IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.317 of 2014

1.S.Alamelu

2.Minor S.Vinoth Kumar

3.Minor S.Rajesh Kumar

2 & 3 Petitioner rep by their
Mother S.Alamelu

4.Vasanthi ... Appellants/Petitioners

Vs

1.K.Ramamoorthy
(was ex parte in the Trial Court)

2.Reliance General Insurance Co. ltd.,
Reliance House 6th Floor, No.6, Haddows Road,
Nungambakkam, Chennai - 6.
... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, against the Judgment and Decree dated 26.02.2013 made in MACT O.P.No.5022 of 2010 on the file of the learned XVII Additional Judge, Motor Accident Claims Tribunal (XVII Additional District Court), Chennai.

For Appellants : Mr.K.Suryanarayanan

For Respondent 2: Mr.S.Arun Kumar

J U D G M E N T

The instant appeal has been filed by the claimants seeking enhancement of compensation challenging the order dated 26.02.2013 passed by the learned XVII Additional Judge, Motor Accident Claims Tribunal, Chennai in MACTOP.No.5022 of 2010.

Brief facts of the case are as follows:

2. On 06.11.2010 at about 20.00 hours the deceased

Santhakumar a pillion rider of the motor cycle bearing Registration No.TN-05-R-0475 on the Solingar Road at G.K.Kandigai near Beerakuppam, Thiruttani, a lorry bearing registration No.TN-07-Q-5665 which is owned by the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner endangering to the public safety and hit against the motor cycle and the said lorry was ran over the deceased body. The deceased Santhakumar sustained multiple grievous injuries which culminated in fatal. The deceased Santhakumar was aged 25 years and worked as a car driver at the time of accident. The claimants/Appellants preferred a compensation claim before the Motor Accident Claims Tribunal seeking a compensation of Rs.20,00,000/- against the respondents for the death of Santhakumar.

3. On behalf of the claimants/Appellants, two witnesses were examined namely PW1 & PW2 and on his side, copy of First Information Report marked as Ex.P1, copy of rough sketch marked as Ex.P2, copy of charge sheet marked as Ex.P3, Motor Vehicle report marked as Ex.P4, Inquest report marked as Ex.P5, Death Certificate marked as Ex.P6, Legal Heirship certificate marked as Ex.P7, copy of transfer certificate marked as Ex.P8, Driving license copy of the deceased marked as Ex.P9, Medical treatment records for the minor sons S.Vinothkumar and S.Rakeshkumar marked as Ex.P10 & P11 and Driving license copy of PW2. Neither any witness was examined nor any document was marked as exhibits on behalf of the respondents.

4. After examining various aspects the Tribunal passed an Award dated 26.02.2013 by directing the second respondent Insurance Company to pay the appellants a sum of Rs.9,23,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and set the first respondent ex parte.

5. Aggrieved by the Award dated 26.02.2013, the Appellants preferred this appeal seeking enhancement of compensation.

6. Heard learned counsel for the Appellants and learned counsel for the second respondent. The first respondent was remained ex parte both before the Tribunal as well as this Court.

7. Learned counsel for the Appellants submitted that the deceased Santhakumar was aged 25 years at the time of accident and was working as a car driver and earning a sum of Rs.9,000/- per month including batta of Rs.100/- per day, whereas the Tribunal has taken the income of the deceased as Rs.4,500/- which is very much lower than the standard income as determined by the Hon'ble Supreme Court. The learned counsel drew the

attention of this Court to the Division Bench Judgment of the Hon'ble Supreme Court in the case of Syed Sadiq, etc vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459 (SC) wherein the Hon'ble Supreme Court has fixed the income for the Vegetable vendor as Rs.6,500/- per month for the accident of the year 2008 for the purpose of calculation of the loss of income of the dependents/Appellants. Therefore, the learned counsel for the Appellants insisted this Court to fix the monthly income of the deceased at Rs.8,000/- at the time of his death.

8. The learned counsel for the Appellants also contended that the Tribunal has erronously awarded only a sum of Rs.1,00,000/- towards future prospects instead of awarding 40% out of loss of income of the deceased. The learned counsel for the Appellants further contended that the Tribunal has awarded the compensation under the heads loss of love and affection, funeral expenses and for loss of consortium is very meagre.

9. Per contra, learned counsel for the second respondent would submit that the compensation awarded by the Tribunal is a fair and just compensation.

10. After examining the impugned award and after hearing the submissions of the learned counsels and considering the facts and circumstances of the instant case, it would be appropriate for this Court to refix the notional income of the deceased at the time of accident for the purpose of calculating the pecuniary benefits as Rs.8,000/- instead of Rs.4,500/- as fixed by the Tribunal, as the deceased was a car driver at the time of accident by applying the principles laid down by the Hon'ble Apex in the Syed Sadiq case cited supra. 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, future prospects will be fixed at 40%, since the deceased was a driver and aged below 40 years at the time of accident. This court also feels that the Tribunal has rightly adopted 17 multiplier and deducted 1/4th towards personal expenses of the deceased as the number of dependents is 4 as per the dictum laid down by the Hon'ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation reported in (2009) 6 SCC 121. Therefore, calculation for loss of dependency is that Rs.8,000 x 12 x 17= 1632000 + 40% =2284800 - 1/4th = Rs.17,13,600/-.

11. Since the Tribunal has awarded a sum of Rs.5,000 towards Funeral Expenses, Rs.25,000/- towards loss of consortium and not awarded any compensation towards loss of estate, this Court is inclined to refix as a sum of Rs.15,000/- towards Funeral Expenses, Rs,40,000/- towards loss of consortium and

Rs.15,000/- towards loss of estate as held by the Hon'ble Supreme Court in the Pranay Sethi's case cited supra.

12. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection and Rs.5,000/- towards Transportation. However, this Court feels that the amount awarded by the Tribunal under the heads loss of love and affection and Transportation is reasonable.

13. Hence the total compensation payable to the appellants are as follows:-

Head	Award Amount (Rs.)
Loss of Dependency	17,13,600/-
Loss of consortium	40,000/-
Loss of love and affection	1,00,000/-
Loss of estate	15,000/-
Funeral expenses	15,000/-
Transportation	5,000/-
Total	18,88,600/-

Out of the total compensation amount of Rs.18,88,600/-, the first Appellant is entitled for Rs.9,00,000/-, the second and third Appellants are entitled for Rs.4,00,000/- each and the fourth Appellant is entitled for Rs.1,88,600/-.

14. In the light of the above observation, the amount awarded by the Tribunal is modified by enhancing the award from Rs.9,23,500 to Rs.18,88,600/- and the Insurance Company/second respondent is directed to deposit the modified award amount, after deducting the amount already deposited, if any, 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 eight weeks from the date of receipt of a copy of this order to the credit of MACTOP.No.5022 of 2010 on the file of the learned XVII Additional Judge, Motor Accident Claims Tribunal, Chennai. The Appellants are directed to pay deficit court fees.

15. On such deposit being made, the Tribunal shall transfer the share of award amount of the first and fourth Appellants to their personal accounts through RTGS within a period of one week thereon. Since the second and third Appellants are minors, their respective shares shall be deposited in any one of the nationalized banks till they attain majority and the first Appellant/guardian/mother of the second and third Appellants is permitted to withdraw the interest accrued once in six months, within a period of one week thereon.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The XVII Additional Judge,
   Motor Accident Claims Tribunal, Chennai

Copy TO

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

+1cc to Mr.K.Suryanarayan, Advocate, S.R.No. 9834
+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 10382

C.M.A.No.317 of 2014

RJI(CO)
GN(27/04/2019)