

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.28.07.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1899 of 2012

1. K.Thulasimani
2. K.Jayakumar

... Appellants/Claimants

vs.

1. M.Ramalingam
2. M/s.Save Sight Foundation,
Rep. by its Chairman,
Dr.Paneerselvam,
No.26, Annamalai Layout,
Opp. Royal Theatre, Erode-638 001.
3. Royal Sundaram Alliance Insurance,
Company Limited,
No.46, Whites Road,
Chennai-600 014.

[Respondents 1 and 2 was set ex-parte.
Hence, notice in the CMA may be
dispensed with.]

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 07.12.2011 in MCOP.No.373 of 2010 passed by the Motor Accident Claims Tribunal (Principal District Judge), Erode.

For Appellants : Mr.Ramaraaj

For 3rd Respondent : Mr.R.Rajadurai
for Mr.N.Vijayaragavan

1st Respondent : Served - No appearance

2nd Respondent : No such addressee

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimants seeking enhancement of the compensation passed under the Impugned Award dated 07.12.2011 by the Motor Accident Claims Tribunal (Principal District Judge) Erode in MCOP.No.373 of 2010.

Brief facts leading to the filing of the instant appeal are as follows:

2. A person by name Kulandaisamy, died on 20.07.2010 at about 4.00 P.M., in an accident caused by an Omni Van, bearing Registration No. TN 33 AE 9292, driven by the first respondent, owned by the second respondent and insured with the third respondent/Insurance Company. The accident happened when the deceased Devadoss was riding a Motor cycle viz., TVS 50 bearing Registration No. TN 33 E 6955 from south to north on the left side of the road, at that time, an Omni van bearing Registration No. TN 33 AE 9292 coming in the same direction, hit the motor-cycle from behind and as a result of the impact, Kulanthaisamy (deceased) was thrown out on the road and sustained severe head injuries, which resulted in his death.

3. The claimants are wife and son of the deceased, who are the Appellants herein. They have preferred a claim before the Motor Accidents Claims Tribunal (Principal District Judge), Erode in MCOP No.373 of 2010, seeking compensation for the death of Kulanthaisamy.

4. The Motor Accidents Claims Tribunal by its Award dated 07.12.2011 in MCOP No.373 of 2010 directed the respondent/Insurance Company to pay a compensation of a sum of Rs.95,000/- to the claimants, together with interest and costs, as detailed hereunder:-

Sl.No.	Heads	Award
1	Loss of income	50,000/-
2	Loss of consortium for wife	25,000/-
3	Loss of love and affection for 2 nd petitioner	10,000/-
4	Funeral expenses	5,000/-
5	Transportation	5,000/-
	Total	95,000/-

5. The appellants, unsatisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal seeking enhancement.

6. Heard Mr.Ramaraj, learned counsel for the Appellants / claimants and Mr.R.Rajadurai, learned counsel for the third Respondent/Insurance Company. The first and second respondents have remained ex-parte both before the Tribunal as well as this Court.

7. Before the Tribunal, the claimants have filed 13 documents, which were marked as Ex.P1 to Ex.P13 and two witnesses were examined viz., PW1, the wife of the deceased; PW2- an eyewitness to the accident. On the side of the respondents, neither any witness was examined nor any document filed.

8. The appellants/claimants have preferred this appeal seeking enhancement of compensation on the ground that the compensation awarded by the Tribunal, is very meagre and it is not a just compensation. They have challenged the assessment of monthly income of the deceased, by the Tribunal and they have also challenged the quantum of compensation awarded by the Tribunal under various heads. According to them, the said compensation is an inadequate sum and it has to be enhanced.

9. It is the contention of the appellants/claimants, as seen from their claim petition that the deceased Kulanthaisamy was an agriculturist and was also having a medical shop, a fertilizer shop, a rice and flour mill and was earning Rs.35,000/- per month, at that time of the accident. The appellants/claimants have filed tax receipts (Ex.P8) for the rice mill, owned by the deceased Kulanthaisamy, and tax receipts (Ex.P9) for the fertilizer shop, and attested copy of the certificate of renewal of license in favour of Kulanthaisamy to sell or distribute drugs, which was marked as Ex.P10. They have also filed the patta and adangal extracts, which were marked as Ex.P11 and Ex.P12, respectively, in order to establish that the deceased was owning agricultural lands at the time of the accident. However, by the impugned award, the Tribunal has fixed the annual income of the appellant only at Rs.15,000/-, since the deceased was aged 69 years, at the time of the accident.

10. The accident happened on 20.07.2010. Considering the year of the accident, the assessment of the annual income of the deceased at the time of the accident by the Tribunal at Rs.15,000/-, is too low. The Tribunal has also failed to consider Ex.P9 and Ex.P10 respectively, which relates to the fertilizer shop claimed to be owned by the deceased at the time of the accident. The Tribunal has only taken into consideration the agricultural income of the deceased and has erroneously fixed the annual income of the deceased at a meagre sum of Rs.15,000/-. The appellants/claimants, in their claim petition, have claimed Rs.35,000/- as monthly income of the deceased and they have also claimed that the deceased was not alone an agriculturist, but was also the owner of a medical shop, fertilizer shop and rice and flour mill. The oral evidence adduced by PW1 - the wife of the deceased is consistent with the pleadings as found in the claim petition. Before the Tribunal, the respondents have neither filed any document nor adduced any

oral evidence. The Tribunal ought to have considered the afore mentioned factors should have also considered the year of the accident before assessing the annual income of the deceased.

11. For the foregoing reasons, this Court is of the considered view that the assessment of the annual income of the deceased by the Tribunal at Rs.15,000/- is very meagre and it has to be enhanced to Rs.5,000/- per month. Even, for a person aged 69 years, he would have certainly earned a minimum of Rs.5,000/- per month in the year 2010 for the nature of business that Mr. Kulanthaisamy, the deceased, was said to have been doing. Accordingly, the monthly income of the deceased, at the time of the accident, is enhanced to Rs.5,000/- i.e. Rs.6,000/- annually per month by this Court instead of Rs.15,000/- per annum fixed by the Tribunal. Since the deceased was aged 69 years, at the time of the accident 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 and Others reported in 2017 (16) SCC 680, the claimants are not entitled for loss of future prospects.

13. The Tribunal has not awarded any compensation towards funeral expenses, which the appellants/Claimants are legally entitled to as per Pranay Sethi Judgment of the Hon'ble Supreme Court referred to supra. Accordingly, a sum of Rs.15,000/- is awarded as compensation towards funeral expenses to the appellants/claimants by this Court. Further, the Tribunal has also not awarded any compensation to the appellants/claimants towards loss of estate, which they are legally entitled to as per Pranay Sethi Judgment of the Hon'ble Supreme Court referred to supra. Accordingly, the same is fixed at Rs.15,000/- by this Court.

14. Since the deceased was aged 69 years, at the time of the accident, as per the decision of the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), '5' multiplier will have to be applied. (Rs.5000/- X 5 X 12 = Rs.3,00,000/-) Since the dependents of the deceased are admittedly 2 in number, the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased following sarla verma judgment referred to supra. (Rs.3,00,000/- - 1/3rd = Rs.2,00,000/-).

15. As per Pranay Sethi Judgment, the loss of consortium payable to the wife of the deceased is Rs.40,000/- and towards loss of love and affection to the children of the deceased is Rs.40,000/-. But, the Tribunal has erroneously, without following Pranay sethi judgment referred to supra, has awarded only a sum of Rs.25,000/- as loss of consortium to the first

claimant/wife of the deceased and only Rs.10,000/- towards loss of love and affection to the son of the deceased which is very meagre. Accordingly, this Court is enhancing the compensation payable to the first claimant towards loss of consortium to Rs.40,000/- and the compensation payable to the second claimant towards loss of love and affection to Rs.40,000/-.

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

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income	50,000/-	2,00,000/- (Rs.5000X12X5- 1/3)
Loss of Consortium	25,000/-	40,000/-
Loss of love and affection	10,000/-	40,000/-
Funeral expenses	10,000/-	15,000/-
Loss of estate	---	15,000/-
Total	95,000/-	3,10,000/-

Conclusion:

17. In the result, the appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second respondent insurance Company is directed to deposit the modified award amount i.e, Rs.3,10,000/- along with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.373 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 share of the first and second Appellants as per the order of this Court through RTGS within a period of four weeks thereafter.

18. The claimants/appellants have to pay the requisite court fee, if any, for the enhanced compensation amount awarded by this Court. No costs.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

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To

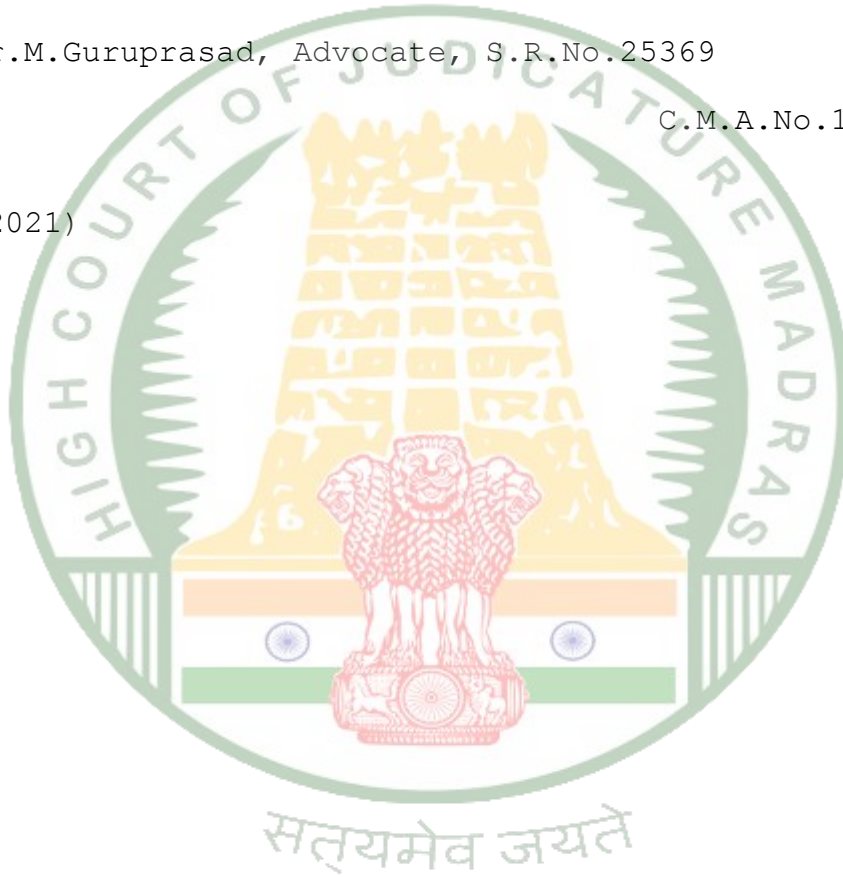
The Motor Accident Claims Tribunal
(Principal District Judge) Erode.

Copy to:
The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.25369

C.M.A.No.1899 of 2012

MR(CO)
CB(23/04/2021)



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