

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1703 of 2016

1.Mrs.S.Habiba Banu

2.Mr.S.Mohammed Gani

3.S.Ragahana (minor)aged 13 years,
D/o late A.Sirajudeen,
(minor rep.by mother and N/F
Mrs.S.Habiba Banu)

4.Mrs.Ramzan Beevi (died)

Mr.Syed Abdul Rahim (died) ... Appellants/Claimants

/versus/

1.Velammal Matric Hr.Sec.School,
No.21, Velammal Gardens, T.S.Krishna Nagar,
Chennai-50.

2.Royal Sundaram Alliance Insurance Co.Limited,
No.45 and 46, Sundaram Towers,
Whites Road, Chennai-14. ... Respondents /Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 28.08.2014 made in M.C.O.P.No.437 of 2011 on the file of Motor Accident Claims Tribunal,(Chief Small Causes Court), Chennai.

For Appellants 1to 3:Mr.K.Varadha Kamaraj

For R2 :M/s Harini for
Mr.M.B.Raghavan

For R1 :No appearance

JUDGMENT

(Heard through Video Conference)

Heard the learned counsel appearing for the appellants and the 2nd respondent.

2.It is the case of fatal accidental where one Sirajudeen died in the freak road accident in which his two wheeler caught between the Tanker lorry and Eicher van. A claim petition for Rs.20,00,000/- was filed by the appellants on the ground that at the time of death, Sirajudeen was earning Rs.15,000/- per month as owner-cum-driver of Mahindra Toe vehicle. He was 49 years old at the time of accident and earning more with good future prospects. Therefore, the claimants are entitled to be adequately compensated for the sudden death of Sirajudeen in the road accident. It was contended that the first respondent vehicle was cause for the accident and the same being insured under the 2nd respondent, they both are liable to compensate the loss.

3.The insurance company filed counter contesting the liability and quantum. The Tribunal in a common award has fixed the monthly income of the deceased at Rs.5,500/- notionally, since there was no material to prove the avocation and income of the deceased. Applying the multiplier and giving compensation for other conventional heads, a sum of Rs. 7,48,500/- was awarded as compensation with interest at the rate of 7.5% p.a from the date of petition, till the date of realisation.

4.In this appeal, it is contended that the deceased had a driving license which was marked as Ex.P7 and his avocation was spoken through PW-2- son of the deceased. Further, the learned counsel would submit that no compensation for future prospects was awarded by the Tribunal, which is mandated even for the self-employed injured/deceased as per Pranay Sethi case. The learned counsel would further submit that the compensation given under the other heads is also not in tune with the guidelines of the Hon'ble Supreme Court. Hence, it has to be enhanced accordingly.

5.Learned counsel for the insurance company/2nd respondent would submit that except omission to give compensation under the head of future prospects, the award of the Tribunal needs no interference.

6.The records and the award of the Tribunal indicates that the claimants, who are the wife, children and parent were depending on the deceased. The tribunal has fixed the income of the deceased at Rs.5,500/- per month, though there was no material to prove the avocation and income of the deceased, in

the view of this Court, taking into account his skill for driving LMV as found through his driving license, the income shall be fixed at Rs.6,000/- per month notionally. Towards future prospects 25% of the fundamental income is added and from out of that, 1/4th is deducted for his personal expenditure. The decease was 49 years old at the time of the accident as per the driving license. Therefore, multiplier ''13'' is applied to arrive at the loss of dependency (Rs.6000+Rs.1500) x 3/4th x 13 x12= Rs.8,77,500/-.

7. The award of the Tribunal is therefore modified as below following Pranay Sethi judgment.

Loss of dependency : Rs. 8,77,500-00

Loss of consortium
to the first petitioner : Rs. 40,000-00

Loss of love and
affection for the
2nd and 3rd claimants : Rs. 30,000-00
(each Rs.15,000-00)

Loss of estate : Rs. 15,000-00

Funeral expenses : Rs. 15,000-00

Transport charges : Rs. 5,000-00

Total : Rs. 9,82,500-00

8.The award of the Tribunal is enhanced from Rs.7,48,500/- to Rs.9,82,500/-. The 2nd respondent/insurance company is directed to deposit the modified award amount with interest at the rate of 7.5% pa from the date of petition till the date of deposit. On such deposit, the appellants 1 to 3 are entitled to apportion the compensation equally. Since the appellants 4 and 5 died pending appeal, the claimants are permitted to withdraw the award amount on filing appropriate application.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Chief Small Causes Court, Chennai.

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

+lcc to Mr.K.Varadha kamaraj, Advocate, sr no.28721

C.M.A.No.1703 of 2016

GP(CO)
RMP(19/04/2021)



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