

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1063 of 2012

1.G.Prakasam (Died)

2.Karthiayenikutty

3.Ravisankar.

(3rd Appellant brought on record as LR of the deceased 1st appellant vide order of Court dated 21.07.20 made in CMP.No.22965/18) ...Appellants /Petitioner

vs.

1.G.Ramesh

2.R.Thiruvankadam

3.M/s.Cholamandalam M/S General Insurance Company Ltd.,

Dare House, IIInd Floor,

234, N.S.C. Bose Road,

Chennai - 600 001.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree of the Motor Accident Claims Tribunal and Additional District and Sessions Judge - Fast Track Court No.1, Coimbatore, dated 12.9.2011 in M.C.O.P.No.470 of 2009.

For Appellants : Mr.V.Karthikeyan
for M/s.Nicholas

For Respondent : Batta with petition due reg. R1 & R2
Mr.E.Rajadurai
for M/s.N.Vijayaraghavan for R3

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 12.09.2011 passed by the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.1, Coimbatore in M.C.OP.No.470 of 2009.

2.Heard Mr.V.Karthikeyan, learned counsel for the Appellant and Mr.E.Rajadurai, learned counsel for the third respondent.

3.They are aggrieved by the exoneration of liability of the third respondent Insurance Company by the Tribunal under the impugned Award.

4.The Tribunal under the impugned Award exonerated the liability of the third respondent and has directed the second respondent to pay the compensation of Rs.4,88,000/- together with interest and cost for the death of P.Rajesh as a result of an accident caused by a vehicle owned by the second respondent and insured with the third respondent.

5.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Loss of dependency Rs.3,000x12x13	-	Rs.4,68,000/-
Funeral expenses	-	Rs. 5,000/-
Transport	-	Rs. 5,000/-
Love and Affection	-	Rs. 10,000/-

Total		Rs.4,88,000/-

6.The Appellants have raised the following grounds in this appeal:

- (a)The Tribunal has erroneously exonerated the liability of the third respondent Insurance Company.
- (b)The quantum of compensation awarded by the Tribunal under the impugned Award is inadequate and is not a just compensation.

7.With regard to the first contention raised by the Appellants/claimants, the Tribunal has exonerated the liability of the third respondent only on the ground that the driver of the insured vehicle was not possessing a valid driving license at the time of the accident. Admittedly, in the case on hand, the driver of the insured vehicle was possessing a LMV driving license but the insured vehicle is a heavy vehicle for which a separate HMV license is required. It is now settled law that if a driver of the insured vehicle was not possessing a valid driving license, the insurer will have to compensate the claimant and recover the same from the owner of the vehicle (insured). Therefore, the Tribunal under the impugned Award has not followed the settled position of law by granting pay and recovery rights to the third respondent but instead has erroneously exonerated the liability on the third respondent Insurance Company absolutely. Therefore, this Court in accordance with the settled position of law, directs the third

respondent Insurance Company to pay the assessed compensation to the Appellants/claimants and recover the same from the second respondent by filing an execution application before the same Tribunal.

8. With regard to the second contention raised by the Appellants/claimants, the compensation awarded by the Tribunal is not a just compensation is concerned, there is no merit in the said contention for the following reasons:

(a) The Tribunal has assessed the notional monthly income of the deceased at Rs.4,500/-. In the claim petition, the Appellants/claimants have pleaded that the deceased P.Rajesh was aged 25 years and was working as an Agent for LIC and other financial companies earning approximately Rs.43,000/- per month. The accident happened on 05.12.2007 which resulted in the death of P.Rajesh. Since no documentary evidence was produced by the Appellants/claimants to prove that the deceased P.Rajesh was earning Rs.43,000/- as pleaded in their claim petition, the Tribunal has fixed the monthly income of the deceased on notional basis at Rs.4,500/-. This Court is of the considered view that the assessment of the notional monthly income of the deceased is low and it has to be enhanced.

9. In fact, the Appellants/claimants have filed the income tax returns of the deceased for the assessment year 2007 ? 2008 which is the year of the accident which was marked as Ex.P9 before the Tribunal. But the Tribunal has rejected the same and has instead assessed the monthly income of the deceased on notional basis at Rs.4,500/-. As observed earlier, the said assessment is low and it has to be enhanced. After giving due consideration to his age, avocation and the year of the accident, this Court is of the considered view that the notional monthly income of the deceased at the time of the accident has to be assessed at Rs.6,500/-. Accordingly, this Court assesses the notional monthly income of the deceased at the time of the accident at Rs.6,500/- instead of Rs.4,500/- assessed by the Tribunal.

10. The Tribunal has not awarded loss of future prospects to the Appellants/claimants which they are legally entitled to as per the decision 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. As per the said decision, this Court fixes the same at 40%.

11. Under the impugned Award, the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased which is not correct. The correct deduction to be applied is 1/2 as the deceased was a bachelor at the time of the accident. Accordingly, the same is modified by this Court. The Tribunal

has also erroneously adopted 13 multiplier by considering the age of the mother of the deceased instead of the deceased himself. The correct multiplier to be adopted as per the decision of Hon'ble Supreme Court in the case of Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another reported in (2009) 6 SCC 121 for a person aged 25 years is 17 multiplier, but the Tribunal has erroneously adopted 13 multiplier. If 17 multiplier is adopted the compensation payable to the claimant towards pecuniary loss will be Rs.9,28,200/-

12.The Tribunal has also awarded only a meagre compensation of Rs.5,000/- towards funeral expenses which is not in accordance with the decision of the Hon'ble Supreme Court in Pranay Sethi's case referred to supra. In accordance with the said judgment, this Court enhances the compensation towards funeral expenses from Rs.5,000/- to Rs.15,000/-. Being a fatal accident, the Tribunal ought not to have awarded any compensation towards transportation charges. But the Tribunal has erroneously awarded transportation charges which has to be removed by this Court.

13.The Tribunal has also awarded only a meagre compensation of Rs.10,000/- towards loss of love and affection and it has to be necessarily enhanced by this Court in accordance with settled practice. Accordingly, this Court enhances the same to Rs.30,000/-. The Tribunal has also failed to award any compensation towards loss of estate which the Appellants/claimants are legally entitled to as per the settled practice. This Court therefore, awards a compensation of Rs.15,000/- towards loss of estate to the Appellants/claimants.

14.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.4,88,000/- to Rs.9,88,200/- by this Court in the following manner:

Heads	Awarded by the Tribunal in Rs.	Enhanced by this Court in Rs.
Income fixed	4,500	6,500
Future prospects	-	40% (Rs.2,600/-)
Personal expenses	1/3	$\frac{1}{2}$ (6,500+2,600=9,100/ 2=4,550)
Multiplier	13	17
Loss of dependency	3,000x12x13=4,68,000/-	4,550x12x17 = 9,28,200/-
Funeral expenses	5,000/-	15,000/-

Heads	Awarded by the Tribunal in Rs.	Enhanced by this Court in Rs.
Transport	5,000/-	-
Love and affection	10,000/-	30,000/-
Loss of estate	-	15,000/-
Total	Rs.4,88,000/-	Rs.9,88,200/-

15. In the result, the appeal is partly allowed. The Third respondent Insurance is directed to deposit the modified award amount of Rs.9,88,200/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, after deducting the amount already deposited if any, to the credit of M.C.OP.No.470 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.1, Coimbatore, 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 award amount directly to the bank account of the appellant/claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any shall be paid by the appellant before receiving the copy of this Judgment. No costs.

16. However, it is made clear that the third respondent is entitled to recover the compensation deposited by them from the second respondent by filing an execution application before the same Tribunal.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

pam

To

1. The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court No.1, Coimbatore.

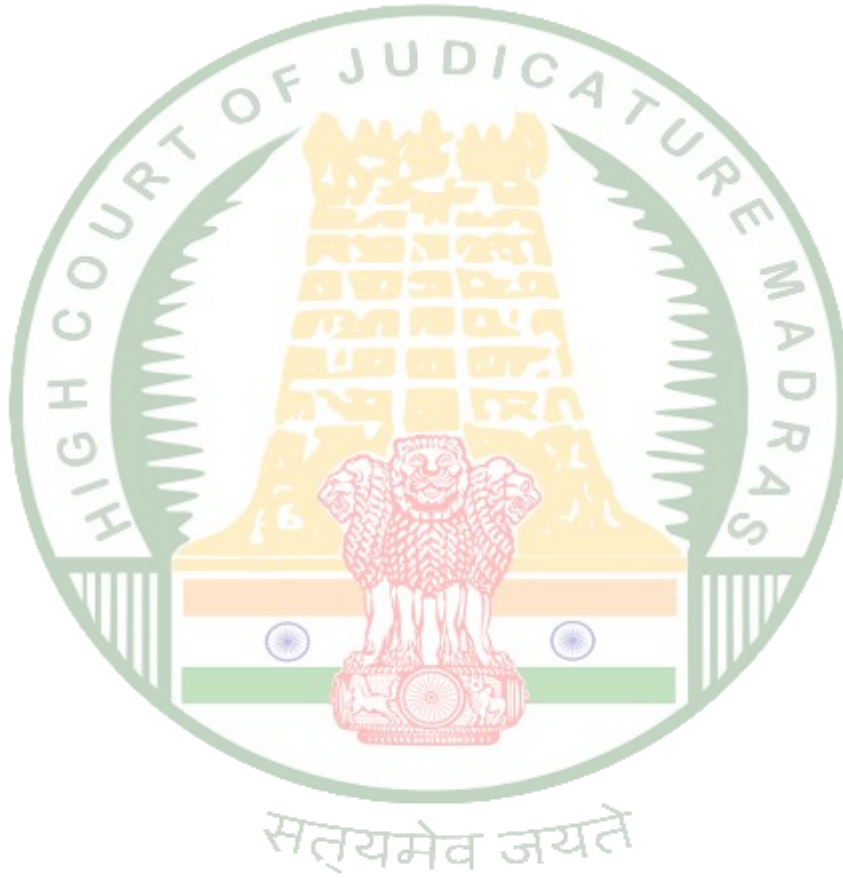
2. The Section Officer,
Vernacular Section,
Madras High Court.

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+1cc to Mr.V.Nicholas, Advocate SR.29827

C.M.A.No.1063 of 2012

MP (CO)
CB(07/04/2021)



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