

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1060 of 2013

1.K.Chinnu

2.C.Chinnaponnu

... Appellants/Claimants

..Vs..

1.R.Nagaraj

2.G.Mohanraj

3.The New India Assurance Co. Ltd.,
No.5/1/338, Annapoorna Building,
Ooty Main Road, Mettupalayam,
Coimbatore District.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 23.06.2010 and made in MCOP.No.55 of 2008 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Coimbatore.

For Appellant : Mr.Ma.P.Thangavel

For Respondent 2 : No appearance

For Respondent 3 : Mr.Rajadurai,
for Mr.N.Vijayaraghavan
R1 set exparte

J U D G M E N T

[This Appeal has been taken up for hearing through Video conferencing]

This Appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 23.06.2010 passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate, Coimbatore) in MCOP.No.55 of 2008.

2. The finding of the Tribunal with regard to the negligence of the driver of the vehicle insured with the third respondent has now attained finality, since no appeal has been filed by the third respondent Insurance Company.

3. Heard Mr.Ma.P.Thangavel, learned counsel for the

Appellants and Mr.Rajadurai, learned counsel representing Mr.N.Vijayaraghavan, learned counsel for the third respondent. Despite service of notice on the second respondent, there is no representation on his side. The first respondent remained exparte both before the Tribunal as well as this Court.

4. The Appellants/claimants challenged the impugned award passed by the Motor Accident Claims Tribunal in MCOP.NO.55 of 2008 on the ground that the third respondent was exonerated from their liability, since the driver of the insured vehicle was not possessing a valid driving licence at the time of the accident. The Appellants/claimants have also sought for enhancement of compensation.

5. The questions that need to be decided by this Court is whether the Tribunal was right in exonerating the third respondent and whether the Appellants/claimants are entitled for any enhancement of compensation or not.

6. The Tribunal under the impugned award has assessed the compensation payable to the Appellants/claimants at Rs.3,95,000/-, but however has exonerated the liability of the third respondent insurance company on the ground that the driver of the insured vehicle did not possess a driving licence at the time of the accident. The details of the compensation awarded by the Tribunal are as follows:

Heads	Award Amount (Rs.)
Pecuniary loss of income	3,84,000/- $(3,000 - 1/3 = 2000 \times 12 \times 16)$
Funeral expenses	5,000/-
Loss of love and affection	6,000/-
Total	3,95,000/-

7. Insofar as the exoneration of liability of the third respondent insurance company by the Tribunal is concerned, the issue regarding the non-possessing of driving licence by the driver of the insured vehicle is now well settled by various decision of the Hon'ble Supreme Court including the latest decision in the case of Pappu and others vs. Vinod Kumar Lamba and another reported in 2018 (2) CTC 232 wherein the Hon'ble Supreme Court has held that in case, the driver of the insured vehicle did not possess a valid driving licence, the insurance company will have to pay compensation to the claimant and thereafter, recover the said amount from the insured. In the view of the settled position of law, the Tribunal has

erroneously exonerated the third respondent insurance company under the impugned award. Therefore, the finding given by the Tribunal that the third respondent insurance company is not liable to compensate the claimants is set aside by this Court and it is held that the third respondent insurance company is liable to compensate the claimants and recover the said amount from the insured.

8. Insofar as the second contention namely the quantum of compensation awarded by the Tribunal is concerned, the cause of the accident and the death of Mr. Prakash, as a result of the accident has not been disputed by the third respondent insurance company before the Tribunal.

9. The only dispute is with regard to the monthly income of the deceased at the time of the accident before the Tribunal. The contention of the Appellants/claimants is that the deceased was earning Rs.10,000/- per month and that he was working temporarily in Trane India Company, Ooty main road, Mettupalayam, Coimbatore District. However, the Tribunal under the impugned award fixed the monthly income of the deceased at the time of the accident as Rs.3,000/- per month, since no documentary evidence was produced by the Appellants/claimants before the Tribunal.

10. Before the Tribunal, the Appellants/claimants have filed 7 documents which were marked as Ex.A1 to Ex.A7 and three witnesses were examined which included the first Appellant/claimant who is the father of the deceased as PW1, Siddiq, an eyewitness to the accident as PW2 and Moorthy an employer of the deceased as PW3. On the side of the third respondent insurance company, three documents were filed which were marked as Ex.B1 to Ex.B3 and only one witness was examined as RW1.

11. PW3 who is an employer of the deceased and in his deposition had deposed that the deceased was earning Rs.4,500/- per month at the time of the accident. The Tribunal under the impugned award has ignored the said testimony and has fixed the monthly income of the deceased on notional basis at Rs.3,000/-. The year of the accident is 2004. Therefore, in the considered view of this Court, the assessment of monthly income of the deceased by the Tribunal at Rs.3,000/- is low. Considering the fact that the deceased was working in a private concern, as a labourer, the Tribunal ought to have accepted the testimony of PW3. As per the said testimony, the deceased was earning Rs.4,500/- per month at the time of the accident. Further in the case on hand, in the claim petition, the Appellants/claimants have pleaded that the deceased was earning Rs.10,000/- per month. The Tribunal ought to have accepted the testimony of PW3

and assessed the monthly income of the deceased at Rs.4,500/-. Accordingly, this Court assesses the monthly income of the deceased at Rs.4,500/-.

12. The Tribunal failed to award any compensation towards loss of future prospects which the Appellants/claimants are legally 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. Accordingly, this Court awards 40% towards loss of future prospects.

13. Since the deceased was a bachelor at the time of the accident, the Tribunal ought to have deducted 50% towards personal expenses of the deceased in accordance with the judgment of the Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), instead the Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased which is not a correct assessment. Accordingly, the same is modified by the this court to 50%.

14. The age of the deceased was 18 years at the time of the accident which is evidenced from Ex.A4, Portmortem certificate. As per the Sarla verma judgment referred to supra, 18 is the correct multiplier to be applied for calculating the pecuniary loss of income of the deceased. However, the Tribunal adopted 16 multiplier which is incorrect and accordingly the same is modified by this Court by 18 multiplier.

15. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses of the deceased which is not in accordance with Pranay Sethi's Judgment of the Hon'ble Supreme Court referred to supra. Hence, this Court awards a sum of Rs.15,000/- towards funeral expenses of the deceased in view of Pranay Sethi's Judgment referred to supra.

16. The Tribunal has awarded a sum of Rs.6,000/- towards loss of love and affection at Rs.3,000/- to each of the claimants which is not in accordance with Pranay Sethi's Judgment of the Hon'ble Supreme Court referred to supra. Hence, this Court awards a total sum of Rs.80,000/- at Rs.40,000/- each towards loss of love and affection in view of the Pranay Sethi's Judgment referred to supra.

17. The Tribunal has not awarded any compensation towards loss of estate. As per Pranay Sethi's Judgment referred to supra, it would be appropriate to award a sum of Rs.15,000/- towards loss of estate. Accordingly, this Court awards a sum of Rs.15,000/- towards loss of estate to the Appellants/claimants.

18. Since the deceased died on the date of the accident

itself, it would not be appropriate to award any compensation towards transportation cost. Accordingly, the Tribunal has rightly not awarded any compensation towards transportation cost.

19. For the foregoing reasons, the amount awarded by the Tribunal under the impugned award is enhanced from Rs.3,95,000/- to Rs.7,90,400/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss of income	3,84,000/- (3,000 - $\frac{1}{3}$ = 2000 x 12 x 16)	6,80,400/- (4,500 + 40% = 6,300 - 50% = 3,150 x 12 x 18)
Funeral expenses	5,000/-	15,000/-
Loss of love and affection	6,000/-	80,000/-
Loss of estate	Nil	15,000/-
Total	3,95,000/-	7,90,400/-

Conclusion:

20. In the result, this appeal is partly allowed by enhancing the amount awarded by the Tribunal from Rs.3,95,000/- to Rs.7,90,400/- and by granting pay and recovery rights to the third respondent insurance company. The Third respondent Insurance Company 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 and costs to the credit of MCOP.No.55 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the owner of the vehicle who is the second respondent herein. On such deposit being made, the Appellants/claimants are permitted to withdraw their respective shares of award amount along with accrued interest lying to the credit of MCOP.No.55 of 2008 by filing appropriate applications. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

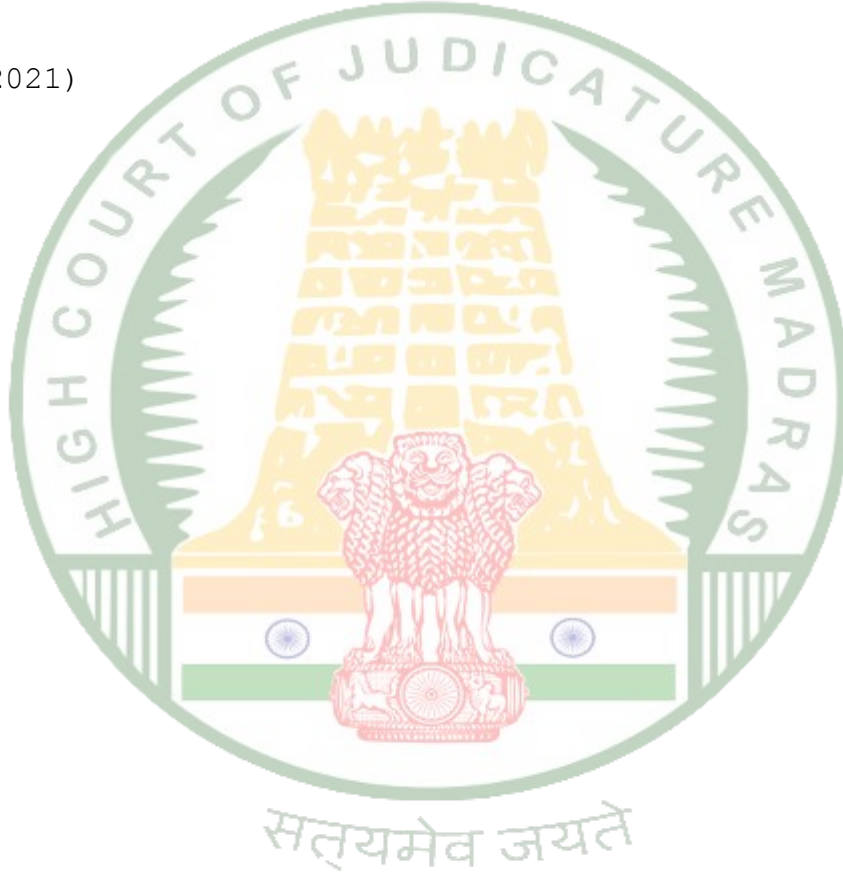
1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Coimbatore.

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The Section Officer
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C.M.A.No.1060 of 2013

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