

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2421 of 2013

1. R. Sundari
2. R. Boopathy
3. R. Elumalai (minor),
rep. by his mother and next
friend R. Sundari ...Appellants/Claimants

vs.

1. Andhra Pradesh Tourism Development
Corporation Ltd.
Rep. by its Chairman and Managing Director,
No.3-5-891, Tourism House,
Himayat Nagar,
Hyderabad.
2. The New India Assurance Co. Ltd.
No.46, Moore Street,
Chennai - 01. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 09.05.2011 made in MCOP No.1466 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge (II Fast Track Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.R. Neethi Perumal for R2
Not ready in notice reg R1

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 09.05.2011 passed by the Motor Accidents Claims Tribunal (Additional District Judge, II Fast Track Court), Chennai in MCOP No.1466 of 2006.

2. A person by name, M.Rajendran died on 19.02.2006 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The appellants / claimants are the legal heirs and dependants of the deceased M.Rajendran. They preferred a claim before the Motor Accident Claims Tribunal (Additional District Judge, II Fast Track Court), Chennai in M.C.O.P. No.1466 of 2006 seeking compensation for the death of M.Rajendran.

3. The Motor Accidents Claims Tribunal (Additional District Judge, II Fast Track Court), Chennai under the impugned award directed the respondents to pay the appellants / claimants a compensation of Rs.6,34,940/- together with interests at 9% p.a. from the date of claim petition till the date of realisation and has also awarded 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.)
Towards compensation	5,99,940
Towards funeral expenses	5,000
Loss of consortium to the first petitioner	15,000
Love and affection	15,000
Total	6,34,940

5. The appellants /claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking for enhancement.

6. Heard Mr.K.Varadha Kamaraj, learned counsel for the appellants and Mr.R. Neethiperumal, learned counsel for the second respondent.

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

8. Before the Tribunal, the appellants / claimants have filed five documents which were marked as Exs.P1 to P5 and two witnesses were examined viz., the wife of the deceased, R.Sundari as PW1 and Balu, an Eye witness to the accident as PW2. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

9. In the claim petition filed before the Tribunal in MCO.P. No.1466 of 2006, the appellants / claimants have pleaded

that the deceased M.Rajendran, was aged 40 years and was a Labourer cum Milk vendor, owning ten buffaloes and earning Rs.300/- per day at the time of the accident. Since, no documentary evidence was filed in support of the claim of the appellants that the deceased was earning Rs.300/- per day at the time of the accident, the Tribunal, accordingly fixed the monthly income of the deceased on notional basis at Rs.5,000/-. The accident happened in the year 2006. After giving due consideration to the year of the accident and the nature of the avocation as well as the age of the deceased, this Court is in agreement with the assessment made by the Tribunal with regard to the notional monthly income of the deceased.

10. However, the Tribunal has erroneously failed to award any compensation towards loss of future prospects, which the appellants / claimants 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 40 years at the time of the accident. For a person, aged 40 years, the loss of future prospects will have to be added at 25%, as fixed by the Hon'ble Supreme Court. Accordingly, this Court awards 25% towards loss of future prospects to the appellants / claimants. The Tribunal has also adopted the correct multiplier of 15 and also rightly deducted 1/3rd towards personal expenses of the deceased, since, the appellants / claimants, who are the dependants of the deceased are three in number.

11. The Tribunal has awarded a compensation of Rs.5,000/- towards funeral expenses and Rs.15,000/- towards loss of consortium, which is low and not in accordance with the decision of the Hon'ble Supreme Court in the case of Pranay Sethi, referred to supra. In accordance with the said judgment, this Court enhances the compensation towards funeral expenses from Rs.5,000/- to Rs.15,000/- and towards loss of consortium from Rs.15,000/- to Rs.40,000/-.

12. Insofar as the compensation awarded by the Tribunal towards loss of love and affection at Rs.15,000/- is concerned, the same is confirmed by this Court as it is in accordance with Pranay Sethi judgment referred to supra.

13. The Tribunal has also failed to award any compensation towards loss of estate to the appellants / claimants, which they are legally entitled to in accordance with Pranay Sethi judgment referred to supra. In accordance with the said judgment, this Court awards a compensation of Rs.15,000/- to the appellants / claimants towards loss of estate.

14. 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.)
Towards compensation * Rs.5000 - $1/3 \times 12 \times 15$ # Rs.5000 $\times 25/100$ - $1/3 \times 12 \times 15$	5,99,940 *	7,50,000 #
Towards funeral expenses	5,000	15,000
Loss of consortium to the first petitioner	15,000	40,000
Love and affection	15,000	15,000
Loss of estate	-	15,000
Total	6,34,940	8,35,000

15. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.6,34,940/- to Rs.8,35,000/- as indicated above. No costs.

16. However the Tribunal has erroneously awarded 9% interest to the appellants / claimants, which is not in accordance with the settled practice adopted by Tribunals all over the State of Tamil Nadu. In accordance with the settled practice, this Court reduces the rate of interest from 9% to 7.5%.

17. 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 MCOP No.1466 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge (II Fast Track Court), 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 and second appellants, 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 third respondent / minor claimant is concerned, the same shall be

deposited in Fixed deposit in any one of the Nationalised Banks, till he attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant 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(CCC)

//True copy//

Sub Assistant Registrar

vsi2

To

1. The Additional District Judge
(II Fast Track Court),
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R. Section,
Madras High Court.

+1cc to Mr.V.Mohan Choudary, Advocate SR.No.31265

C.M.A.No.2421 of 2013

RSV(CO)
GMY(23/04/2021)

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