

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.10.2019
CORAM
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.1769 of 2018

1.P.Renuka
2.P.Gowri
3.P.Balaraman
4.P.Kala

... Appellants

vs.

1.Rajammal Memorial Charity Trust,
No.9, Kondi Chetty Street,
Chennai - 600 001.

2.The National Insurance Company Limited,
Divisional Office,
No.19, Officers Line
Opposite to Lakshmi Theatre,
Vellore.

... Respondents

(No relief sought against the
1st respondent. Hence, notice
may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the Decree and Judgment
dated 07.04.2018 made in MCOP.No.227 of 2016 on the file of the
Motor Accident Claims Tribunal, II Additional District and
Sessions Judge, Ranipet, Vellore.

For Appellants : Mr.C.Prabakaran

For Respondent 2 : Mr.D.Bhaskaran

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the claimants seeking
enhancement of compensation under the Award dated 07.04.2018
passed by the Motor Accident Claims Tribunal, II Additional
District and Sessions Judge, Ranipet, Vellore in MCOP.No.227 of
2016.

Brief facts leading to the filing of this appeal:

2. A person by name T.Paramasivam died on 27.04.2014 as a result of an accident caused by a car bearing registration No.TN04-AL-2615 owned by the first respondent and insured with the second respondent. The accident happened when the deceased was riding his two wheeler bearing registration No.TN21-AE-9309 in the Vellore to Chennai National High Ways Road, Near Kil Ambi Junction, when a car bearing registration No.TN04-AL-2615 coming from behind dashed against the two wheeler which resulted in the death of T.Paramasivam.

3. The dependents of the deceased who are his wife, two daughters and a son are the claimants/Appellants herein. They preferred a claim before the Motor Accident Claimst Tribunal, II Additional District and Sessions Judge, Ranipet, Vellore in MCOP.No.227 of 2016 against the respondents seeking a compensation of Rs.30,00,000/- for the death of T.Paramasivam as a result of the accident.

4. The Motor Accident Claims Tribunal by its Award dated 07.04.2018 passed in MCOP.No.227 of 2016 directed the respondents to pay the claimants a compensation of Rs.11,59,975/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. Out of the total compensation amount of Rs.11,59,975/-, the Tribunal determined the amount payable to the first claimant at Rs.8,59,975/-, to the claimants 2 to 4 at Rs.1,00,000/- each.

5. Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned Award dated 07.04.2018, the claimants have filed this Appeal seeking enhancement of compensation.

6. Heard Mr.C.Prabhakaran, learned counsel appearing for the Appellants and Mr.D.Bhaskaran, learned counsel appearing for the second respondent. The first respondent has remained exparte before the Tribunal and hence, notice to the first respondent is dispensed with in this Appeal.

Discussion:

7. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal, has sought for enhancement of compensation in this Appeal on the ground that the Tribunal has erroneously not considered the gross salary of the deceased at the time of the accident. According to them, as per Ex.P13, the deceased was a Sub Inspector of Police and was

drawing a gross salary of Rs.32,053/- at the time of the accident, but the Tribunal has erroneously taken into consideration only the pay and grade pay totally amounting to Rs.16,370/- which is unsustainable in law. It is also their case that the Tribunal has not awarded adequate compensation under various other heads.

8. This Court has perused and examined the impugned Award as well as the materials and evidence available on record.

9. Before the Tribunal, the claimants have filed 15 documents which were marked as Ex.P1 to Ex.P15 and three witnesses were examined on their side namely PW1 to PW3. On the side of the second respondent, insurance company, neither any witness was examined nor any document filed before the Tribunal.

10. The second respondent insurance company has not disputed the fact that the deceased was a Sub Inspector of Police and they have also not disputed Ex.P13, the salary certificate of the deceased. The accident happened on 27.04.2014. The claimants have filed the salary certificate of the deceased for the month of March 2014 which is Ex.P13. The contents of the salary certificate has also not been disputed by the second respondent insurance company before the Tribunal. As per Ex.P13, gross salary of the deceased was Rs.32053/-. Instead of taking into consideration the gross salary of the deceased, the Tribunal has selectively taken into consideration only the pay and grade pay of the deceased and has erroneously assessed the monthly income of the deceased at Rs.16,370/-. It is settled law that while assessing the monthly income of the deceased, the Tribunal will have to take into consideration only the gross monthly income. Accordingly, the monthly income of the deceased at the time of the accident is revised to Rs.32,053/- instead of Rs.16,370/- fixed by the Tribunal.

11. The Tribunal has also not awarded any compensation towards loss of future prospects which the claimants are entitled to as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. The deceased was aged 54 years at the time of the accident. As per Pranay Sethi Judgment of the Hon'ble Supreme Court referred to supra, the claimants are entitled to loss of future prospects at the rate of 15% over and above the monthly income.

12. The Tribunal has rightly applied split multiplier, in view of the fact that the deceased had only three years and 11 months in service as Sub Inspector of Police.

13. Considering the age of the deceased, the Tribunal has also rightly deducted $1/4^{\text{th}}$ towards personal expenses of the deceased as the dependents of the deceased are four in number.

14. The Tribunal has not awarded any compensation towards loss of love and affection to the claimants 2 to 4 who are the children of the deceased which they are entitled to as per Pranay Sethi Judgment of the Hon'ble Supreme Court referred to supra. Accordingly, we award a total sum of Rs.75,000/- as compensation towards loss of love and affection.

15. The Tribunal has rightly awarded a sum of Rs.40,000/- towards loss of consortium and another sum of Rs.15,000/- towards funeral expenses and we confirm the same.

16. The Tribunal has not awarded any compensation towards loss of estate which the claimants are entitled to as per Pranay Sethi Judgment of the Hon'ble Supreme Court referred to supra. As per Pranay Sethi Judgment of the Hon'ble Supreme Court referred to supra, the claimants are entitled to a sum of Rs.15,000 towards loss of estate. Accordingly, we award a sum of Rs.15,000/- towards loss of estate.

17. For the foregoing reasons, the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss while the deceased was in service	5,89,320/- ($16370 \times 12 = 196440 - 1/4 = 147330 \times 4$)	13,26,960/- ($32053 + 15\% = 36861 - 1/4 = 27645 \times 12 \times 4$)
Pecuniary loss after the period of retirement	5,15,655/- ($16370 / 2 = 8185 \times 12 = 98220 - 1/4 = 73665 \times 7$)	11,61,048/- ($32053 + 15\% = 36861 - 1/4 = 27645 / 2 = 13822 \times 12 \times 7$)

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of consortium to the first Appellant	40,000/-	40,000/-
Loss of love and affection to the Appellants 2 to 4	--	75,000/-
Loss of estate	--	15,000/-
Funeral Expenses	15,000/-	15,000/-
Total	11,59,975/-	26,33,008/-
Rounded off		(+2)
Award amount	11,59,975/-	26,33,010/-

Conclusion:

18. In the result, the Appeal is partly allowed by enhancing the award amount from Rs.11,59,975/- to Rs.26,33,010/-. However, the rate of interest fixed by the Tribunal is confirmed. The second respondent insurance company is directed to deposit the entire award amount of Rs.26,33,010/- together with interest at the rate of 7.5% per annum from the date of numbering of claim petition till the date of realisation and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.227 of 2016 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective share of award amount to the claimants/Appellants as per the ratio of apportionment made by the Tribunal through RTGS within a period of four weeks thereafter. No costs.

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Sd/-
Assistant Registrar (CS-II)

// True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
II Additional District and Sessions Judge, Ranipet, Vellore.

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

+lcc to Mr.Prabakaran, Advocate, SR.No.87626.

+lcc to Mr.Baskaran, Advocate, SR.No.87649.

C.M.A.No.1769 of 2018

MG(CO)
CSR: 27.02.2020



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