

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.2573 of 2018

1.Rajeswari
2.Rajendran

... Appellants

vs.

1.N.Sivakumaran
2.Royal Sundaram Alliance Insurance Co Limited,
Subramaniam Building, First Floor,
No.1, Club Road, Chennai - 2.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 02.01.2018 in MCOP.No.7540 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Ms.Ramya V.Rao
For Respondent 2 : Ms.T.Rathana Thara

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 02.01.2018 passed by the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai in MCOP.No.7540 of 2015.

Brief facts leading to the filing of the instant appeal:

2. A person by name R.Sathishkumar died on 25.05.2015 as a result of an accident caused by a car bearing registration No.TN10-P-9325 owned by the first respondent and insured with the second respondent. The accident happened when the deceased R.Sathish kumar was riding his motor cycle bearing registration No.TN19-M-1867 at Thiruporur Salai, near Thiruporur, when the insured car coming in the opposite direction dashed against the motor cycle and as a result of the impact, the deceased fell down and sustained fatal injuries resulting in his death.

3. The dependents of the deceased are his mother and father. They preferred a claim before the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai in MCOP.No.7540 of 2015 seeking compensation of Rs.50,00,000/- against the respondents for the death of R.Sathish Kumar.

4. The Motor Accident Claims Tribunal by its Award dated 02.01.2018 passed in MCOP.No.7540 of 2015 directed the second respondent insurance company to pay the claimants a sum of Rs.13,90,800/- as compensation together with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., from 25.09.2015 till the date of realisation. Out of the total compensation, the Tribunal determined the compensation payable to both the claimants equally.

5. Aggrieved by the Award dated 02.01.2018 passed by the Motor Accident Claims Tribunal in MCOP.No.7540 of 2015, this appeal has been filed by the claimants seeking enhancement of compensation.

6. Heard Ms. Ramya V.Rao, learned counsel appearing for the Appellants and Ms.T.Rathna Thara, learned counsel appearing for the second respondent.

Discussion:

7. According to the claimants, the compensation awarded by the Tribunal under the impugned award is inadequate. According to them, the notional monthly income of the deceased fixed by the Tribunal at Rs.9,000/- is meagre. It is their case that considering the fact that the deceased was aged 22 years and had completed a degree in Political science in Madras Christian College and was earning a monthly income of Rs.40,000/- by working part-time as a tiles mason with Jayakumar company and Ramboo Builders, the Tribunal ought to have fixed the monthly income of the deceased at Rs.50,000/-. It is also their case that the Tribunal did not consider the call letter dated 23.05.2015 calling upon the deceased to come for selection for the post of Sub-Inspector of Police and further according to them, the Tribunal also did not consider the deceased proficiency in sports and extra curricular activities. It is also their case that the deceased having died at very young age, the Tribunal ought to have awarded compensation under the head loss of love and affection as the claimants have lost their son at a very young age.

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

9. The Tribunal has awarded the compensation to the claimants in the impugned award under the following heads as detailed below:

Sl. No.	Heads	Amount (Rs.)
1	Loss of pecuniary benefits (9000 + 40% = 12,600 - 50% = 6,300 x 12 x 18)	13,60,800/-
2	Loss of estate	15,000/-
3	Funeral expenses	15,000/-
	Total	13,90,800/-

10. Before the Tribunal, the claimants have filed 13 documents which were marked as Ex.P1 to Ex.P13 and two witnesses were examined viz., PW1-mother of the deceased and PW2-an eye-witness to the accident. On the side of the second respondent insurance company, three documents were filed before the Tribunal which were marked as Ex.R1 to R3 and one witness was examined viz., RW1-an official of the insurance company.

11. It is the case of the Appellants that the deceased was earning a monthly income of Rs.40,000/- as a tiles mason and was also a degree holder in political science from Madras Christian College. PW1 has deposed that the deceased was earning Rs.21,000/-per month as a tiles mason with Jayakumar and Company and also earned Rs.20,000/- to Rs.25,000/- as tiles mason in Ramboo Builders and in total, he earned Rs.47,000/- per month. Ex.P6 and Ex.P7 have been filed by the claimants to substantiate their claim that the deceased was earning Rs.47,000/- per month in total. However, the Tribunal has assessed the monthly income of the deceased at Rs.9,000/- after rejecting Ex.P6 and Ex.P7. Even though the Tribunal has rightly rejected Ex.P6 and Ex.P7 as they are not reliable piece of evidence, since the employer was not examined as a witness, we are of the considered view that the Tribunal ought to have fixed the notional monthly income of the deceased at a higher sum.

12. Before the Tribunal, the claimants have filed Ex.P5 - transfer certificate of the deceased issued by the Madras Christian College to prove that the deceased was a graduate in Political Science from that college. The claimants have also filed sports certificate pertaining to the proficiency of the deceased in sports which was marked as Ex.P10. The age of the deceased is also proved through Ex.P1 (copy of the postmortem certificate). The accident happened in the year 2015. We are of the considered view that considering the education qualification

of the deceased and his proficiency in sports as well as the contention of the claimants that he was working as a tiles mason and earning Rs.47,000/- per month though not proved through reliable evidence, ought to have fixed his monthly notional income of the deceased at a higher sum. We are of the considered view that the Tribunal ought to have fixed the monthly income of the deceased at Rs.12,000/-.

13. The Tribunal has also not awarded any compensation to the claimants under the head loss of love and affection which they 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 claimants each are entitled to Rs.40,000/- and totally they are entitled to Rs.80,000/- towards loss of love and affection.

14. Insofar as the other heads of compensation awarded by the Tribunal is concerned, we do not find any infirmity in the same.

15. In the result, the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified award amount (Rs.)
Loss of Pecuniary Benefits	13,60,800/- (9000 + 40% = 12,600 - 50% = 6,300 x 12 x 18)	18,14,400/- (12,000+40% = 16,800 - 50% = 8,400 x 12 x 18)
Love and affection	.	80,000/-
Loss of estate	15,000/-	15,000/-
Funeral expenses	15,000/-	15,000/-
Total	13,90,800/-	19,24,400/-

16. In view of the above, the compensation awarded by the Tribunal is enhanced from Rs.13,90,800/- to Rs.19,24,400/- and out of the total modified award amount, both the claimants are equally entitled to.

Conclusion:

17. For the foregoing reasons, the Appeal is partly allowed. However, the rate of interest awarded by the Tribunal at 7.5% is confirmed. The second respondent insurance company is directed to deposit the modified award amount of Rs.19,24,400/- along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.7540 of 2015 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 amount lying to the credit of MCOP.No.7540 of 2015 to the first and second Appellants equally through RTGS within a period of four weeks thereafter. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Chief Judge, Small Causes Court, Chennai

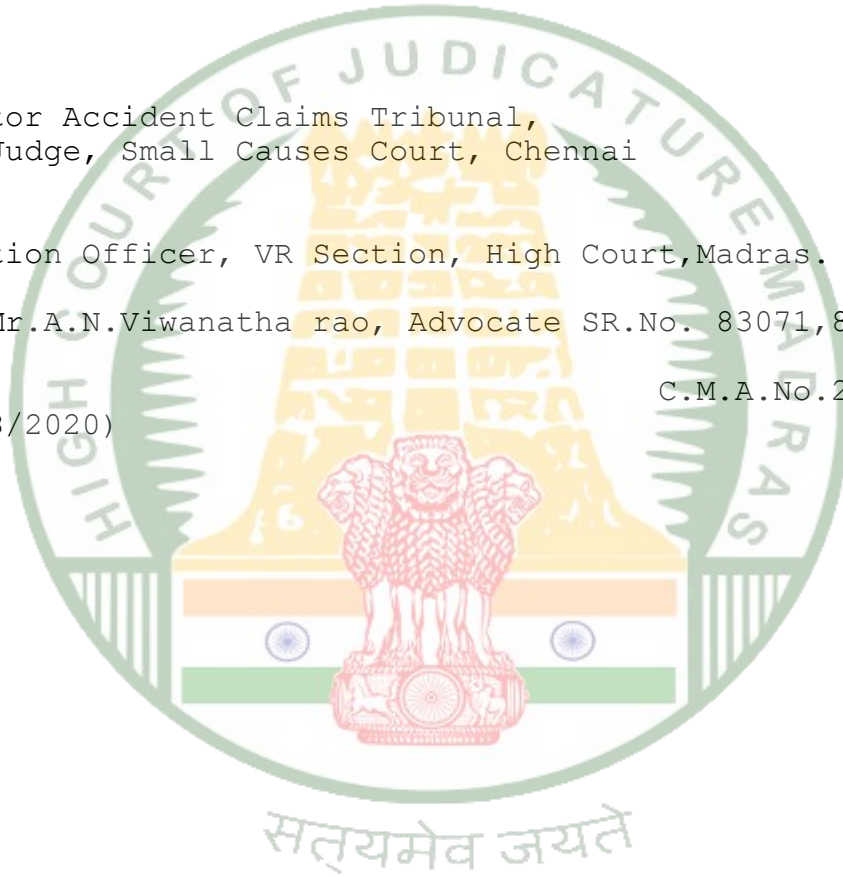
Copy to:

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

+2ccs to Mr.A.N.Viwanatha rao, Advocate SR.No. 83071,83296

C.M.A.No.2573 of 2018

A.SK(06/08/2020)



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