IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27. 07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3800 of 2011

(Through Video Conferencing)

1.Amaravathy
2.Karthika(Minor)
3.Gayathri (Minor)
4.Divya (Minor)
5.K.Rani
6.R.Kanniappan
(Minors rep.by their mother & Nextfriend,1st appellant)

... Appellants/Petitioners

Vs.

1.E.Karpagam
(1st Respondent remained exparte)

2.The New India Assurance Co., Ltd.,
No.92, East Coast Chambers,
1st Floor, G.N.Chetty Road,
T.Nagar,Chennai600017.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 10.01.2011 made in M.A.C.T.O.P.No.1739 of 2007 on the file of the Motor Accidents Claims Tribunal, (Chief Judge) Small Causes Court, Chennai.

For Appellants : Mr.R.Kalaiarasan
For 2nd Respondent: Mr.S.Dakshinamoorthy

J U D G M E N T

In this civil miscellaneous appeal, the appellants seek for enhancement of the compensation awarded in the impugned fair and decretal order dated 10.01.2011 passed by the Motor Accident Claims Tribunal Chennai, (Chief Judge) Small Causes Court, Chennai in M.A.C.T.O.P No.1739 of 2007. For brevity hereinafter referred to as the Tribunal and the impugned order respectively.

2.The appellants filed a claim petition before the Tribunal. By the impugned order, the Tribunal has awarded a sum of Rs.7,45,000/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit to the appellants/claimants. They are legal heirs of the deceased K.Sekar.

3. On 11.03.2007 at about 16.30 hrs., while the deceased K.Sekar was riding his two wheeler, viz. TVS Champ moped bearing Reg.No. TN-22-X-9375 and was proceeding from Velacherry to Pallavaram, when a car bearing Reg.No.TN-22-AP-6019 allegedly driven in a rash and negligent manner came from behind and knocked the said two wheeler, as a result of which, the deceased K.Sekar sustained injuries and later died in the hospital. Therefore, the appellants filed the above claim petition in M.A.C.T.O.P No.1739 of 2007 for compensation.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the car and therefore directed the 2nd respondent / Insurance Company to pay a sum of Rs.7,45,000/- as compensation together with interest and cost from the date of the claim petition till the date of deposit to the appellants/claimants. The break up of the amount awarded by the Lower Court are summarised below:-

For loss of income - Rs.5,000/- x 12x 1/4 x 16	Rs.7,20,000/-
Loss of consortium	Rs. 10,000/-
Loss of love and affection	Rs. 10,000/-
Funeral expenses	Rs. 5,000/-
Total	Rs.7,45,000/-

5. Not being satisfied with the amounts awarded by the Tribunal, the appellants have filed the present appeal for enhancement of compensation.

6. The learned counsel for the appellants submit that the income of the deceased fixed by the Tribunal was too low, as a result of which, the compensation awarded was also too low. It is submitted that in the decision of the Hon’ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, a vegetable vendor's income was fixed as Rs.6,500/- per month. In this case, the deceased was working as Supervisor

and therefore the Tribunal ought to have considered the notional income of the deceased at Rs.7,500/- p.m and additional amount of Rs.200/- per assignment. It was submitted that the Tribunal has not granted any amount towards future prospects. The amounts awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove the avocation and income of the deceased. In absence of any material evidence with regard to avocation and income, a sum of Rs.5,000/- per month fixed by the Tribunal as notional income of the deceased cannot be said to be meagre. The appellants are not entitled to future prospects of the deceased. Therefore, he prayed for dismissal of the appeal with partial modification.

8.I have considered the arguments of the learned counsel for the appellants and the learned counsel for the second respondent-Insurance Company and also perused all the materials available on record. The Tribunal considering the entire materials on record, has awarded a sum of Rs.7,45,000/- as compensation to the appellants, which is not meagre.

9. It is the contention of the appellants that the deceased was working as Supervisor and was earning a sum of Rs.7,500/- per month and drawing additional income of Rs.200/- per assignment at the time of the accident. PW3 / co-worker of the deceased was examined to prove the same. The appellants have produced salary certificate - Ex.P.8. However, the second respondent-insurance company has not effectively cross examined the witness nor summoned the employer of the deceased to state that the income of the deceased could not have earned a sum of Rs.7,700/- as was claimed.

10. In the decision of the Hon'ble Supreme Court in Syed Sadiq's case (referred to supra), a vegetable vendor's notional income working in an organised sector was considered as Rs.6,500/- per month. Since the appellants had only produced the salary certificate through a co-worker of the deceased as a witness, I am inclined to fix the notional income of the deceased as Rs.7000/- per month for the purpose of awarding compensation.

11. Accordingly, the compensation awarded by the Tribunal is partially enhanced in terms of the following the decisions of the Hon'ble Supreme Court :

i. National Insurance Co. Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680.
ii. Sarla Verma vs. Delhi Transport Corporation, 2009 (2) TNMAC 1 SC
iii. Magma General Insurance Company Ltd. vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 Online SC 1546

12. The appellants are entitled to receive an enhanced amount of compensation by adding 40% of the income towards future prospects. There are six dependants of the deceased and the Tribunal deducted 1/4th towards personal expenses of the deceased. It is maintained considering the size of the family. Thus, by applying proper multiplier of '16', the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.14,11,200/- from Rs.7,20,000/- A sum of Rs.10,000/- awarded towards loss of consortium and a sum of Rs.10,000/- awarded towards loss of love and affection are meagre and the same are to be enhanced. Thus, the compensation awarded by the Tribunal is modified as follows:

Heads and Calculation	Amount of compensation
Loss of dependency:- Monthly Income of the deceased : Rs.7,000/- Add: Future Prospectus at 40% (7000x40/100) : Rs.2,800/- ------------- : Rs.9,800/- Less: Personal Expenses at 1/4th (9,800x1/4th) : Rs.2,450/- ------------- : Rs.7,350/- ------------- AnnualIncome (7,350x12) : Rs.88,200/- Multiplier-16(88,200x16) : Rs.14,11,200/-	Rs.14,11,200/-
Loss of consortium	Rs. 40,000/-
Loss of filial consortium (40,000 x 3)	Rs. 1,20,000/-
Loss of Estate	Rs. 15,000/-

Heads and Calculation	Amount of compensation
Funeral and Transport expenses	Rs. 25,000/-
Total	Rs.16,11,200/-

13. The appellants are directed to pay deficit court fee, if any, on the enhanced amount of compensation now determined by this Court. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount of compensation of Rs.16,11,200/- now determined by this Court together with interest at 7.5% p.a. from the date of the claim petition till the date of deposit and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

14. The aforesaid compensation of Rs.16,11,200/- is apportioned as follows:-

1st appellant (wife)	Rs.6,61,200/-
2nd appellant (daughter)	Rs.2,50,000/-
3rd appellant (daughter)	Rs.2,50,000/-
4th appellant (daughter)	Rs.2,50,000/-
5th appellant (mother)	Rs.1,00,000/-
6th appellant (father)	Rs.1,00,000/-
Total	Rs.16,11,200/-

15. The 1st, 5th and 6th appellants are permitted to withdraw their respective share awarded by both the Tribunal and this Court together with interest thereon and costs, less the amount if any, already withdrawn, by making necessary applications before the Tribunal.

16. The shares of the minors 2nd to 4th appellants shall be deposited by the Tribunal in any one of the nationalised Bank under re-investment scheme till they attain majority. The 1st appellant, who is guardian of the minors, is permitted to withdraw the accrued interest from the deposit of the minors

once in three months directly from the said Bank. On attaining the age of majority, the 2nd to 4th appellants may be permitted to withdraw their respective shares by filing suitable applications before the Tribunal.

17. In the result, this civil miscellaneous appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kkd/jen

To:
The Motor Accident Claims Tribunal
(Chief Judge) Court of Small Causes,
Chennai.

+1 cc to M/s.R.Kalaiarasan, Advocate Sr.No. 25458
+1 cc to M/s.S.Dhakshanamoorthy, Advocate Sr.No. 25340

C.M.A.No.3800 of 2011

KJ(CO)

RMP(10/06/2021)