

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3173 of 2012

(Through Video Conferencing)

1.G.Kasthuri

2.G.Senthil Prabhu

3.Saraswathi

.. Appellants/Petitioners

Vs.

1.P.Boominathan

2.K.Somasundaram

3.The New India Assurance Company Limited,

People's Park 2nd Floor,

No.11-19 & 20,

Govt. Arts College Road,

Coimbatore - 641 018.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 28.04.2008 made in M.C.O.P.No.48 of 2007, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court at Coimbatore.

For Appellants	: Mr.M.Lokesh for Mr.Ma.P.Thangavel
For Respondents	:
For R1& R2	: Not ready in notice
For R3	: Mr.J.Chandran

JUDGMENT

The claimants are the appellants in this appeal. They are aggrieved by the impugned Judgment and Decree dated 28.04.2008 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate at Coimbatore in M.C.O.P.No.48 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has exonerated the 3rd respondent Insurance Company merely on the ground that the driver of the insured Auto has possessed license only for Light Motor Vehicle and did not possess a badge endorsement for driving auto and therefore there was a violation

of policy condition. As far as quantum is concerned, the Tribunal has adopted the notional income of the deceased (P.Govindarajan) as Rs.4,000/- per month as against the income of Rs.8097/- as per Ex.P10-Salary Certificate which was marked through the employer P.W.3.

3. The learned counsel for the appellants submit that the Tribunal ought to have awarded just compensation based on the evidences available, instead of fixing the notional income as Rs.4,000/- per month. The learned counsel further submits that the appellants/claimants are also entitled to the compensation towards future prospects, apart from the other conventional heads for compensation.

4. The learned counsel for the respondents submit that the impugned Judgment and Decree of the Claims Tribunal is well-reasoned and requires no interference. He further submits that the Tribunal has awarded just compensation based on the notional income of the deceased (P.Govindarajan) as Rs.4,000/-. It is submitted the appellants have not established that the deceased (P.Govindarajan) was allegedly working as time keeper in Pankaja Mills, Ramanathapuram, Coimbatore District and that the Tribunal had come to a fair conclusion that the deceased was earning only a sum of Rs.4,000/- for the purpose of awarding just compensation.

5. I have considered the arguments advanced on behalf of the appellants and the third respondent Insurance Company and I have also gone through the records.

6. Though Ex.P.10-Salary Certificate was marked through P.W.3-employer of the deceased to substantiate that the deceased (P.Govindarajan) was earning a sum of Rs.8097/-, it is noticed that in the claim statement, the appellants/claimants have themselves stated that the deceased-P.Govindarajan was earning a sum of Rs.7500/- per month. Therefore, the evidences of P.W.3-employer and the Salary Certificate-Ex.P.10 raises a shadow doubt as to the correctness of the income of the deceased as per Ex.P.10-Salary Certificate. At the same time, the Tribunal has considered a very low income of Rs.4,000/- while arriving the aforesaid compensation. It is well settled that the Tribunal and the Courts have to award just compensation. Though the appellants/claimants have claimed lesser compensation, the Courts is not precluded for awarding just compensation, if the appellants/claimants are indeed entitled to the same.

7. It is well settled that the Tribunal and the Courts have to award just compensation. Though the appellants/claimants have claimed lesser compensation, the Courts is not precluded for awarding just compensation, if the appellants/claimants are

indeed entitled to the same.

8. In my view, the Tribunal ought to have considered the notional income of the deceased as Rs.6000/-, even though an attempt was made to make as if he was earning a sum of Rs.8097/- vide Ex.P.10, which was marked through P.W.3-Employer. If the notional income of the deceased was assessed as Rs.8097/- as shown in Ex.P.10-Salary Certificate, the appellants/claimants would have got the claim petition rectified before the Tribunal.

9. Therefore, the amount of compensation to be awarded to the appellants is recomputed by considering the notional income of the deceased-Govindarajan as Rs.6000/- and there shall be 15% in addition to the aforesaid income towards future prospects, as per the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680, considering the age of the deceased as 56 years at the time of the accident.

10. That apart, the appellants/claimants who are the wife, son and the mother of the deceased-P.Govindarajan, are entitled to further amount of compensation under the heads of loss of consortium, loss of filial consortium and loss of love & affection as per the Hon'ble Supreme Court in the case of

(i) National Insurance Co. Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

(ii) Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12.

(iii) Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130.

11. Accordingly, the compensation to be awarded by the Tribunal is recomputed as follows:-

Monthly income of the deceased = Rs.6000/-

(by considering the age 56 years
as per Pranay Sethi)

Future Prospects = 15% add

Deduction towards personal expenses (1/3rd)

Proper Multiplier 9

(i) Loss of dependency = Rs.6000/- +Rs.900/- (Rs.6000/-x15%)
= Rs.6900/-
= Rs.6900/-x12x9x2/3*
= Rs.4,96,800/-

(*1/3 deduction towards personal expenses of the deceased)

(ii) Loss of Consortium for the 1st appellant = Rs.40,000/-

- (iii) Loss of Love & Affection for the
2nd & 3rd appellants = Rs.40,000/- each
= Rs.40,000x2 = Rs.80,000/-
- (iv) Funeral Expenses = Rs.15,000/-
- (v) Transportation = Rs.10,000/-

Sl.No .	Heads of Compensation	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or reduced or granted
1.	Loss of Dependency	Rs.2,55,360/- (Rs.2660/-x12x8)	Rs.4,96,800/-	enhanced
2.	Loss of Consortium	----	Rs.40,000/-	granted
3.	Loss of Love, Affection & Support	Rs.10,000/-	Rs.80,000/-	enhanced
4.	Funeral Expenses	Rs.2000/-	Rs.15,000/-	enhanced
5.	Medical Bills & Hospital Van Bill	Rs.24,900/- (Rs.24000+Rs.900/-)	Rs.24,900/-	confirmed
6.	Transportation Charges	----	Rs. 10,000/-	granted
7.	Total	Rs.2,92,260/-	Rs.6,66,700/-	Enhanced by Rs.3,74,440/-

12. The third respondent Insurance Company is therefore directed to deposit a sum of Rs.6,66,700/- less any amount already deposited, if any, before the Tribunal together with cost awarded by the Tribunal and interest at 7.5% per annum on the aforesaid amount of Rs.6,66,700/- from the date of numbering of the claim petition till the date of such deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment.

13. On such deposit being made by the third respondent Insurance Company, the 1st and 2nd appellants/claimants are permitted to withdraw a sum of Rs.3,00,000/- each together with interest accrued thereon at 7.5%, less the amount already withdrawn, if any, by filing suitable application before the Tribunal. The third appellant is entitled to receive the balance amount of Rs.66,700/- together with interest accrued there on at 7.5%, less the amount already withdrawn, if any, by filing suitable application before the Tribunal.

14. Since the appellants/claimants are awarded a sum of Rs.6,66,700/- more than the value of the appeal for Rs.2,00,000/- they are directed to pay necessary court fee for the enhanced amount within a period of two weeks and produce the proof of payment of court fee before the Tribunal.

15. Accordingly, the present Civil Miscellaneous Appeal stands partly allowed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Coimbatore.

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

+1cc to Mr.J.Chandran, Advocate, sr no.29064

C.M.A.No.3173 of 2012

GP(CO)
RMP(04/03/2021)