

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.07.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1291 of 2012

1.Sunitha Iyer.S
2.V.Manasamithra (Minor)
(Minor represented by her mother, the first Appellant)
3.G.Sulochana Appellants/Plaintiff

vs.

1.Perumal A.T
2.United India Insurance Co. Ltd.,
No.64, Armenian Street,
Chennai - 600 001. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 25.07.2011 made in MCOP.No.3140 of 2008 by the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.V.Manisekaran
For Respondent 2 : Mr.S.Arun Kumar
For Respondent 1 : Not Ready 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 25.07.2011 passed by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes, Chennai) in MCOP.No.3140 of 2008.

2. A person by name Venkatasubbratnam died on 01.03.2008 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellants who are the dependents of the deceased Venkatasubbratnam preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the death of Venkatasubbratnam.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent to pay the Appellants/claimants a sum of Rs.8,00,000/- as compensation together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of pecuniary benefits	7,68,000/- (6000 x 12 = 72,000 - 1/3 rd = 48,000 x 16)
Loss of consortium	10,000/-
Loss of love and affection	10,000/-
Funeral expenses and transport to hospital	12,000/-
Total	8,00,000/-

4. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking for enhancement.

5. Heard Mr.V.Manisekaran, learned counsel for the Appellants and Mr.S.Arun Kumar, learned counsel for the second respondent. Notice sent to the first respondent was returned with an endorsement "no such person". Since the first respondent has remained exparte before the Tribunal, notice to the first respondent is dispensed with by this court.

6. Before the Tribunal, the Appellants/claimants have filed nine documents which were marked as Ex.P1 to Ex.P9 and five witnesses were examined on their side namely, PW1 to PW5. On the side of the second respondent, Insurance company, neither any document was filed nor any witness examined.

7. In the claim petition, the Appellants/claimants had claimed that the deceased was employed as an Assistant Team Leader at Reliance BPO Pvt., Amaricorp Tower, No.2, Park Road, Chennai - 600 050. Before the Tribunal, the Appellants/claimants had filed the salary certificate of the deceased which was marked as Ex.P9 which discloses that the deceased was earning Rs.12,000/- per month at the time of the accident. However, the Tribunal has rejected the said salary certificate and fixed the notional monthly income of the deceased at Rs.6,000/-. The Tribunal has observed in the impugned award that eventhough a

Senior Manager (Human Resources) of the same company in which the deceased was said to have been working was examined as a witness (PW4), no authorisation letter was produced by PW4 from the Company to prove that he was a senior manager of the same company in which the deceased was working at the time of the accident. The Tribunal has also observed that PW4, an alleged co worker of the deceased has admitted in his deposition that the salary of the deceased was being deposited in his bank account. The Tribunal further observed that the claimants have failed to produce any other requisite documents like appointment order, identity card, bank account of the deceased etc., to substantiate their claim that the deceased was earning Rs.12,000/- per month at the time of the accident. For the aforementioned reasons, the Tribunal has rejected the salary certificate Ex.P9 which discloses that the deceased was earning Rs.12,000/-. The reasons given by the Tribunal for rejection of salary certificate Ex.P9 is a sound one and is acceptable to this Court. Despite sufficient opportunity having been granted to produce the necessary documents to substantiate their claim that the deceased was earning Rs.12,000/- per month at the time of the accident, they have failed to do so before the Tribunal. Therefore, the only option left for the Tribunal was to fix the monthly income of the deceased on notional basis. The accident happened in the year 2008. No contra evidence has also been produced by the respondents to disprove the contention of the Appellants/claimants that the deceased was an Assistant Team Leader at Reliance BPO Pvt., Amaricorp Tower, No.2, Park Road, Chennai - 600 050. This being the case, the Tribunal ought to have fixed the notional monthly income of the deceased at a higher sum. This Court is of the considered view that the fixation of Rs.6,000/- per month as notional monthly income of the deceased is low and it has to be enhanced to Rs.7,000/- per month.

8. The Tribunal has also failed to award any compensation towards loss of 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 32 years at the time of the accident which has also not been disputed before the Tribunal. For a person, aged 32 years, 40% loss of future prospects ought to have been granted by the Tribunal under the impugned Award. However, the Tribunal has failed to do so. Hence, this Court awards 40% towards loss of future prospects to the Appellants/claimants.

9. Since the age of the deceased at the time of the accident was 32 years, the Tribunal has rightly adopted 16 multiplier. Since the dependents of the deceased are three in number, the

Tribunal has rightly deducted 1/3rd towards the personal expenses of the deceased and the same is confirmed by this Court.

10. The Tribunal has awarded a sum of Rs.10,000/- as compensation towards loss of consortium to the first Appellant/first claimant and another sum of Rs.10,000/- to the second and third Appellants/second and third claimants towards loss of love and affection and another sum of Rs.12,000/- towards funeral expenses which in the considered view of this Court is low and not in accordance with the decision of the Hon'ble Supreme Court in Pranay Sethi's Judgment referred to supra. In accordance with the settled practice, this Court enhances the compensation towards the aforesaid heads at Rs.40,000/-, Rs.80,000/- and Rs.15,000/- respectively.

11. The Tribunal has also 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 sum of Rs.15,000/- towards loss of estate to the Appellants/claimants.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.8,00,000/- to Rs.14,05,000/- by this Court in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of pecuniary benefits	7,68,000/- (6000 x 12 = 72,000 - 1/3 rd = 48,000 x 16)	12,54,400/- (7000 + 40% = 9800 x 12 x 16 x 2/3)
Loss of consortium	10,000/-	40,000/-
Loss of love and affection	10,000/-	80,000/-
Funeral expenses	12,000/-	15,000/-
Loss of estate	---	15,000/-
Total	9,25,000/-	14,04,400/-
Rounded off	9,25,000/-	14,05,000/-

Conclusion:

13. In the result, this Appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.8,00,000/- to Rs.14,05,000/-. However, the rate of interest

fixed by the Tribunal at 7.5% per annum is confirmed. The second respondent is directed to deposit the modified award amount 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.3140 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.3140 of 2008 to the bank accounts of the Appellants 1 and 3/claimants 1 and 3 through RTGS as per the apportionment made by the Tribunal within a period of two weeks thereafter. Since the second 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. The Appellants are directed to pay requisite court fee if any for the enhanced award amount before obtaining a copy of this Judgment.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judge,
Court of Small Causes,
Motor Accident Claims Tribunal Chennai.

Copy To:

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

+1 cc to Mr.V.Manisekaran ,Advocate Sr.No. 29036

+1 cc to Mr.S.Arunkumar, Advocate Sr.No. 29428

C.M.A.No.1291 of 2012

EV (CO)

RMP (03/05/2021)