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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.10.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1171 of 2012

1.Gowri
2.Minor Jeevitha
3.Minor Pratheepkumar
(Minors rep. by the first Appellant)
4.Muniammal ... Appellants/Petitioners

vs.

1.Josy Jacob
2.Bajaj Allianz General Insurance Co., Ltd.,
Represented by its Manager,
No.31, TBR Tower,
1st Cross, New Mission Road,
Near Jain College,
Bangalore. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.11.2010 made in MCOP.No.215 of 2009 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Dharmapuri.

For Appellants : Mr.M.Selvam

For Respondent 2 : Mrs.R.Rathana Thara

For Respondent 1 : Not ready in notice

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 18.11.2010 passed by the Motor Accident Claims Tribunal (Principal District Judge, Dharmapuri) in MCOP.No.215 of 2009.

2. Heard Mr.M.Selvam, learned counsel for the Appellant and Mrs.Rathana Thara, learned counsel for the second respondent.



3. A person by name Ramakrishnan died on 30.01.2009 as a result of an accident which happened on 26.01.2009 caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellants who are the legal heirs of the deceased Ramakrishnan have preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.215 of 2009 seeking compensation for the death of Ramakrishnan.

4. The Motor Accident Claims Tribunal under the impugned award directed the respondents to pay the Appellants a compensation of Rs.5,33,950/- together with interest from the date of claim till the date of deposit by deducting 20% towards contributory negligence of the deceased from the total compensation of Rs.6,67,426/- as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of dependency	5,44,000/- (4000 x 12 = 48000 - 1/3 = 32000 x 17)
Medical expenses	73,544/-
Damages to two wheelers	19,882/-
Loss of consortium	5,000/-
Loss of love and affection	15,000/-
Funeral Expenses	10,000/-
Total	6,67,426/-

The Tribunal has committed a calculation error while assessing the total compensation payable to the Appellants/claimants. The total compensation under the impugned award works out to only Rs.6,67,426/- and not Rs.6,67,436/-.

5. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this appeal seeking enhancement of compensation.

6. Before the Tribunal, the Appellants/claimants have filed 12 documents which were marked as Ex.P1 to Ex.P12 and three witnesses were examined on their side namely the wife of the deceased as PW1, an eye-witness to the accident as PW2 and co-worker of the deceased as PW3. On the side of the second respondent/ Insurance Company, one document was filed which was marked as Ex.R1 and their official was examined as RW1 before the Tribunal.



7. In the claim petition, the Appellants/claimants have pleaded that the deceased Ramakrishnan was aged 29 years and was a Mason earning Rs.15,000/- per month at the time of the accident. However, as per Ex.P2, the postmortem certificate, the age of the deceased was 30 years at the time of the accident. Since no documentary evidence has been produced by the respondents before the Tribunal, the Tribunal was constrained to assess the monthly income of the deceased on notional basis. The Tribunal fixed the notional monthly income of the deceased at Rs.4,000/-. The accident happened in the year 2009. No contra evidence has been produced by the respondents to disprove the contention of the Appellants/claimants that the decease was a mason and earning Rs.15,000/- per month, at the time of the accident. The Hon'ble Supreme Court in the case of Syed Sadiq vs. United India Insurance Company Limited reported in (2014) 2 SCC 735 has assessed the monthly income of the deceased, in case of a vegetable vendor for an accident that took place in the year 2008 at Rs.6,500/-. This Court is of the considered view that the assessment of notional monthly income of the deceased at Rs.4,000/- is an incorrect assessment and applying the same yardstick as in the above referred decision, this Court fixes the notional monthly income of the deceased at the time of the accident at Rs.6,500/-.

8. The Tribunal has also not awarded any compensation towards loss of future prospects under the impugned award. 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, this Court grants 40% towards loss of future prospects to the Appellants/claimants

9. The Tribunal has rightly deducted 1/3rd towards the personal expenses of the deceased, since the dependents of the deceased are four in number. The Tribunal has also applied the correct multiplier of 17, since the deceased was aged 30 years at the time of the accident. Accordingly, the loss of dependency is modified by this court from Rs.5,44,000/- to Rs. 12,37,668/- ($6500 + 40\% = 9100 - 1/3 = 6067 \times 12 \times 17$)

10. The Tribunal has rightly awarded a compensation of Rs.73,544/- towards medical expenses based on the medical bills filed by the Appellants/claimants before the Tribunal which was marked as Ex.P7 (10 numbers).

11. However, the Tribunal has awarded a meagre compensation of Rs.5,000/- towards loss of consortium to the first Appellant/first claimant and Rs15,000/- towards loss of love and affection to the Appellants 2 to 4/claimants 2 to 4 which is not in accordance with the settled practice as laid down by the



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Hon'ble Supreme Court in Pranay Sethi's Judgment referred to supra. In accordance with the said judgment, this Court enhances the compensation towards loss of consortium to the first Appellant/first claimant to Rs.40,000/- and loss of love and affection to the second to fourth Appellants at Rs.30,000/- calculated at Rs.10,000/- for each of the respective claimants.

12. The Tribunal has awarded a meagre compensation of 10,000/- towards funeral expenses which is also to be enhanced to Rs.15,000/- by this Court in accordance with Pranay Sethi's Judgment referred to supra.

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

14. Under the impugned award, the Tribunal has fixed the contributory negligence of the deceased at 20%, since the motorcycle in which the deceased was the rider was carrying excess persons than the permissible limit. The said finding given by the Tribunal is a correct finding as it is an admitted fact.

15. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.6,67,426/- to Rs.8,12,2006/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	5,44,000/- (4000 x 12 = 48000 - 1/3 = 32000 x 17)	12,37,668/- (6500 + 40% = 9100 - 1/3 = 6067 x 12 x17)
Medical expenses	73,544/-	73,544/-
Damages to two wheelers	19,882/-	19,882/-
Loss of consortium	5,000/-	40,000/-
Loss of love and affection	15,000/-	30,000/-
Funeral Expenses	10,000/-	15,000/-
Loss of estate	---	15,000/-
Total	6,67,426/-	14,31,094/-



Conclusion:

16. In the result, this appeal is partly allowed by enhancing the compensation from Rs.6,67,426/- to Rs.14,31,094/- and confirming the finding of the Tribunal that the contributory negligence of the deceased is 20%. However, the rate of interest fixed by the Tribunal at 7.5% is confirmed. The respondents are directed to deposit 80% of modified award amount i.e., Rs.11,44,875/- together with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.215 of 2009 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.215 of 2009 to the bank accounts of the respective Appellants/claimants as per the ratio apportioned by the Tribunal through RTGS within a period of two weeks thereafter. No costs. Necessary Court fee, if any to be paid by the Appellants before receiving the copy of this Judgment.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
The Principal District Judge,
Dharmapuri.

C.M.A.No.1171 of 2012

PVS (CO)
GMY (03/12/2021)