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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.18.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1970 of 2013

1.Suresh
2.Rajesh

... Appellants/Petitioners

vs.

1.Ananthi
2.Sri Ram General Insurance Company Limited,
Chennai - 17 represented by its Manager.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 02.07.2012 made in MCOP.No.122 of 2011 on the file of the Principal Sub Court (Motor Accident Claims Tribunal, Mayiladuthurai).

For Appellants : Mr.S.Sounthar

For Respondents : Mr.K.Poomalai for R2
R1 - exparte

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the claimants challenging the award dated 02.07.2012 passed by the Motor Accident Claims Tribunal (Principal Sub Court, Mayiladuthurai) in MCOP.No.122 of 2011.

2. The Tribunal under the impugned award directed the second respondent to pay the Appellants/claimants a compensation of Rs.1,35,000/- together with interest from the date of claim till the date of deposit and costs as detailed hereunder:



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Heads	Award Amount (Rs.)
Loss of income	1,20,000/- (3000-1/3=2000x12x5)
Loss of love and affection	10,000/-
Funeral expenses	5,000/-
Total	1,35,000/-

3. The Appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this Appeal seeking enhancement of compensation.

4. Heard Mr.S.Sounthar, learned counsel for the Appellants and Mr.K.Poomalai, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

5. In the claim petition, the Appellants/claimants have pleaded that the deceased S.Krishnamoorthy was an Ex-serviceman aged 65 years and an agriculturist earning Rs.20,000/- per month at the time of the accident.

6. Before the Tribunal, the Appellants/claimants have filed eight documents which were marked as Ex.A1 to Ex.A8 and two witnesses were examined namely the son of the deceased Mr.Suresh as PW1 and Mr.Balamurugan an eyewitness to the accident as PW2. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

7. The Tribunal has assessed the notional monthly income of the deceased at Rs.3,000/-. The year of the accident is 2011. Even though the deceased at the time of the accident was 65 years, the assessment of notional monthly income of the deceased at Rs.3,000/- is low, considering the fact that the Appellants/claimants have pleaded that the deceased was an Ex.serviceman and an agriculturist. No contra evidence has also been produced by the respondents before the Tribunal, to disprove the claim of the Appellants/claimants that the deceased was an Ex.serviceman and agriculturist. If the Tribunal had taken into consideration the year of the accident, the assessment of notional monthly income of the deceased would have been much higher. This court after giving due consideration to the avocation of the deceased as well as his age and the year of the accident is of the considered view that the notional monthly income of the deceased will have to be fixed at Rs.4,500/- instead of Rs.3,000/- fixed by the Tribunal.



8. The Appellants/claimants who are the legal heirs of the deceased are two in number and therefore, the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased, under the impugned award. This Court also deducts 1/3rd towards personal expenses of the deceased.

9. The Tribunal has also adopted the correct multiplier of five under the impugned award, since the deceased was aged 65 years at the time of the accident. The same multiplier is also adopted by this Court while assessing the loss of dependency.

10. Accordingly, the loss of dependency is enhanced from Rs.1,20,000/- to Rs.1,80,000/- ($4500 - \frac{1}{3} = 3000 \times 12 \times 5$).

11. The Tribunal has erroneously awarded a meagre compensation towards loss of love and affection to the Appellants/claimants at Rs.5,000/-each totally amounting to Rs.10,000/- and has also awarded a meagre compensation of Rs.5,000/- towards funeral expenses of the deceased which is not in accordance with 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). Accordingly, this Court awards a compensation of Rs.20,000/- each to the Appellants/claimants towards loss of love and affection amounting to Rs.40,000/- and also awards a compensation of Rs.15,000/- towards funeral expenses of the deceased.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,35,000/- to Rs.2,35,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income	1,20,000/- ($3000 - \frac{1}{3} = 2000 \times 12 \times 5$)	1,80,000/- ($4500 - \frac{1}{3} = 3000 \times 12 \times 5$)
Loss of love and affection	10,000/-	40,000/-
Funeral expenses	5,000/-	15,000/-
Total	1,35,000/-	2,35,000/-

Conclusion:

13. 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.122 of 2011 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 along with accrued interest lying to the credit of MCOP.No.122 of 2011 to the bank account of the respective Appellants/claimants through RTGS as per the ratio of apportionment made by the Tribunal within a period of two weeks thereafter. No costs. The Appellants /claimants are directed to pay the requisite court fee if any for the enhanced award amount before the obtaining the copy of this Judgment.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
The Principal Sub Judge, Mayiladuthurai.

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

+lcc to Mr.S.Sounthar, Advocate, S.R.No.30933
+lcc to Mr.K.Poomalai, Advocate, S.R.No.30945

C.M.A.No.1970 of 2013

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