

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1436 of 2013

1. K.Pushpavalli

2. T. Jaganathan

.... Appellants /Petitioners

Versus

1. D.Ramachandra Reddy

2. Shiram General Insurance Co. Ltd.,
No.66, 2nd Floor,
City Centre Complex,
Thirumalaipillai Road,
T.Nagar,
Chennai - 600 017.

.... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.11.2012 in M.C.O.P. No.2567 of 2010 on the file of the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellants

: Mr.G.Balaji Prasad

For Respondents

: M/s.C.Bhuvana Sundari for R2
R1 - Exparte

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 20.11.2012 passed by the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes, Chennai in MCOP No.2567 of 2010.

2. Unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, this appeal has been filed by the claimants seeking enhancement.

3. A person, by name J.Vijayaraghavan, aged 27 years died on 11.04.2010 as a result of an accident caused by a vehicle insured with the second respondent.

4. The legal representatives of the deceased are the appellants herein. They preferred a claim before the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes,

Chennai. seeking compensation of Rs.10,00,000/- for the death of J.Vijayaraghavan.

5. The Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes, Chennai, by its award dated 20.11.2012 passed in M.C.O.P. No.2567 of 2010, directed the second respondent to pay Rs.4,79,900/- together with interest at 7.5% per annum from the date of numbering i.e. from 22.07.2010 till the date of deposit and costs as compensation to the appellants/claimants for the death of J.Vijayaraghavan. Out of the total compensation, the Tribunal determined the amount payable to the first claimant being the mother of the deceased at Rs.3,79,900/- and to the second claimant being the father of the deceased at Rs.1,00,000/-.

6. The details of the impugned award are as follows :-

Heads	Amount awarded by the Tribunal (Rs.)
Annual Income Rs.6000 x 12 =Rs.72,000/- Less $\frac{1}{2}$ x 11	Rs.3,96,000/-
Transport charges	20,000
Loss of Love & affection to the petitioners 1 & 2 Rs.20,000/- x 2	40,000
Medical bills	18,818
Funeral expenses	5,000
Total	4,79,818
R/off	4,79,900

7. Aggrieved by the quantum of compensation assessed by the Tribunal, this appeal has been filed by the appellants / claimants seeking enhancement.

8. Heard Mr.G.Balaji Prasad, learned counsel for the appellants and Ms.C.Bhuvana Sundari, learned counsel for the second respondent. R1 was set ex-parte before the Tribunal.

9. This Court has perused the materials and evidence available on record before the Tribunal.

10. The findings as regards the negligence of the driver of the insured vehicle has now become final as no appeal has been filed by the second respondent challenging the said findings. It is only the claimants, who have filed this appeal seeking for

enhancement of compensation. The deceased was a third and final year student, who was doing his Catering course at Meenatchi Ramasamy College, Thatanoor, Ariyalur District, when the accident happened, which resulted in his death. It is also the contention of the appellants /claimants that the deceased was also undergoing Trainee (Steward) in a private concern, viz., Sree Annapoorna Hospitality Services Private Ltd., Mysore during the time of the accident.

11. Before the Tribunal, the appellants / claimants have filed fourteen documents, which were marked as Exs.P1 to P14 and three witnesses were examined on their side viz., the mother and the father of the deceased (PW1 and PW2 respectively) and S.Anandapadmanabhan, is an Eyewitness to the accident. However, on the side of the second respondent / Insurance Company, neither any witness was examined nor any document filed before the Tribunal.

12. The proof for the age of the deceased, who was aged 27 years at the time of accident is supported by Ex.P11 viz., his Industrial school certificate. No contra evidence has been produced by the second respondent / insurance company to disprove the age of the deceased. The deceased was the only son of the appellants / claimants, as seen from the consistent evidence placed before the Tribunal. No contra evidence has also been produced by the second respondent before the Tribunal to disprove the contention of the appellants / claimants that the deceased was their only son. The Tribunal under the impugned award as per the settled position of law as laid down by the Hon'ble Supreme Court in the case of the National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680 ought to have awarded loss of future prospects to the appellants / claimants. However, the Tribunal has failed to do so. As per the aforesaid decision of the Hon'ble Supreme Court, the Tribunal ought to have awarded 40% towards loss of future prospects to the appellants / claimants.

13. While assessing the income of the deceased, the Tribunal has erroneously taken into consideration the age of the mother of the deceased for the purpose of applying the correct multiplier. The Tribunal ought to have taken into consideration the age of the deceased for applying the correct multiplier as laid down by the Hon'ble Supreme Court in the case of Sarala Verma & Ors vs. Delhi Transport Corp. & Anr. reported in 2009 6 SCC 121. The multiplier applied by the Tribunal under the impugned award was 11, which is not correct, as the correct multiplier to be applied is 17, since the age of the deceased was 27 years at the time of the accident. The same is accordingly modified by this Court. As observed earlier, the Tribunal has also failed to award any compensation to the

appellants / claimants towards loss of future prospects. Accordingly, 40% is now awarded towards loss of future prospects, as per the settled law in the case of Pranay Sethi Judgment (referred to supra).

14. Insofar as the compensation towards transportation charges and medical bills are concerned, the Tribunal has awarded Rs.20,000/- and Rs.18,880/- respectively, which in the considered view of this Court is a just compensation. However, the Tribunal has awarded only a sum of Rs.40,000/- towards loss of love and affection to the appellants / claimants, which in the considered view of this Court is low, considering the fact that the deceased was the only son of the appellants / claimants, who are his parents. In the considered view of this Court, a sum of Rs.50,000/- will be an adequate compensation towards loss of love and affection instead of Rs.40,000/- fixed by the Tribunal. The Tribunal has awarded only a sum of Rs.5,000/- as funeral expenses to the deceased, which as per the settled practice, the Tribunal ought to have been awarded Rs.15,000/-. Accordingly, funeral expenses is enhanced from Rs.5,000/- to Rs.15,000/- by this Court.

15. The Tribunal has failed to award any compensation towards loss of estate as per the Pranay Sethi judgment (referred to supra), the appellants / claimants are entitled to Rs.15,000/- and accordingly, the same is now awarded by this Court.

16. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency *Rs.6000 x 12 =Rs.72,000/- Less $\frac{1}{2}$ x 11 #Rs.6000/- Less $\frac{1}{2}$ = Rs.3,000 Add 40% x 12 x 17	Rs. 3,96,000	8,56,800 #
Transport charges	20,000	20,000
Loss of Love & affection to the petitioners 1 & 2 Rs.20,000/- x 2	40,000	50,000
Medical bills (As per Ex.P4)	18,818	18,818

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Funeral expenses	5,000	15,000
Loss to Estate	-	15,000
Total	4,79,818	9,75,618
R/off	4,79,900	9,75,700

17. In the result, this appeal filed by the Appellants / claimants stands partly allowed by enhancing the compensation from Rs.4,79,900/- to Rs.9,75,700/-, as indicated above. No costs.

18. The second respondent / Insurance Company is directed to deposit the entire award amount as awarded by this Court together with interest at 7.5% p.a. from the date of numbering of the claim petition till the date of realization and costs, less the amount, if any, already deposited to the credit of MCOP No.2567 of 2010, 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 to the bank account of the appellants / claimants, as per the ratio of apportionment fixed by the Tribunal through RTGS within a period of two weeks thereafter. Necessary Court fee, if any to be paid by the appellant before receiving the copy of this Judgment.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Motor Accidents Claims Tribunal,
IV Judge, Court of Small Causes / Chennai.
- 2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

C.M.A.No.1436 of 2013

BR(CO)
GN(29/03/2021)