

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.1342 OF 2016

1.Shakila Bee
2.Abdul Gaffur

...Appellants/Petitioners

Vs

The Tamil Nadu State Fire Service,
Rep.by its Director of Fire Service,
Egmore, Chennai-8

...Respondent/Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 18.12.2014 made in MACT.O.P.No.4290 of 2013 on the file of the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants : Mr.K.Suryanarayanan

For Respondent : Mr.Y.T.Arvind Gosh,
Government Advocate (CS)

JUDGMENT

(The case has been heard through video conference)

This appeal is preferred by the appellants against the award passed by the Motor Accident Claims Tribunal, (Court of Small Causes), Chennai awarding a sum of Rs.5,66,000/- for the deceased.

2. For the death of 20 years old boy, who claim to be self employment as AC mechanic and earning Rs.20,000/- per month, claim petition has been filed seeking compensation of Rs.20,00,000/- for the fatal accident occurred on 25.05.2013.

3. According to the claimants when the deceased Abdul Kathar was travelling as pillion rider of the motor cycle bearing registration No.TN o4 AD 5393 from Puducherry to Chennai, the lorry bearing registration No.TN 37 G 0101 dashed against the

motor cycle and caused injury to the pillion rider all over his body. Injured was taken to the hospital but died on 28.05.2013. The parents of the deceased have preferred the claim estimating Loss of Estate at Rs.17,00,000/-; Love and Affection at Rs.2,00,000/- and Funeral Expenses of Rs.1,00,000/-.

4. Before the Tribunal, the Tamil Nadu State Fire Service Department which is the owner of the lorry refuted the claim attributing the negligence of the motor cycle rider who was the minor have no valid driving license.

5. The Tribunal considering the evidence let in by the claimants namely oral evidence of PW.1 and PW.2, documentary evidence Ex.D1 to Ex.D9 awarded a sum of Rs.5,66,000/- with interest at the rate of 7.5% p.a., from the date of the petition till the date of realization.

6. In this appeal it is contended by the learned counsel for the appellants that the notional income of Rs.4,500/- fixed by the Tribunal for arriving at the loss of income is very low and ought to have been taken as at least Rs.6,500/-. Further, the compensation of Rs.25,000/- awarded for love and affection for each petitioner, Rs.25,000/- for funeral expenses and Rs.5,000/- for transport expenses also sought to be enhanced.

7. The learned counsel for the respondent would submit that the trial Court has fairly considered the material placed before it for fixation of income and has awarded just compensation which requires no interference. The appellants herein have already withdrawn the award amount deposited pursuant to the execution petition filed.

8. This appeal is filed belatedly after not pressing the execution petition. This Court on perusing the records finds that for the loss of dependency, the Tribunal taking note of the fact that the deceased was bachelor and self employed Rs.4,500/- has been taken as notional income and from it 50% of it has been deducted for his personal expenses. Thus, it has arrived loss of dependency as Rs.4,86,000/- applying multiplier factor 18% [Rs.4,500 x $\frac{1}{2}$ x 12 x 18]. As far as this calculation is concerned, this Court finds no error. However, in National Insurance Company Limited Vs. Pranay Sethi case, the Hon'ble Supreme Court has held even self employment person up to age of 40 years is entitled for an additional 40% of the income as future prospects. Therefore, if future prospect is taken note, the compensation has to be enhanced. Hence, compensation is modified as below:-

Loss of Income (Rs.4,500 + Rs.1,800) x ½ x 12 x 18	Rs.6,80,400/-
Loss of love and affection Rs.25,000/- x 2	Rs. 50,000/-
Transport expense	Rs. 5,000/-
Funeral expense	Rs. 25,000/-
Total	Rs.7,60,400/-

9. As a result, the award of the Tribunal is enhanced from Rs.5,66,000/- to Rs.7,60,400/-. Thus, the Appellants are entitled for additional sum of Rs.1,94,400/- towards future prospects with interest at the rate of 7.5% per annum. The respondent is hereby directed to pay the enhanced compensation of Rs.1,94,400/- with interest at the rate of 7.5% from the date of petition (04.06.2013) till the date of deposit. (less interest for 234 days for the delay incurred in filing the appeal).

10. Accordingly, the Civil Miscellaneous Appeal is partly Allowed with costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.
2. The Section Officer, VR Section, Madras High Court.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.26322

C.M.A.No.1342 of 2016

RSK(CO)
CS/08/01/2021

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