

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.198 of 2012

1. V.Vasantha
2. M.Venkatesan

.. Appellants/Claimants

Vs

1. J.V. Prasad
(remained exparte before the Tribunal)
2. Royal Sundaram Alliance Insurance Co. Ltd.
No.45 & 46, Whites Road,
Chennai - 600 014.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.03.2011 made in MACT O.P. No.3097 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accident Claims Tribunal, Chennai).

For Appellants	:	Mr.R.Kalaiarasan
For Respondents	:	Mr.N.Vijayaraghavan
		for R2
		R1 - Exparte

J U D G M E N T

(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 28.03.2011 passed by the Motor Accident claims Tribunal (Chief Court of Small Causes, Chennai) in MCOP.No.3097 of 2007.

2. A person by name V.Chandrasekar died on 22.04.2007 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 legal heirs of the deceased V.Chandrasekar, have preferred a claim before the Motor Accident

Claims Tribunal seeking compensation for the death of V.Chandrasekar.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent to pay the Appellants a compensation of Rs.5,48,000/- together with interest from the date of claim till the date of deposit and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Pecuniary loss	5,28,000/- (8000 x 12) = 96000 - 50% = 48000 x 11)
Loss of love and affection	10,000/-
Funeral expenses and transport to hospital	10,000/-
Total	5,48,000/-

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.R.Kalai Arasan, learned counsel for the Appellants and Mr.N.Vijayaraghavan, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

6. The deceased Chandrasekar was a Chef working in Oberoi Airport Services, No.325, GST Road, Pallavaram, Chennai - 600043 at the time of the accident. In the claim petition, the Appellants/claimants have pleaded that the deceased was aged 27 years and was earning Rs.10,323/- per month at the time of the accident.

7. Before the Tribunal, the Appellants/claimants have filed nine documents were filed which were marked as Ex.P1 to Ex.P9 and three witnesses were examined namely the mother of the deceased who is the first Appellant herein as PW1, Mr.Ashirwad, the deceased employer's representative as PW2 and Mr.Nithyanandam, an eye-witness to the accident as PW3. On the side of the respondents, one document was filed namely the investigation report which was marked as Ex.R1 but no witness was examined before the Tribunal.

8. The accident happened in the year 2007. Eventhough the Appellants/claimants have filed the salary certificate of

the deceased which was marked as Ex.P9 which would reveal that the deceased was earning Rs.10,323/-, the said salary certificate was rightly rejected by the Tribunal on the ground that the salary certificate was of the year 2011 and was issued two days prior to the oral evidence adduced by the employer (PW2). Therefore, the Tribunal had to fix the monthly income of the deceased on notional basis, based on the educational qualification of the deceased. The Tribunal fixed the notional monthly income of the deceased at Rs.8,000/-. This Court is in agreement with the said finding and therefore, confirms the same.

9. The deceased was aged 27 years at the time of the accident which has not been disputed by the respondents before the Tribunal. However, the Tribunal has erroneously adopted wrong multiplier of 11 for assessing the pecuniary loss instead of 17 which is the correct multiplier for a person aged 27 years. The Tribunal has erroneously failed to award any compensation to the Appellants/claimants towards loss of future prospects 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 & others reported in 2017 (2) TN MAC 609 (SC). The deceased was aged 27 years and hence, the Appellants/claimants are entitled to 40% towards loss of future prospects. Therefore, the pecuniary loss will have to be enhanced from Rs.5,28,000/- to Rs.11,42,400/- by this Court by adopting correct multiplier of 17 and by adding 40% towards loss of future prospects as detailed below:

$$8000 \times 12 = 96000 + 40\% = 134400 - 50\% = 67200 \times 17$$

10. The Tribunal has awarded a meagre compensation towards loss of love and affection, Funeral expenses and transportation and has erroneously failed to award any compensation towards loss of estate to the Appellants/claimants. This Court enhances the compensation towards loss of love and affection from Rs.10,000/- to Rs.80,000/- in accordance with settled practice. Since the deceased died on the spot of the accident itself, the Tribunal erred in awarding the compensation under the head "Transport to Hospital" and hence, this Court rejects the compensation under the said head. In accordance with Pranay Sethi's Judgment referred to supra, the Appellants/claimants are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. In accordance with the said judgment, this Court awards the same to the Appellants/claimants. Therefore, the compensation awarded under the head funeral expenses is enhanced to Rs.15,000/- and another sum of Rs.15,000/- is awarded as compensation towards loss of estate to the Appellants/claimants.

11. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs5,48,000/- to Rs.12,52,400/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss	5,28,000/- (8000 x 12) = 96000 - 50% = 48000 x 11)	11,42,400/- (8000 x 12 = 96000 + 40% = 1,34,400 - 50% = 67200 x 17)
Loss of love and affection	10,000/-	80,000/-
Funeral expenses	10,000/-	15,000/-
Transport to hospital	---	---
Loss of estate	---	15,000/-
Total	5,48,000/-	12,52,400/-

Conclusion:

12. In the result, this Appeal is partly allowed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The second respondent insurance company is directed to deposit the modified award amount along 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.198 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.198 of 2012 to the bank account of the respective Appellants/claimants through RTGS within a period of two weeks thereafter. 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.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

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

+1 cc to Mr.N.M.Muthurajan Advocate sr31190

C.M.A.No.198 of 2012

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