



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.291 of 2019

1)M.Seethai

2)M.Uma Maheswari

... Appellants/Petitioners

vs.

1)The Secretary,
Sourashtra College,
Pasumalai, Madurai-6.

2)The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Officer-IV,
No.52, South Masi Street, Madurai-1.

3)Sornavalli (Died)

4)Sornanathan

5)Kothai

6)M.Sivaprakasam

7)M.Vellaiappan

8)Meenakshi

9)Valliappan

10)M.Sundar

11)R.Kamala

(R6 to R11 are brought on record as legal representatives of the deceased 3rd respondent vide order dated 12.07.2018 made in CMP(MD) Nos.5526/18 & 11292/17 in CMA(MD).SR.46844/17)

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation award passed in MCOP.No.51/2009 on the file of the Motor Accident Claims Tribunal/District and Sessions Judge, Communal Clash Court, Madurai dated 26.10.2015.

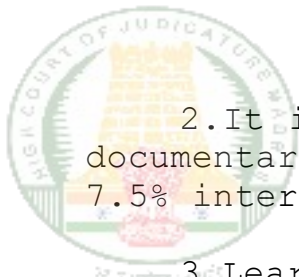
For Appellants : Mr.V.S.Karthi

For R2 : Mr.A.Shajahan

JUDGMENT

This appeal is filed by the claimants seeking enhancement of compensation.

<https://hosevlogs.courts.gov.in/heservices/>



2.It is a case of fatal and the Tribunal considering oral and documentary evidence awarded compensation of Rs.3,31,000/- with 7.5% interest per annum.

3.Learned counsel for the appellants would contend that the Tribunal ought to have awarded 10% of income towards future prospects as per the judgment of the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition(Civil)No.25590 of 2014 dated 31.10.2017)** and as per the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC)**, the Tribunal ought to have adopted 9 multiplier instead of 8 as per the Schedule. He further contended that under conventional heads, a sum of Rs.70,000/- shall be awarded as per Pranay Sethi's case.

4.Heard the learned counsel for the appellants as well as the respondents.

5.Perusal of record shows that while calculating the loss of income, the Tribunal has not awarded any sum towards future prospects. The claimants claimed that the deceased was aged 58 years at the time of accident and he was running a cycle shop and earned Rs.25,000/- per month. However, in the absence of proof, the Tribunal fixed the monthly income of the deceased at Rs.4,500/- notionally. As rightly contended by the learned counsel for the appellants, the Tribunal ought to have granted 10% of income towards future prospects according to the age of the deceased as per Pranay Sethi's case. If 10% is added towards future prospects and if 9 multiplier is applied as per Sarla Verma's case, the loss of income is calculated as follows:-

$$\text{Rs.}4500 + \text{Rs.}450 - 1/3^{\text{rd}} \times 12 \times 9 = \text{Rs.}3,56,400/-$$

6.Perusal of the award shows that the Tribunal has granted only Rs.10,000/- towards loss of consortium. As per Pranay Sethi's case, a sum of Rs.40,000/- is awarded. Except the above heads, the compensation awarded by the Tribunal under other heads are not interfered with. The total compensation is calculated as follows:-

Loss of income	=	Rs.3,56,400/-
Loss of estate	=	Rs. 10,000/-
Loss of consortium	=	Rs. 40,000/-
Funeral Expenses	=	Rs. 5,000/-
Transportation	=	Rs. 8,000/-
Love and affection	=	Rs. 10,000/-

Total = Rs.4,29,400/-

(Less) Amount awarded by

<https://hcservices.ecourts.gov.in/hcservices> the Tribunal = Rs.3,31,000/-



Enhanced compensation = Rs. 98,400/-

7. The enhanced amount of Rs.98,400/- shall not carry interest for the delayed period of 660 days in filing this appeal. The 2nd respondent insurance company is directed to deposit the total compensation of Rs.4,29,400/- with 7.5% interest per annum from the date of claim petition till the date of deposit, excluding the interest of Rs.98,400/- for the delayed period of 660 days, and costs, less the amount already deposited, if any to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. In the Tribunal, 1st appellant/wife of the deceased and respondents 3 and 4/son and daughter of the deceased were permitted to withdraw the award amount. Therefore, on such deposit of the award amount by the 2nd respondent, the 1st appellant and the 4th respondent are permitted to withdraw their respective shares with proportionate interest, without filing formal permission petition before the Tribunal. Pending this appeal, 3rd respondent died and her legal heirs were brought on record as respondents 6 to 11 vide order dated 12.07.2018. Therefore, the respondents 6 to 11 are permitted to withdraw the share of the deceased 3rd respondent in equal shares with proportionate interest without filing formal permission petition before the Tribunal.

With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

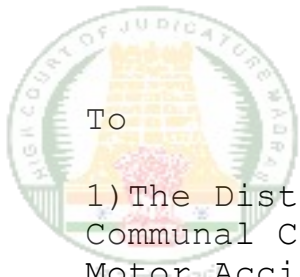
Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

1) The District and Sessions Judge,
Communal Clash Court,
Motor Accidents Claims Tribunal,
Madurai.

Copy to
The Section Officer-2 copies
VR section,
Madurai Bench of Madras High Court, Madurai

+1 cc to Mr.V.S.Karthi , Advocate SR.No.70878
+1 cc to Mr.A.Shajahan , Advocate SR.No.70830

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