



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.06.2019
CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANUCMA(MD)No.319 of 2019andCMP(MD)No.4004 of 2019

1)Nallammal
2)Minor Palani Bharathi
3)Minor Jegatheeswaran
(Minor appellants 2 and 3 are represented by
their mother, next friend Nallammal/1st appellant)
... Appellants/Petitioners

vs.

1)Er.Perumal
2)National Insurance Company Limited,
Jerome Building,
1st Floor, Fort Station, Trichy-2.
3)S.Palanisamy
4)Nagammal
5)S.Muthumeena
6)Minor S.Heerthika
(Minor 6th respondent represented by
her mother next friend Muthumeena/
5th respondent)
... Respondents/Respondents

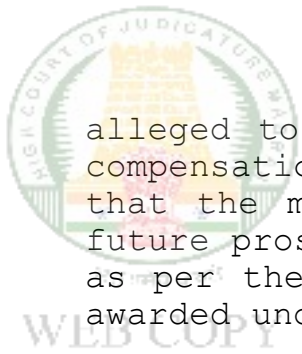
Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order in MCOP.No.661/2012 dated 07.04.2018 passed by the Motor Accidents Claims Tribunal, Principal District Judge at Tiruchirappalli in so far as awarding the compensation in favour of the 5th and 6th respondents and consequently enhance the compensation passed in favour of the appellants.

For Appellants	: Mr.K.P.Narayanakumar
For R1 and R6	: No appearance
For R2	: Ms.P.Malini
For R3 to R5	: Mr.N.Sudhagar Nagaraj

JUDGMENT

This appeal has been filed by the by appellants/claimants seeking enhancement of compensation.

2. Learned counsel for the appellants/claimants would contend that the 5th respondent is not the legally wedded wife of the deceased and therefore, the 5th respondent and her son/6th respondent



alleged to have born through the deceased are not entitled to any compensation for the death of the deceased. It is further contended that the monthly income fixed by the Tribunal is very low and no future prospects were awarded as per Pranay Sethi's case and further as per the same judgment, a sum of Rs.70,000/- ought to have been awarded under conventional heads.

3.Learned counsel for the respondents 3 to 5 would contend that the 5th respondent as second wife is entitled to compensation in view of the judgment in 2016 ACJ 79, Lalitha vs. M.R.Sunilkumar and others and therefore, the apportionment of compensation to the respondents 5 and 6 need not be interfered with.

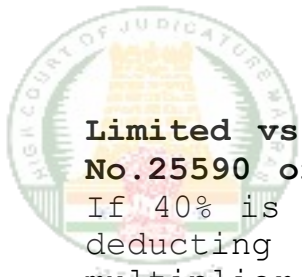
4.Learned counsel for the 2nd respondent would contend that though no proof has been produced for the income of the deceased, the Tribunal has erroneously fixed the higher notional income at Rs.7,000/- per month and the award under other heads does not require enhancement.

5.Heard the learned counsel for the appellants, 2nd respondent and respondents 3 to 5.

6.Perusal of record shows that though the claimants claimed that the deceased earned Rs.20,000/- as a driver, no evidence was let in to prove the income and therefore, the Tribunal fixed the monthly income of the deceased at Rs.7,000/-. After deducting 1/5th towards the personal expenses and applying 17 multiplier, the Tribunal awarded a sum of Rs.11,42,400/- towards loss of dependency. Apart from the above, the Tribunal awarded Rs.10,000/- each towards loss of love and affection to the appellants and respondents 3 to 6 and Rs.10,000/- each towards transport expenses and funeral expenses. Altogether, the Tribunal awarded Rs.12,32,400/- as compensation with 7.5% interest per annum from the date of petition till the date of deposit.

7.The contention of the appellants that the 5th respondent is not the legally wedded wife of the deceased and therefore, she is not entitled to compensation is not tenable in view of the judgment reported in 2016 ACJ 79, wherein, it has been held that the second wife is entitled to maintain claim application for the death of her husband in motor accident as she inter meddles with the estate of the deceased and would fall within the meaning of legal representatives as per Section 2(11) of CPC and therefore, the interference of this Court is not necessary in respect of the finding rendered by the Tribunal as to the entitlement of the second wife/5th respondent herein.

8.As to the second claim by the appellants/claimants for enhancement of compensation, perusal of record shows that the Tribunal has failed to award any sum for future prospects. At the time of accident, the claimant was aged 28 years and therefore, 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), 40% of income is to be added. If 40% is added towards future prospects, the loss of income after deducting $1/5^{\text{th}}$ towards the personal expenses and applying 17 multiplier would be Rs.15,99,360/- (Rs.9800- $1/5 \times 12 \times 17$). The award of Rs.70,000/- towards loss of love and affection is confirmed. A sum of Rs.70,000/- is hereby awarded under conventional heads as per Pranay Sethi's case. Consequently, the award of Rs.10,000/- each towards transportation and funeral expenses are set aside. The compensation is modified as follows:-

Loss of dependency	=	Rs. 15,99,360/-
Loss of love and affection	=	Rs. 70,000/-
Conventional heads	=	Rs. 70,000/-

Total	=	Rs. 17,39,360/-
(Less) Amount awarded by the Tribunal	=	Rs. 12,32,400/-

Enhanced compensation	=	Rs. 5,06,960/-

9. In the result, the appellants are entitled to enhanced compensation of Rs.5,06,960/- with 7.5% interest from the date of petition till the date of deposit. Since the respondents 3 to 6 are satisfied with the apportionment of award amount made to them, they are not before this Court and therefore, the enhanced amount of Rs.5,06,960/- shall be apportioned only to the appellants/claimants as per the apportionment made by the Tribunal. The 2nd respondent is directed to deposit Rs.17,39,360/- with 7.5% interest from the date of petition till the date of deposit, 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. On such deposit, all the major claimants are permitted to withdraw their respective shares in the ratio apportioned by the Tribunal. The minors' shares shall be deposited in a Nationalised Bank till they attain majority. The interest accruing on such shares is permitted to be withdrawn by the respective guardians once in three months directly from the bank.

With the above direction, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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To

1) The Principal District Judge,
Motor Accidents Claims Tribunal,
Tiruchirappalli.

2) The Section Officer,
V.R. Section (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.MALINI, Advocate (SR-71588[F] dated 26/06/2019)
+1 CC to MR.N.SUDHAGAR NAGARAJ, Advocate (SR-71730[F] dated
27/06/2019)
+1 CC to MR.K.P.NARAYANA KUMAR, Advocate (SR-71887[F] dated
27/06/2019)

CMA(MD)No.319 of 2019
26.06.2019

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