

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.366 of 2013

1. K.Padmavathy
2. M.Chitra
3. M.Suresh

... Appellants/Petitioner

Vs

1. Shivas Industrial Caterers India Pvt. Ltd.,  
HG-43, GST Road, Tambaram,  
Chennai - 600 045.

2. National Insurance Co.Ltd.,  
S7, Hamanji Centre,  
Thiru-Vi-Ka Industrial Estate,  
Post Box No.6162, Chennai 600 035.  
(R1-Remained Exparte before the Tribunal

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in MACTOP.No.3038 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Cum Sessions Court, Fast Track Court - XV, Chennai dated 10.08.2012.

For Appellants : Mr. N.M.Muthurajan

For Respondents: Mr. G.Udaya Sankar,  
Standing Counsel for R2  
R1 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation, against the order dated 10.08.2012 made in M.C.O.P.No.3038 of 2008, on the file of XV Additional Judge, (Motor Accidents Claims Tribunal), Chennai.

2.The appellants are the claimants in M.C.O.P.No.3038 of 2008, on the file of XV Additional Judge, (Motor Accidents Claims Tribunal), Chennai. They filed the said claim petition,

claiming a sum of Rs.12,00,000/- as compensation for the death of one Manoharan. The first appellant is the wife of the deceased, second appellant is the daughter and third appellant is the son of the deceased. The accident took place on 13.05.2008.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the TATA ACE Van and the respondents 1 and 2 are jointly and severally liable to pay compensation to the appellants. The Tribunal awarded a sum of Rs.5,08,000/- as compensation to the appellants and directed the respondents 1 and 2 to pay the same.

4. Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with the present appeal, seeking enhancement of the same.

5. The learned counsel appearing for the appellants contended that the deceased was working as Web Offset Machine Mechanic and Operator in M/s.Bhagath Printers, Kilkattalai, Chennai-117. The Tribunal fixed a meager sum of Rs.4,500/- per month as notional income of the deceased. The Tribunal has not awarded any amount for future prospects and the amounts awarded by the Tribunal under different heads are very meager and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that though P.W.1 wife of the deceased filed salary certificate (Ex.P.6) the same was not proved by the owner of the M/s.Ramana Enterprises. In the absence of any proof with regard to the income of the deceased, the amounts fixed by the Tribunal as notional income is not meager. The Tribunal considering the relationship of the appellants, has awarded amounts under different heads which are just and proper compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellants as well as the learned counsel for the 2<sup>nd</sup> respondent and perused the materials on record.

8. From the materials on record, it is seen that the appellants have claimed that the deceased worked as Web Offset Machine Mechanic and Operator in M/s.Bhagath Printers, Kilkattalai, Chennai and was earning a sum of Rs.10,000/- per month. The appellants have not produced any document to substantiate their claim. In such circumstances, in the present case, the Tribunal has fixed the notional income of the deceased

at Rs.4,500/- per month, which is meager and the deceased was 48 years old at the time of accident.

9. It is just and necessary to fix appropriate notional income by considering various aspect. The Hon'ble Supreme Court in the case of 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 in the year 2008. In the present case, the petitioner being a Machine Mechanic, it deems fit to add a sum of Rs.2,000/- in addition to Rs.4,500/-. The Supreme Court in the above cited case fixed Rs.6,500/- for a vegetable vendor and therefore definitely for an Machine Mechanic this Court inclined to fix the notional income as Rs.6,500/-. The Tribunal has failed to add any amount for future prospects. Hence, the appellants are entitled to 25% of the notional income as future prospects as held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. Thus, the loss of dependency is arrived as Rs.8,45,000/- [Rs.6500 + 1,625/- as future prospects 25% = Rs.8,125 x 12 = Rs.97,500/- p.a.]. Deducting 1/3<sup>rd</sup> personal expenses = Rs.32,500/-. Loss of dependency is Rs.65,000/- x 13 = Rs.8,45,000/- Therefore the "loss of dependency" is enhanced to Rs.8,45,000/- from Rs.4,68,000/-

10. The Tribunal awarded a sum of Rs.10,000/- to the first claimant/wife towards loss of consortium, in this regard as per the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra), this Court re-fix the amount as Rs.40,000/- towards consortium. The Tribunal awarded a sum of Rs.25,000/- towards love and affection and the same is enhanced to Rs.50,000/- (Rs.25,000/- each for 2<sup>nd</sup> and 3<sup>rd</sup> claimants). Since consortium has been awarded to the first claimant/wife this Court cannot award any amount towards love and affection. Under the head "Funeral expenses" this Court is inclined to enhance the amount from Rs.5,000/- to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India. As no amount has been awarded under the head "loss of estate" this Court is inclined to award a sum of Rs.15,000/- as per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). As the Tribunal not awarded any amount under the heads "Transportation" and "Damages to clothes" the same are fixed as Rs.10,000/- and Rs.2,000/- respectively.

11. Hence the total compensation payable to the claimants are as hereunder.

| Heads                      | Amount awarded by the Tribunal | Amount awarded by this Court |
|----------------------------|--------------------------------|------------------------------|
| Loss of Dependency         | Rs.4,68,000/-                  | Rs.8,45,000/-                |
| Funeral Expenses           | Rs.5,000/-                     | Rs.15,000/-                  |
| Loss of consortium         | Rs.10,000/-                    | Rs.40,000/-                  |
| Loss of love and affection | Rs.25,000/-                    | Rs.50,000/-                  |
| Loss of estate             | Nil                            | Rs.15,000/-                  |
| Transporation              | Nil                            | Rs.10,000/-                  |
| Damages to clothes         | Nil                            | Rs.2,000/-                   |
| Total                      | Rs.5,08,000/-                  | Rs.9,77,000/-                |

12. The total amount of compensation shall be shared by the claimants 1 to 3 herein, in the following manner:-

The wife of the deceased who is the first appellant herein shall receive a sum of Rs.5,77,000/-, the daughter of the deceased who is the second appellant herein shall receive a sum of Rs.2,00,000/- and the son of the deceased who is the third appellant shall receive a sum of Rs.2,00,000/-

13. The Insurance Company/second respondent 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. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through NEFT or RTGS within a period of one week thereon. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. The claimants are directed to pay the requisite court fee, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

14. Accordingly, the Civil Miscellaneous Appeal is partly allowed by enhancing the award of the Tribunal from Rs.5,08,000/- to Rs.9,77,000/- with interest and costs. Consequently, connected miscellaneous petition is also closed, if any. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

1.The Additional District Cum Sessions Court,  
Fast Track Court - XV, Chennai

Copy to:

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

+1cc to Mr. N.M.Muthurajan, Advocate sr.10401  
+1cc to Mr.G.Udaya Sankar, Advocate sr.10450

C.M.A.No.366 of 2013

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