

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1510 of 2013

1.Sasikala

2.R.I.Gajalakshmi

3.R.I.Gomathi

4.R.I.Bhavani, Minor

(Minor 4th Appellant represented
by her mother first Appellant)

... Appellants/Petitioners

vs.

1.M/s.Namakkal Transport Carriers (P) Ltd.,
New No.39, Old No.18, Linghi Chetty Street,
Chennai - 01.

2.Bajaj Allianz General Insurance Co., Ltd.,
No.25/26, Prince Tower, Ground Floor,
College Road, Nungambakkam,
Chennai - 600 034.

... Respondents/Respondents

(The 1st respondent exparte in
lower court, Hence notice may be
dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the judgment and decree
dated 20.07.2012 made in MCOP.No.3037 of 2008 on the file of
the Motor Accident Claims Tribunal, (XV Additional Judge)
Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondent 2 : Mr.S.Arun Kumar

For Respondent 1 : Set Ex parte

JUDGMENT

[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 20.07.2012 passed by the Motor Accident Claims Tribunal (XV Additional Judge, Court of Small Causes, Chennai) in MCOP.No.3037 of 2008.

2. Heard Mr.K.Varadha Kamaraj, learned counsel for the Appellant and Mr.S.Arun Kumar, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3. A person by name A.R.Iyappan died on 26.12.2003 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellants are the legal heirs of the deceased and they preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the death of A.R.Iyappan.

4. The Motor Accident Claims Tribunal under the impugned award has fixed the contributory negligence on the part of the deceased as well as on the driver of the lorry insured with the second respondent at 50:50 ratio and directed the respondents to pay the Appellants a sum of Rs.4,62,500/- as compensation together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Pecuniary loss	7,20,000/- (6000 x 12 x 15 x 2/3)
Loss of consortium	1,00,000/-
Loss of love and affection	1,00,000/-
Funeral expenses	5,000/-
Total	9,25,000/-

5. Before the Tribunal, the claimants have filed five documents which were marked as Ex.P1 to Ex.P5 and two witnesses were examined on their side namely, the first Appellant who is the wife of the deceased as PW1 and an eye-witness to the accident as PW2. On the side of the second respondent insurance company, neither any document was filed nor any witness examined before the Tribunal.

6. The deceased A.R.Iyappan was aged 45 years at the time of the accident and was a broker dealing with machines and tools and in the claim petition filed by the Appellants/claimants, they had claimed that the deceased was earning Rs.10,000/- per month. The accident happened on 26.12.2007. However, the Tribunal has fixed the notional monthly income of the deceased at Rs.6,000/-. This Court is of the considered view that since the age and avocation of the deceased at the time of the accident has not been disputed by the respondents before the Tribunal by any contra evidence, the notional monthly income of the deceased fixed by the Tribunal at Rs.6,000/- is low. After giving due consideration to the year of the accident, this Court enhances the same to Rs.6,500/- per month. The Tribunal has also erroneously deducted 50% towards personal expenses of the deceased. The Tribunal ought to have deducted only 1/4th towards personal expenses of the deceased, since the Appellants/claimants are four in number. Accordingly 1/4th is deducted towards personal expenses of the deceased by this Court. The Tribunal has also erroneously adopted 15 multiplier under the impugned award. As per the decision of the Hon'ble Supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 SC the correct multiplier to be adopted is 14, since the deceased was aged 45 years at the time of the accident. Accordingly, the correct multiplier of 14 is adopted by this Court.

7. The Tribunal has also failed to award any compensation towards future prospects to the Appellants/claimants which they are legally entitled to as per the decision of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC). The deceased was aged 45 years at the time of the accident. Therefore, the Appellants/claimants are entitled to 25% towards loss of future prospects. Therefore, the pecuniary loss is enhanced from Rs.7,20,000/- to Rs.10,23,750/- by this Court.

8. Insofar as the compensation awarded by the Tribunal towards loss of consortium at Rs.1,00,000/- is concerned, the same is on the higher side and it has to be reduced to Rs.40,000/- to the first Appellant who is the wife of the deceased which is settled practice as per the decision of the Hon'ble Supreme Court in Pranay Sethi's Judgment.

9. The Tribunal has awarded a sum of Rs.1,00,000/- as compensation towards loss of love and affection which is a correct assessment and there is no scope for interference by this court under the said head.

10. The Tribunal has also awarded a sum of Rs.5,000/- towards funeral expenses which is low and it has to be enhanced to Rs.15,000/- in accordance with the decision of the Hon'ble Supreme Court in Pranay Sethi Judgment referred to supra.

11. The Tribunal has erroneously failed to award any compensation towards loss of estate which the Appellants/claimants are legally entitled to as per the decision of the Hon'ble Supreme Court in Pranay Sethi Judgment referred to supra. Accordingly, this Court awards a sum of Rs.15,000/- to the Appellants/claimants towards loss of estate.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.9,25,000/- to Rs.11,93,750/- by this Court in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss	7,20,000/- (6000 x 12 x 15 x 2/3)	10,23,750/- (8125 x 12 x 14 x 3/4)
Loss of consortium	1,00,000/-	40,000/-
Loss of love and affection	1,00,000/-	1,00,000/-
Funeral expenses	5,000/-	15,000/-
Loss of estate	---	15,000/-
Total	9,25,000/-	11,93,750/-

13. With regard to the second contention raised by the Appellants/claimants that the deceased was not responsible for the cause of the accident and therefore, the Tribunal ought not to have fixed the contributory negligence against the deceased at 50% is concerned, the said contention cannot be accepted by this Court for the reason that in the claim petition, the Appellants/claimants had pleaded that the insured lorry came from behind and dashed against the motorcycle resulting in the death of A.R.Iyappan, whereas in the FIR, Ex.P1, it is stated that the motorcycle came from behind and dashed against the lorry. Therefore, there is contradiction between the pleadings contended in the claim petition as well as in the FIR Ex.P1 as to how the accident had happened. The Appellants have also

failed to disprove the contents of the FIR by producing the necessary evidence. The Tribunal has given due consideration to the same and has rightly assessed the contributory negligence on the part of the deceased at 50%.

14. The reason given by the Tribunal for fixing the contributory negligence on the side of the deceased as well as on the side of the insured lorry at 50:50 ratio is a sound one and does not call for any interference by this Court. There is no scope for interference by this Court with regard to findings of contributory negligence by the Tribunal under the impugned award.

Conclusion:

15. For the foregoing reasons, this Appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.9,25,000/- to Rs.11,93,750/- and the finding of contributory negligence on the part of the deceased as well as on the part of the insured lorry at 50:50 ratio by the Tribunal is confirmed. The rate of interest fixed by the Tribunal at 7.5% is also confirmed. The respondents are directed to deposit 50% of modified award amount i.e., Rs.5,96,875/- after deducting the amount already deposited if any together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.3037 of 2008 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 respective shares of award amount along with accrued interest lying to the credit of MCOP.No.3037 of 2008 to the bank accounts of the Appellants 1 to 3/claimants 1 to 3 through RTGS within a period of two weeks thereafter. Since the fourth Appellant is a minor, her respective share of award amount shall be deposited in interest bearing fixed deposit in any one of the Nationalised bank, till she attains majority. Her mother, the first Appellant herein is permitted to withdraw the interest once in six months for the welfare of the minor. If the minor attains the age of majority, it is open for her to file a formal petition before the Tribunal to declare her as a major. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

The XV Additional Judge,
Motor Accidents Claims Tribunal, Chennai.

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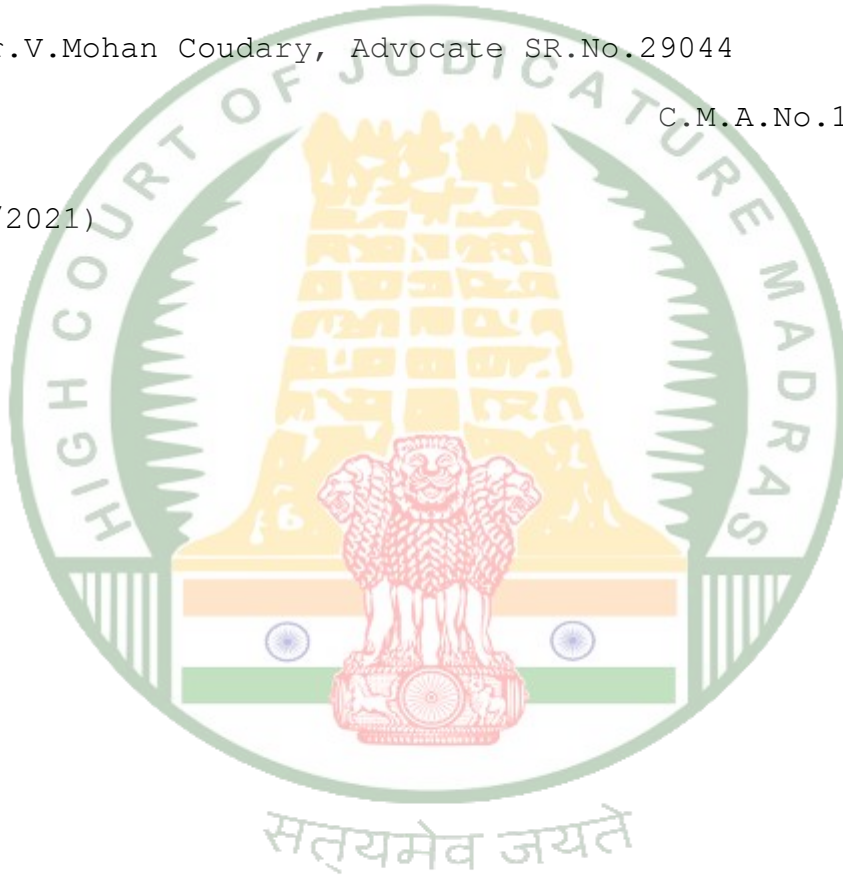
The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.S.Arunkumar, Advocate SR.No.28941

+2cc to Mr.V.Mohan Coudary, Advocate SR.No.29044

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GMY(20/04/2021)



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