

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.09.2020
CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2235 of 2013

1. N.Kanniyammal
2. N.Janarthan (Minor)
3. N.Balaji (Minor)
2 and 3 are minors rep. by their mother
Kanniyammal ...Appellants/ Petitioners

vs.

1. P.Pramod Kumar Gothi
2. National Insurance Company Ltd.,
No.378, Mint Street,
Chennai - 600 078.
3. Z.Dhamith Susan
4. Janakiammal ...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2012 in M.C.O.P.No.581 of 2006 on the file of the II Judge, (Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Vadivel for R2
Ms.R. Ramya Rao for R4
R1 & R3 - Ex-parte

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the appellants / claimants seeking enhancement of compensation under the impugned award dated 29.06.2013 passed by the Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai, in M.C.O.P.No.581 of 2006.

2. A person by name, Narasaya died on 13.06.2004 as a result of an accident caused by a vehicle insured with the second respondent. The first appellant, being the wife of the deceased, second and third appellants are the minor

children of the deceased and the fourth respondent, being the mother of the deceased are the claimants. The claimants are the legal heirs and dependants of the deceased. The appellants preferred a claim before the Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai in M.C.O.P. No.581 of 2006 seeking compensation for the death of Narasaya.

3. The Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai under the impugned award directed the second respondent / Insurance Company to pay the appellants / claimants as well as the fourth respondent a compensation of Rs.4,87,000/- together with interests and costs, as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary loss is calculated as Rs.2,000 x 12 x 18	4,32,000
Loss of Consortium to the 1st petitioner (1st appellant)	10000
Funeral expenses	5000
Love and affection	40000
Total	487000

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.K.Varadha Kamaraj, learned counsel for the appellants, Mr.S.Vadivel, learned counsel for the second respondent and Ms.R. Ramya Rao, learned counsel for the fourth respondent. The first and the third respondents remained ex-parte both before the Tribunal as well as before this Court.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. The deceased Narasaya, aged 26 years was a Labourer at the time of the accident. In the claim petition filed by the appellants/claimants, they have pleaded that the deceased was earning Rs.4,000/-p.m., at the time of the accident. However, the Tribunal has fixed the notional monthly income of the deceased at Rs.3,000/-, since no documentary evidence was produced by the appellants/claimants in support of their contention that the deceased was earning Rs.4,000/-p.m., The accident happened on 13.06.2004. This Court after giving due consideration to the year of the accident, which happened in the year 2004 is of the considered view that the assessment

of the notional monthly income of the deceased at Rs.3,000/- is a correct assessment. The Tribunal has failed to award any compensation to the claimants towards Loss of future prospects, which they are legally entitled to as per 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 16 SCC 680. The deceased was aged 26 years at the time of the accident. Therefore, the claimants are entitled to 40% towards Loss of future prospects. The Tribunal has erroneously adopted 18 multiplier and has also erroneously deducted 2/3rd while assessing the pecuniary loss of the deceased. The claimants are four in number viz., the wife of the deceased, two minor children and the mother of the deceased, who is fourth respondent in this appeal. Since there are four claimants, the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased but has erroneously deducted 1/3rd under the impugned award. The Tribunal has also erroneously adopted 18 multiplier instead of 17 multiplier under the impugned award. For a person, aged 26 years, the correct multiplier to be adopted as per the decision of the Hon'ble Supreme Court in the case of Sarala Verma & Ors vs. Delhi Transport Corp. & Anr. reported in 2009 6 SCC 121 is 17. Accordingly, the same is modified by this Court. Therefore, the pecuniary loss is enhanced from Rs.4,32,000/- to Rs.6,42,600/- by this Court, as detailed hereunder :

$$\text{Rs.3,000} + 40\% - 1/4 = \text{Rs.3,150} \times 12 \times 17 = \text{Rs.6,42,600/-}$$

8. The Tribunal has awarded a meager compensation of Rs.10,000/- towards loss of consortium, which is not in accordance with the judgment of the Hon'ble Supreme Court in the case of Pranay Sethi, referred to supra. Accordingly, this Court enhances the loss of consortium from Rs.10,000/- to Rs.40,000/-.

9. Insofar as the compensation awarded by the Tribunal towards loss of love and affection at Rs.40,000/- is concerned, the same is a just compensation and there is no scope for interference by this Court.

10. The Tribunal has awarded only a meager compensation of Rs.5,000/- towards funeral expenses, which is not in accordance with Pranay Sethi's judgment referred to supra. Accordingly, this Court enhances, the same to Rs.15,000/-.

11. The Tribunal has failed to award any compensation towards loss of income, which the claimants are legally entitled to, as per the settled practice. Accordingly, this Court awards Rs.15,000/- as compensation towards loss of estate to the claimants.

12. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pecuniary loss is calculated as * Rs.3,000 - 1/3 = Rs.2,000 x 12 x 18 # Rs.3,000 +40% - 1/4= Rs.3,150 x 12 x 17	4,32,000 *	6,42,600 #
Loss of Consortium to the 1st petitioner (1st appellant)	10000	40000
Funeral expenses	5000	15000
Love and affection	40000	40000
Loss of estate	-	15000
Total	4,87,000	7,52,600

13. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.4,87,000/- to Rs.7,52,600/- as indicated above. No costs.

14. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.581 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai, 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 award amount directly to the bank account of the major claimants / first appellant and fourth respondent, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. Insofar as the share of the second and third respondents / minor claimants are concerned, the same shall be deposited in Fixed deposit in any one of the Nationalised Banks, till they attain the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank. The requisite Court fee, if any has to be paid by the appellants/claimants before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS V)

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vsi2

To

1.The II Judge,
Small Causes Court
(Motor Accident Claims Tribunal),
Chennai.

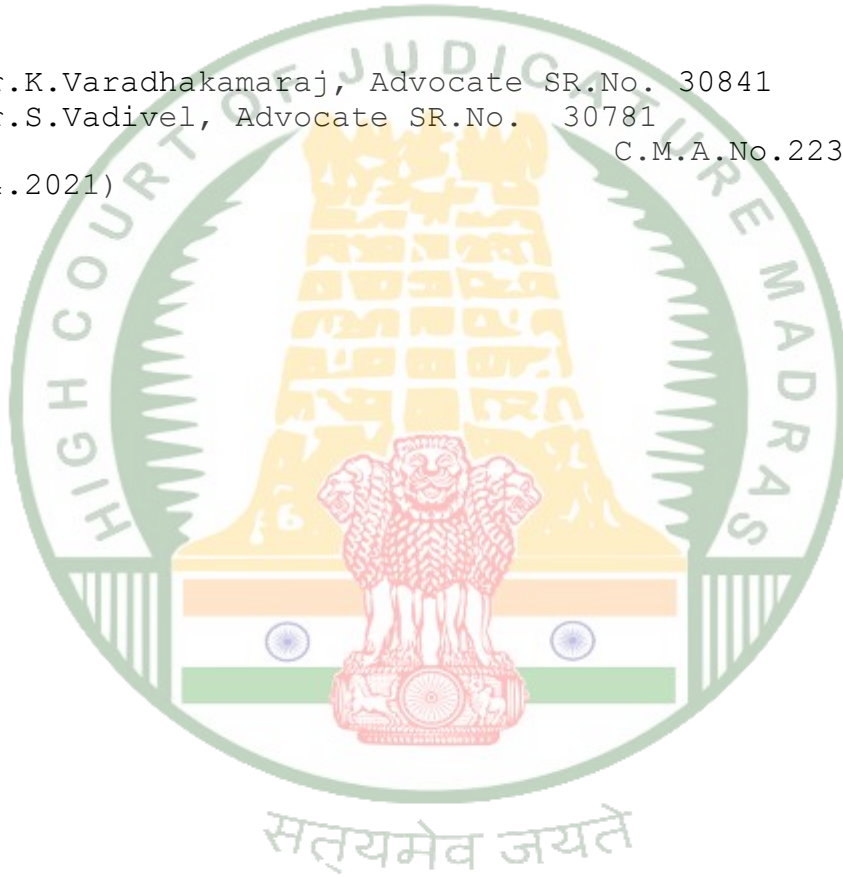
2.The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No. 30841

+1cc to Mr.S.Vadivel, Advocate SR.No. 30781

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A.SK(28.04.2021)



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