

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3212 of 2017

M/s.Reliance General Insurance Company Limited,
Rai's Towers, 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai 600 040. ... Appellant /2nd Respondent

Vs

1.Tmt.Susila, W/o.Balsamy

2.Tmt.Maheswari @ Mahesh,
W/o.Manikandan

Both are residing at
No.347/C, Poonamallee High Road,
Aminjikarai, Chennai 600 029. ...1st & 2nd Respondent/
Petitioner

3.K.Ashok Kumar,
No.2/195, Reddy Street,
Kumaran Nagar,
Chennai 600 107. ...3rd Respondents/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment
and Decree made in MCOP.No.4933 of 2013, dated 14.03.2017, on
the file of the Motor Accident Claims Tribunal, in the Special -
I, Court of Small Causes, Chennai.

For Appellant :Mr.R.Mohanbabu
for Mr.M.B.Gopalan Asso.

For Respondent :Mr.Amar D.Pandiya (for R1 & R2)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company, against the award of Rs.15,01,000/- granted by the Tribunal, to the legalheirs of one Mr.Murugesan, 27 years, Cooly, allegedly earning about Rs.500/- per day, in the accident occurred on 28.04.2013, when the deceased, who was riding his motorcycle from West to East was knocked down by a Tipper lorry, which suddenly took reverse, without any signal.

2.Heard Mr.R.Mohan Babu, learned counsel, for Mr.M.B.Gopalan Asso., learned counsel for the appellant, and Mr.Amar D.Pandiya, learned counsel appearing for R1 and R2.

3.The only point to be decided in this matter is with regard to quantum of compensation.

4.It is submitted by the learned counsel for the appellant that the deceased was a bachelor, instead of deducting 50% towards personal expenses, 1/3rd has been deducted by the Tribunal. Further, 50% has been added towards future prospects, which is contrary to the Constitution Bench's judgment of the Honourable Apex Court in *National Insurance Company Limited V. Pranay Sethi and others*, reported in 2017 (2) TN MAC 609 (SC).

5.The Tribunal has determined the notional income at Rs.6,500/-, based on the Judgment of the Honourable Supreme Court delivered in *Syed Sadiq Vs. United India Insurance Company*, reported in 2014 (1) TNMAC 459. No doubt that the Hon'ble Supreme Court determined the monthly income of a vegetable vendor, who sustained injuries in the accident occurred during the year 2008 at Rs.6,500/-, whereas in this case, the accident was occurred during the year 2013 and therefore, Rs.6,500/- determined by the Tribunal as notional income is liable to be enhanced. Accordingly, it is redetermined as Rs.10,000/-.

6.50% has been added towards future prospects by the Tribunal, whereas the Hon'ble Supreme Court in *Pranay Sethi's* case, determined only 40% towards future prospects. If 40% is taken as future prospects, the monthly income would be Rs.14,000/- (Rs.10,000/- + Rs.4,000/-).

7.The Tribunal deducted only 1/3rd towards personal expenses, whereas it has to be 50% as the deceased was a bachelor. If 50% is deducted, loss of income would be at

Rs.7,000/- (14000/2).

8.As per Ex.P.3/Post mortem certificate, the deceased was aged 27 years at the time of accident and therefore, appropriate multiplier as per the judgment of the Honourable Supreme Court in *Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC)*, is "17". Therefore, loss of dependency would be at Rs.14,28,000/- (Rs.7,000/- x 17 x 12).

9.Love and affection:

The Tribunal awarded a sum of Rs.1,00,000/- to the 1st respondent and a sum of Rs.50,000/- to the 2nd respondent under this head, the same is reduced to Rs.75,000/- and Rs.25,000/- respectively. Therefore, totally a sum of Rs.1,00,000/- is awarded under this head.

10.Funeral expenses:

The Tribunal awarded a sum of Rs.25,000/- under this head, the same is reduced to Rs.15,000/-.

11.Transportation:

Though no amount was awarded by the Tribunal under this head, this Court awards a sum of Rs.15,000/- under this head.

12.Loss of estate:

Though no amount was awarded by the Tribunal under this head, this Court awards a sum of Rs.15,000/- under this head.

<i>Head</i>	<i>Amount (Rs.)</i>
Loss of dependency	1428000
Love and affection	100000
Funeral expenses	15000
Transportation	15000
Loss of estate	15000
Total	1573000

13.Hence, the total compensation payable in this case is Rs.15,73,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

14.Though the Insurance company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.15,01,000/- is enhanced to Rs.15,73,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is

just and reasonable compensation. Neither it could be inflated nor inadequate. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme Court in *Nagappa V. Gurdayal Singh* reported in 2004 (2) TN MAC 398 (SC).

15.Out of the modified award amount, the 1st respondent is entitled to get a sum of Rs.12,73,000/- and the 2nd respondent is entitled to get a sum of Rs.3,00,000/-.

16.The 1st and 2nd respondents/claimants are directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which the amount enhanced would not accrue to the claimant.

17.The Insurance company is directed to deposit the entire award amount along with interest and costs as per the modified award passed by this Court, 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 is directed to transfer respective shares of the respondents 1 and 2 along with interest and costs to their personal bank accounts through RTGS within a period of one week thereon.

18.Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.15,01,000/- to Rs.15,73,000/- with interest. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sai

To
The Special Sub Judge I,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai 104.

copy to

The Section Officer
VR Section

+1 cc to M/s.M.B.Gopalan Associates sr9895
+1 cc to M/s.S.Ravikumar Advocate sr 8680

C.M.A.No.3212 of 2017

aa05/09/2019