

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.3300 OF 2019

1.Nithya
2.Minor.Gowtham
3.Minor.Sachin
(Minor Petitioner's 2 & 3
represented by their NF,
Guardian/Grand Father
Sellaiya)
4.Sellaiya ... Appellants/Petitioners

vs.

1.Varatharaj
2.M/s. National Insurance Company Limited,
No.74-A. Paramathy Road,
Namakkal Taluk & District. ... Respondents/Respondents
(Respondent -1 set
remained ex-parte before
the tribunal. Hence, notice
may be dispensed with for
them in this appeal)

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against insofar as quantum in the
Judgment and Decree dated 21.12.2017 made in MCOP.No.1637 of
2016 on the file of MACT/Additional District Court at Namakkal.

For Appellants : Mr.Ma.P.Thangavel

For Respondent 2 : Mr.S.Vadivelu

R1 : Dispensed with vider order
dated 05.09.2019

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 21.12.2017 passed by the Motor Accident Claims Tribunal (Additional District Court) at Namakkal in MCOP.No.1637 of 2016.

Brief facts leading to the filing of the instant appeal:

2. A person by name Palanisamy died on 10.05.2016 as a result of an accident caused by a Tata Ace vehicle bearing registration No.TN70-A-1568 owned by the first respondent and insured with the second respondent. Palanisamy was riding a two wheeler bearing registration No.TN28-AK-6114 on the left side of the road towards north to south direction, when the Tata Ace vehicle bearing registration No.TN70-A-1568 came from the opposite direction and dashed against the two wheeler resulting in the death of Palanisamy.

3. The dependents of the deceased who are the Appellants herein preferred a claim before the Motor Accident Claims Tribunal (Additional District Court) at Namakkal in MCOP.No.1637 of 2016 against the respondents seeking a compensation of Rs.20,80,000/- which was restricted to Rs.20,00,000/- by the claimants.

4. By an award dated 21.12.2017 passed in MCOP.No.1637 of 2016, the Tribunal has directed the second respondent to pay the Appellants a sum of Rs.11,26,900/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and recover the same from the first respondent. A further direction was given by the Tribunal that out of the total compensation amount, the first Appellant being the daughter of the deceased was entitled to Rs.3,26,900/-, the second and third Appellants being the minor children of the deceased each were entitled to Rs.3,00,000/- and the fourth Appellant being the father of the deceased was entitled to Rs.2,00,000/-.

5. Aggrieved by the quantum of compensation assessed by the Tribunal under the impugned award dated 21.12.2017 passed in MCOP.No.1637 of 2016, this appeal has been filed by the claimants seeking enhancement of compensation.

6. Heard Mr.Ma.P.Thangavel, learned counsel for the Appellants and Mr.S.Vadivelu, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

Discussion:

7. The Appellants have filed this appeal on the ground that the Tribunal has not taken note of the fact that the deceased was a carpenter and was earning a monthly income of Rs.15,000/- at the time of the accident which happened in the year 2016. According to the Appellants, the assessment of notional monthly income of the deceased at Rs.6,500/- by the Tribunal is an incorrect assessment. Further it is their case that the Tribunal ought to have awarded Rs.1,00,000/- each towards loss of love and affection to the Appellants. The Appellants have also challenged the award on the ground that no compensation has been awarded under the head transportation expenses.

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 11 documents which were marked as Ex.A1 to Ex.A11 and two witnesses were examined viz., PW1- Nithya, daughter of the deceased and PW2-Jayapal, an eye-witness to the accident. On the side of the respondents, 4 documents were filed which were marked as Ex.B1 to Ex.B4 and two witnesses were examined viz., RW1- Murali, Motor Transport Inspector and RW2- Shanti Mala, Administrative Officer of the Insurance Company.

10. Before the Tribunal, the claimants have established that only due to the rash and negligent driving by the driver of the Tata Ace bearing registration No. TN70-A-1568 (insured vehicle), the accident had happened which resulted in the death of Palanisamy. No appeal has also been filed by the insurance company against the finding of the Tribunal that the accident had happened only due to the rash and negligent driving by the driver of the Tata Ace and therefore, the said finding has attained finality.

11. The claimants had filed the claim petition claiming that the deceased palanisamy was a carpenter and was earning a monthly income of Rs.15,000/- at the time of the accident. The oral evidence has also been let in by the claimants through PW1 his daughter that the deceased was a carpenter. The avocation of the deceased has also not been disproved by the respondents before the Tribunal. However, no documentary evidence has been produced by the claimants to prove that the deceased was a carpenter at the time of the accident and was earning a monthly income of Rs.15,000/-. Since no documentary evidence was produced, the Tribunal has assessed the notional monthly of the deceased at the time of the accident as Rs.6,500/- per month.

12. The accident happened in the year 2016. Even a manual labourer in the year 2016 would have earned a minimum of Rs.500/- per day and on an average, he would have earned Rs.12,000/- per month depending upon the number of days of work. But the Tribunal has erroneously fixed the monthly notional income of the deceased at the time of the accident at Rs.6,500/- without any basis. The Tribunal ought to have fixed the monthly notional income of the deceased at least on par with the manual labourer who would have earned minimum of Rs.12,000/- per month in the year 2016. Therefore, we are enhancing the monthly notional income of the deceased at the time of the accident from Rs.6,500/- to Rs.12,000/-.

13. The Tribunal has fixed the loss of future prospects at 25% which in our considered view is an incorrect assessment. The deceased was aged 40 years and the postmortem report Ex.A2 has also proved the same. As per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd., vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the claimants are entitled to 40% towards loss of future prospects of the deceased. Hence, we enhance the loss of future prospects to 40% from 25%.

14. The Tribunal under the impugned award has awarded compensation under the following heads:

Heads	Award amount
Loss of Income	10,96,920/- $6500 + 25\% = 8125 \times \frac{1}{4} = 6094 \times 12 = 73128 \times 15 = 10,96,920/-$
Funeral Expenses	15,000/-
Loss of estate	15,000/-
Total	Rs.11,26,920/-
Rounded off to	Rs.11,26,900/-

15. As seen from the above tabular column, no compensation has been awarded by the Tribunal under the heads (a) Loss of love and affection and transportation charges which the claimants are legally entitled to as per the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd., vs. Pranay Sethi and others referred to supra. Accordingly, we fix the compensation towards loss of love and affection to the Appellants 1 to 3 at Rs.1,20,000/- and the loss of love and affection to the Appellant 4 at Rs.40,000/- and also awarded a sum of Rs.10,000/- towards Transportation Charges. Since the driver of the Tata Ace vehicle did not possess valid driving licence, the Tribunal has directed the second respondent

to pay the compensation to the Appellants and recover the same from the first respondent and we do not find any infirmity in the same.

16. For the foregoing reasons, the amount awarded by the Tribunal is modified in the following manner:

Heads	Amount awarded by the tribunal	Amount awarded by this Court
Loss of Income	10,96,920/- $6500+25\% = 8125 \times \frac{1}{4} = 6094 \times 12 = 73128 \times 15 = 10,96,920/-$	18,90,000/- $(10,000+40\%=14,000 \times 12 \times 15 \times \frac{1}{4})$
Loss of love and affection	Nil	1,60,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Transportation Charges	Nil	10,000/-
Total	Rs.11,26,900/-	Rs.20,90,000/-

17. In view of the above, the amount awarded by the tribunal is enhanced from Rs.11,26,900/- to Rs.20,90,000/-. Out of the said amount, the first Appellants is entitled to Rs.5,90,000/-, the second and third Appellants each are entitled to Rs.5,50,000/- and the fourth Appellant is entitled to Rs.4,00,000/-.

Conclusion:

18. In the result, the appeal is partly allowed by modifying the award amount passed in MCOP.No.1637 of 2016 by the Motor Accident Claims Tribunal, Additional District Court at Namakkal. However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The Second respondent-Insurance Company is directed to deposit the entire award amount as per the order of this court before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.1637 of 2016 within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the first respondent. On such deposit being made, the Tribunal is directed to transfer the share of the first and fourth Appellants as per the order of this Court through RTGS within a period of four weeks thereafter. Since the second and third Appellants

are minors, their share of award amount shall be deposited in any one of the Nationalised Banks, till they attain majority. The fourth Appellant who is the guardian of the minors/second and third Appellant is permitted to withdraw the interest accrued once in six months. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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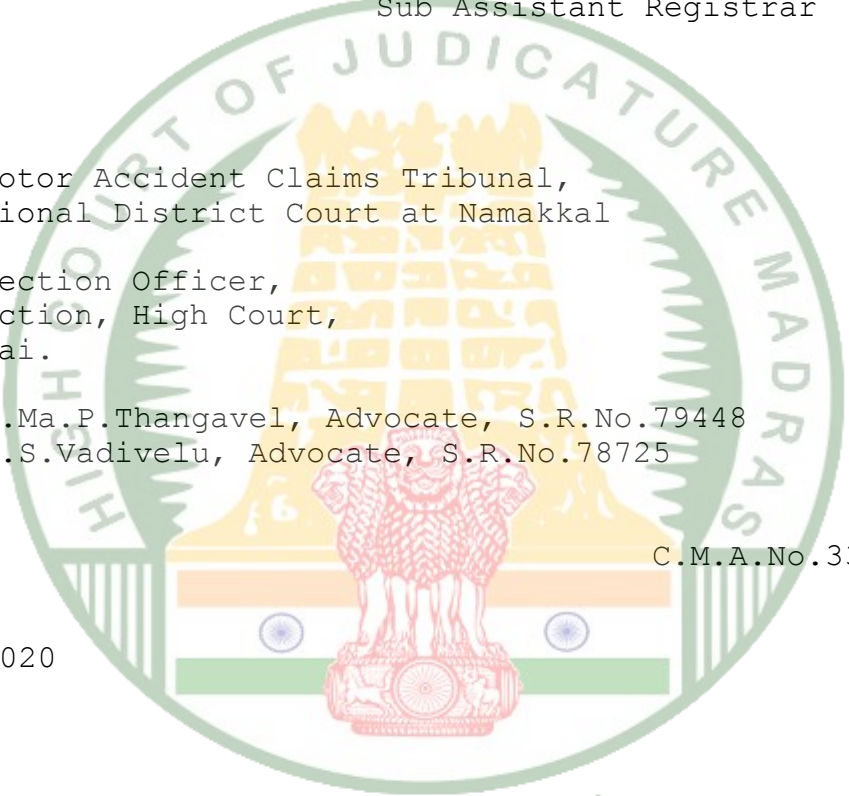
1. The Motor Accident Claims Tribunal,
Additional District Court at Namakkal
2. The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.79448

+1cc to Mr.S.Vadivelu, Advocate, S.R.No.78725

C.M.A.No.3300 of 2019

PM(CO)
CS/18/11/2020



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