brief case of the appellant/claimant is as follows:
On 07.05.2008, at about 13.00 hours, the deceased Maboo bee was traveling as a pillion rider in a motor cycle bearing Registration No.TN 07 AB 5781 belonging to the first respondent at Srinivasapuram beach service road. When the motorcycle was

crossing the speed breaker, the deceased Maboo bee had fallen from the motorcycle and sustained head injury. She died in the hospital on the same day.

3.According to the appellant/claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 07 AB 5781 belonging to the first respondent was the cause of the accident and that since the first respondent has insured his motorcycle with the second respondent, both of them are jointly and severally liable to pay compensation to her.

4.The first respondent remained absent before the tribunal and therefore, he was set ex-parte. Iffco Tokio General Insurance Company Limited, contested the claim petition by filing a counter. The learned Chief Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.5,21,204/- together with interest at the rate of 7.5% per annum to the appellant/claimant from the date of claim petition till the date of deposit.

5.Not satisfied with the award passed by the tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the quantum of compensation awarded by the tribunal.

6.Mr.T.G.Balachandran, learned counsel appearing for the appellant/claimant submitted that the claimant is the daughter of the deceased Maboo bee, and as the parents of the deceased already passed away, she is the only legal heir of the deceased. The deceased Maboo bee was aged about 50 years on the date of the accident and that she was a pensioner and vegetable vendor, earning a sum of Rs.200/- per day plus pension amount of Rs.2,696/- per month. The appellant/claimant was the only dependent of the deceased Maboo bee and she is completely depending upon the income of the deceased. As per the copy of the Post Mortem report(Ex.P5) the age of the deceased was mentioned as 50 years. The tribunal wrongly fixed the age of the deceased as 55 years for the purpose of determining compensation.

7. Per contra, Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent would contend that the tribunal has taken into consideration, various aspects and awarded just compensation of Rs.5,21,204/- and that the same need not be disturbed at this juncture.

8.The Hon'ble Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. However, the Tribunal fixed a sum of Rs.3,000/- plus pension amount of Rs.2,696/- total amount of Rs.5,696/- as notional income for the deceased, without any rational and any application of mind. Before fixing the income, the Tribunal should have considered the notional income fixed by the Apex Court in Syed Sadiq case (cited supra) plus reasonable income addition to the deceased electrician and the following other factors.

> (i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.
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> (ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.
>
> (iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhacement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour ".

9. The Honourable Supreme Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Since the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, the notional income of Rs.5,696/- fixed by the Tribunal is not proper and this Court set aside the same and re-fix the notional income of the deceased as Rs.5,000/- plus pension amount Rs.2,696/- total amount of Rs.7,696/- per month as notional income.

10.The Compensation awarded by the Tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of estate	Rs.5,01,204/-
2.	Love and affection	Rs.10,000/-
3.	Funeral expenses	Rs.10,000/-
Total		Rs.5,21,204/-

11.The Tribunal has not awarded any amounts towards future prospects, especially, when the deceased was aged just 50 years on the date of accident. Since the deceased was a vegetable vendor and a pensioner, the notional income is fixed by this Court as Rs.7,696/-. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards future prospects and the income would be Rs.9,620/- (Rs.7,696/- + Rs.1,924/-) per month and 1/3rd should be deducted towards the personal expenses of the deceased and the proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation:

Notional Income = Rs.5,000/- + Rs.2,696/-
= Rs.7,696/-
25% Future Prospects = Rs.1,924/-
Total = Rs.7,696/- + Rs.1,924/-
= Rs.9,620/- per month
Annual Income = Rs.9,620/- x 12
= Rs.1,15,440/-
1/3rd deduction = Rs.1,15,440 x 1/3
= Rs.38,480/-

Annual dependency

Annual dependency = Annual Income – 1/3 rd deduction

= Rs.1,15,440/- - Rs.38,480/-
= Rs.76,960/-

Loss of dependency
= Rs.76,960 x 13
= Rs.10,00,480/-

12. The tribunal has awarded a sum of Rs.10,000/- and Rs.10,000/- towards loss of love and affection and funeral expenses respectively and the said amount fixed by the tribunal is very meagre. Therefore, the same are increased to a sum of Rs.40,000/- and Rs.15,000/- towards love and affection and funeral expenses respectively. However, the Tribunal has failed to award any amount towards loss of estate and transportation and therefore, a sum of Rs.15,000/- and Rs.10,000/- is awarded towards loss of estate and transportation respectively. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.10,00,480 /-
2.	Loss of estate	Rs.15,000/-
3.	Transportation	Rs.10,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Love and affection	Rs.40,000/-
Total		Rs.10,80,480/-

Thus the claimant is entitled to a sum of Rs.10,80,480/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

13.In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii)The compensation awarded by the tribunal is enhanced from Rs.5,21,204/- to Rs.10,80,480/-, which shall carry interest at the rate of 7.5% per annum.

(iii)The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The Insurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

Copy to

The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.T.G.Balachandran, Advocate Sr.12923
+1cc to Mr.N.Vijayaraghavan, Advocate Sr.13640

C.M.A.No.344 of 2013

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srg 13/08/2019