

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2717 of 2012

Gomathi ... Appellant/Claimant

Versus

1. Relianz General Insurance Co. Ltd.,
Anil Ambani Group,
Chennai.

2. Rajinidevi Respondents/Respondents
(2nd respondent owner of the vehicle was exparte
before the Tribunal hence notice may be dispense with)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the Judgment and decree dated
22.12.2011 made in M.C.O.P. No.886 of 2009 on the file of the
Motor Accidents Claims Tribunal (Additional District and
Sessions Judge), Fast Track Court No.II, Poonamallee.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.S.Arunkumar for R1
R2 - Exparte

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant seeking
enhancement of compensation under the impugned award dated
22.12.2011 passed by the Motor Accidents Claims Tribunal
(Additional District and Sessions Judge, Fast Track Court No-II,
Poonamallee) in MCOP No.886 of 2009.

2. A person by name Vijayakumar, aged 26 years died on
04.09.2007 as a result of an accident caused by a vehicle owned
by the second respondent and insured with the first respondent.
The parents of the deceased preferred a claim before the Motor
Accidents Claims Tribunal (Additional District and Sessions
Judge, Fast Track Court No.II, Poonamallee) seeking compensation
for the death of their son Vijayakumar. During the pendency of
the claim, the father of the deceased died leaving behind his
wife who is the mother of the deceased, the first claimant in

the claim as his only legal heir.

3. The Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Track Court No.II, Poonamallee) by its award dated 02.12.2011 directed the 1st respondent / Insurance Company to pay the Appellant / claimant a sum of Rs.5,07,000/- together with interests and costs.

4.The details of the compensation awarded by the Tribunal under the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income	4,62,000
Funeral expenses	10000
Transportation	5000
Love and affection to the parents of the deceased i.e. Rs. 15,000/-each	30000
Total	5,07,000

5. The Appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this appeal seeking for enhancement.

6. Heard Mr.C.Prabhakaran, learned counsel for the Appellant and Mr.S.Arunkumar, learned counsel for the 1st respondent. R2 was set ex-parte before the Tribunal, hence notice to R2 is dispensed with.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. Before the Tribunal, the Appellant / claimant has filed thirteen documents, which were marked as Ex.P1 to Ex.P13 and two witnesses were examined on her side viz, the Appellant herself as PW1 and an eye witness to the accident as PW2. However, on the side of the first respondent / Insurance Company, neither any witness was examined nor any document filed before the Tribunal.

9. The deceased Vijayakumar was aged 26 years and was a student studying 4th year B.E., at Sri Raja Rajeswari Engineering College, Chennai, when the accident had happened. The accident happened on 04.09.2007. The Tribunal has fixed the

notional monthly income of the deceased at Rs.7,000/-. The age of the deceased has not been disputed by the first respondent before the Tribunal, as seen from the evidence available on record. This Court is of the considered view that since the accident happened in the year 2007 and the deceased was a Student, the assessment of his notional monthly income at Rs.7,000/- is on the higher side. This Court, therefore reduces the same to Rs.6,500/- per month. But the Tribunal has failed to award loss of future prospects to the Appellant /claimant, which she is legally entitled to as per the Constitution Bench Judgement of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680. Since the deceased was aged 26 years at the time of the accident, as per the aforesaid decision of the Hon'ble Supreme Court, the claimant is entitled to 40% towards loss of future prospects. Accordingly, the same is granted by this Court. The Tribunal has also adopted a wrong multiplier while assessing the loss of dependency. The deceased was aged 26 years at the time of the accident and therefore, the correct multiplier to be adopted is 17, whereas, the Tribunal has erroneously adopted 11 multiplier. The Tribunal has rightly deducted 50% towards personal expenses of the deceased, since the deceased was a Bachelor at the time of the accident. Therefore, the loss of dependency awarded to the Appellant / claimant is enhanced from Rs.4,62,000/- to Rs.9,28,200/- ($\text{Rs.6500} + 40\% \times 12 \times 17 \times \frac{1}{2}$) by this Court.

10. With regard to the compensation awarded by the Tribunal under various other heads, viz., funeral, love and affection and transport are concerned, the same is a just compensation and does not call for any interference by this Court.

11. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.5,07,000/- to Rs.9,73,200/- in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	4,62,000 ($7000 \times 12 \times 11 \times \frac{1}{2}$)	9,28,200 ($6500 + 40\% \times 12 \times 17 \times \frac{1}{2}$)
Funeral expenses	10000	10000
Love and affection	30000	30000
Transport	5000	5000

Total	5,07,000	9,73,200
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12. In the result, this appeal stands partly allowed by enhancing the compensation as indicated above. However, the rate of interest fixed by the Tribunal at 7.5% is confirmed. No costs.

13. The first respondent / Insurance Company is directed to deposit the modified 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.886 of 2009, on the file of the Motor Accidents Claims Tribunal, (Additional District and Sessions Judge, Fast Track Court No-II, Poonamallee), 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 Appellant /claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the Appellant before receiving the copy of this Judgment.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vsi2/nl

To

1. The Additional District and Sessions Judge,
(Motor Accidents Claims Tribunal)
Fast Track Court No.II, Poonamallee.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

+1cc to Mr.C.Prabakaran, Advocate SR.No.28602

C.M.A.No.2717 of 2012

SSI (CO)
GMY (17/04/2021)