IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.16.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1989 of 2012

1.Neelavathi
2.Minor Giriraj
3.Minor Sivapriya
(Minors represented by their mother 1st Appellant Neelavathi)
4.Periyasami ... Appellants/Petitioners

vs.

1.S.Karthikeyan
2.United India Insurance Company Ltd.,
Trichy. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order passed by the Motor Accident Claims Tribunal, Principal District Court, Perambalur, dated 30.07.2010 in MCOP.No.374 of 2009

For Appellants : Mrs.Sangamithirai for M/s.C.Vidhusan

For Respondents : Mr.M.J.Vijayaraghavan for R2
R1 - vacated

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 30.07.2010 passed by the Motor Accident Claims Tribunal, Perambalur in MCOP.No.374 of 2009.

2. A person by name Ponnusamy died on 26.12.2008 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 and the dependents of the deceased Ponnusamy. They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.374 of 2009 seeking compensation of Rs.25,00,000/- for the death of Ponnusamy.

3. The Motor Accident Claims Tribunal under the impugned award directed the respondents to pay the Appellants/claimants a compensation of Rs.9,45,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of income	9,00,000/- (7500 - 1/3 = 5000 x 12 x 15)
Loss of conjugal rights	20,000/-
Loss of love and affection	20,000/-
Funeral expenses	5,000/-
Total	9,45,000/-

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

5. Heard Mrs.Sangamithirai learned counsel representing Mr.C.Vidhusan, learned counsel for the Appellants and Mr.M.J.Vijayaraghavan, learned counsel for the second respondent.

6. Before the Tribunal, the Appellants/claimants have filed 9 documents which were marked as Ex.P1 to Ex.P9 and one witness was examined on their side namely, the first Appellant/first claimant as PW1. On the side of the respondents neither any document was filed nor any witness examined on their side.

7. The deceased Ponnusamy was a Line Inspector in TNEB at the time of the accident. In the claim petition, the Appellants/claimants had claimed that the deceased Ponnusamy was earning Rs.12,885/- per month at the time of the accident. The oay certificate of the deceased was also marked as Ex.P6 before the Tribunal. However, the Tribunal has ignored the same and has assessed the monthly income of the deceased on notional basis, since no supporting evidence was produced by the Appellants/claimants in support of their claim that the deceased was earning Rs.12,885/- per month. The Tribunal fixed the notional monthly income of the deceased as Rs.7,500/- at the time of the accident. This court is of the considered view that

having filed Ex.P6, the pay certificate of the deceased and the deceased being a Line Inspector in TNEB and the year of the accident being 2008, the Tribunal ought to have fixed the notional monthly income of the deceased at a higher sum, eventhough the employer of the deceased has not been examined as a witness to corroborate Ex.P6, the pay certificate of the deceased. TNEB being a Government organisation, the Tribunal ought to have taken judicial notice on the same and ought to have fixed the monthly income of the deceased at a higher sum. After giving due consideration to the aforementioned factors, this court is of the considered view that the notional monthly income of the deceased Ponnusamy will have to be enhanced to Rs.9,500/- instead of Rs.7,500/- fixed by the Tribunal.

8. The Tribunal has erroneously failed to award any compensation towards loss of future prospects. 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 Appellants/claimants are entitled for the loss of future prospects. The deceased was aged 42 years at the time of the accident. In accordance with Pranay Sethi's Judgment referred to supra, the Appellants/claimants are entitled to 30% towards loss of future prospects. Accordingly, the same is awarded to the Appellants/claimants by this Court.

9. The Tribunal has failed to deduct 10% towards Income tax out of the annual income of the deceased. Accordingly, this Court deducts 10% towards Income Tax from and out of the annual income of the deceased.

10. The Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased Ponnusamy, eventhough, the claimants are four in number. The correct deduction to be made in accordance with 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 Supreme Court, is 1/4th and not 1/3rd . Accordingly, the same is modified by this Court.

11. The Tribunal has erroneously adopted 15 multiplier instead of 14 which is the correct multiplier to be adopted in accordance with the settled practice as per Sarla Verma's Judgment referred to supra, since the age of the deceased was 42 years at the time of the accident. Accordingly, the same is modified to 14 instead of 15 by this Court.

12. For the foregoing reasons, the loss of dependency to the Appellants/claimants, the compensation is assessed at Rs.14,00,448/- (9500 + 30% = 12350 - 10% = 11115 - 1/4 = 8336 x 12 x 14) instead of Rs.9,00,000/- fixed by the Tribunal.

13. The Tribunal has awarded a compensation of Rs.20,000/- towards loss of conjugal rights which in the considered view of this Court is too low. Accordingly, this Court enhances the same to Rs.40,000/- from Rs.20,000/- in accordance with settled practice as per Pranay Sethi's Judgment referred to supra.

14. The Tribunal has erroneously awarded a compensation of Rs.20,000/- towards loss of love and affection which is not the correct assessment. Accordingly, this Court modifies the compensation from Rs.20,000/- to Rs.15,000/- towards loss of love and affection to the Appellants 2 to 4/claimants 2 to 4.

15. The Tribunal has also erroneously awarded a compensation of Rs.5,000/- towards funeral expenses of the deceased. Accordingly, this Court enhances the compensation from Rs.5,000/- to 15,000/- in accordance with Pranay Sethi's Judgment referred to supra.

16. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.9,45,000/- to Rs.14,70,448/- by this Court in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income	9,00,000/- (7500 - 1/3 = 5000 x 12 x 15)	14,00,448/- (9500 + 30% = 12350 - 10% = 11115 - ¼ = 8336 x 12 x 14)
Loss of love and affection	20,000/-	15,000/-
Loss of consortium	20,000/-	40,000/-
Funeral expenses	5,000/-	15,000/-
Total	9,45,000/-	14,70,448/-
Rounded off	9,45,000/-	14,70,000/-

Conclusion:

17. 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 cost, after deducting the amount already deposited if any to the credit of MCOP.No.374 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 the award amount lying to the credit of MCOP.No.374 of 2009 to the bank account of the first and fourth Appellants through RTGS within a period of two weeks thereafter. Since the second and third Appellants are minors, their respective shares of the award amount shall be deposited in fixed deposit in any one of the Nationalised Banks, till they attain majority and the first Appellant who is the mother for the minors is permitted to withdraw the interest once in six months. If the minors are attained the age of majority, it is open for them to file a formal petition to declare them as major. The Appellants/claimants are directed to pay requisite court fee, if any for the enhanced award. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   The Principal District Judge,
   Perambalur.

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

+1cc to Mr.C.Vidhusan, Advocate SR.No.30280

NRJK(CO)
GMY(11/05/2021)