

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2631 of 2013

1.Lakshmi @ Lakshmamma
2.Minor Girish
3.Minor Geetha
(Minors rep.by N.F. Mother Lakshmi @ Lakshmamma)
4.Muniappa
5.Ramakkal

...Appellants

vs.

1.Mr.S.Rajashekar
2.The Oriental Insurance Company Limited,
No.1 & 2, 2nd Floor,
Hosur Road,
Opp. 9th Cross, Wilson Garden,
Bangalore – 27.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, aggrieved by the Award and Decree dated 06.07.2009 made in M.C.O.P.No.95 of 2008 on the file of the Motor Vehicle Claims Tribunal, Sub Judge, Hosur.

For Appellants : Mr.Mukund R.Pandiyan

For Respondents : R1 – not claimed
Mrs.R.Sree Vidhya for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned Award dated 06.07.2009 passed by the Motor Accident Claims Tribunal, Sub Judge, Hosur in M.C.OP.No.95 of 2008.

2.Heard Mr.Mukund R.Pandiyan, learned counsel for the Appellants and Mrs.R.Sree Vidhya, learned counsel for the second respondent.

3.The Motor Accident Claims Tribunal under the impugned Award has directed the respondents to pay the Appellants/claimants a compensation of Rs.5,10,200/- together with interest and cost for the death of Venkatesh as a result of an accident on 13.09.2004 caused by a vehicle owned by the first respondent and insured with the second respondent.

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

Pecuniary loss	-	Rs.4,75,200/-
Love and Affection	-	Rs.20,000/-
Loss of Consortium	-	Rs.10,000/-
Funeral expenses	-	Rs.5,000/-

Total		Rs.5,10,200/-

5.Before the Tribunal, the Appellants/claimants have filed five documents which were marked as Exs.A1 to A5 and two witnesses were examined on their side namely, the first Appellant/first claimant, who is the wife of the deceased as PW1 and 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.

6.The accident happened on 13.09.2004 which resulted in the death of Venkatesh. In the claim petition, the Appellants/claimants have pleaded that the deceased Venkatesh was aged 28 years and was a businessman earning Rs.10,000/- per month at the time of the accident. Since no documentary evidence was produced by the Appellants/claimants in support of the monthly income of the deceased, the Tribunal under the impugned Award has fixed the monthly income of the deceased on notional basis at Rs.3,300/-.

7.This Court is of the considered view that the Tribunal ought to have given due consideration to the year of the accident which happened in the year 2004 before assessing the notional monthly income of the deceased. This Court after giving due consideration to the year of the accident, fixes the notional monthly income of the deceased at Rs.4,500/- instead of Rs.3,300/- fixed by the Tribunal.

8.The Tribunal has not awarded any compensation towards loss of future prospects which the Appellants/claimants are legally entitled to as per the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***. Accordingly, this Court Awards 40% towards loss of future prospects to the Appellants/claimants in accordance with the aforesaid judgment of the Hon'ble Supreme Court.

9.The Tribunal has erroneously deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased instead of $\frac{1}{4}^{\text{th}}$. Since the Appellants/claimants are five in number, the correction deduction to be applied is $\frac{1}{4}^{\text{th}}$ and not $\frac{1}{3}^{\text{rd}}$. Accordingly, the same is modified by this Court.

10.The Tribunal has also erroneously adopted 18 multiplier instead of 17 while calculating the loss of dependency in accordance with the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 121***. The correct multiplier to be adopted for a person aged 28 years is 17 multiplier and not 18. Accordingly, the same is modified by this Court.

11.For the foregoing reasons, the loss of dependency is enhanced by this Court from Rs.4,75, 200 to Rs.9,63,900/- in the following manner:

<i>Heads</i>	<i>Awarded by the Tribunal in Rs.</i>	<i>Modified/Enhanced by this Court in Rs.</i>
Income	3,300	4,500
Future prospects	-	40% i.e. 1800
Deduction	1/3 i.e. 1100	1/4 i.e. 1575
Multiplier	18	17
Loss of Dependency	2,200 x 12 x 18 = Rs.4,75,200/-	4,725 x 12 x 17 = Rs.9,63,900/-

12.The Tribunal has erroneously awarded a compensation of Rs.20,000/- towards loss of love and affection to the Appellants/claimants which they are not entitled to as seen from the evidence available on record. Accordingly, the same is removed by this Court.

13.However, the Tribunal has awarded a meagre compensation towards loss of consortium and funeral expenses which is not in accordance **Pranay Sethi** judgment referred to supra. Accordingly, the loss of consortium is enhanced from Rs.10,000/- to Rs.40,000/- and funeral expenses is enhanced from Rs.5,000/- to Rs.15,000/- by this Court.

14.The Tribunal has also erroneously not awarded any compensation towards loss of estate which the Appellants/claimants are legally entitled to as per the

decision in *Pranay Sethi's* case referred to supra. Accordingly, this Court Awards a compensation of Rs.15,000/- towards loss of estate to the Appellants/claimants.

15.For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award is enhanced from Rs.5,10,200/- to Rs.10,33,900/- by this Court in the following manner:

<i>Heads</i>	<i>Awarded by the Tribunal in Rs.</i>	<i>Modified/Enhanced by this Court in Rs.</i>
Income	3,300/-	4,500/-
Future prospects	-	40% i.e. 1800
Deduction	1/3 i.e. 1100/-	1/4 i.e. 1575
Multiplier	18	17
Loss of Dependency	2,200 x 12 x 18 = Rs.4,75,200/-	4,725 x 12 x 17 = Rs.9,63,900/-
Love and Affection	20,000/-	-
Loss of consortium	10,000/-	40,000/-
Funeral expenses	5,000/-	15,000/-
Loss of estate	-	15,000/-
Total	Rs.5,10,200/-	Rs.10,33,900/-

16.Accordingly, the appeal is partly allowed. The second respondent Insurance Company is directed to deposit the modified award amount of Rs.10,33,900/-, after deducting the amount already deposited if any, together with interest at the rate of 7.5% p.a. from the date of claim till the date of realization to the credit of M.C.O.P.No.95 of 2008, on the file of the Motor Accidents Claims Tribunal, Sub

Judge, Hosur, within a period of four weeks from the date of receipt of a copy of this Judgment. Since the second and third respondents are minors, their share amount shall be deposited in any nationalised bank till they attain majority and their mother, the first respondent herein is permitted to withdraw the accrued interest once in three months. On such deposit being made, the Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of M.C.O.P.No.95 of 2008 to the bank account of the first, fourth and fifth Appellants/claimants through RTGS, within a period of two weeks thereafter. No costs.

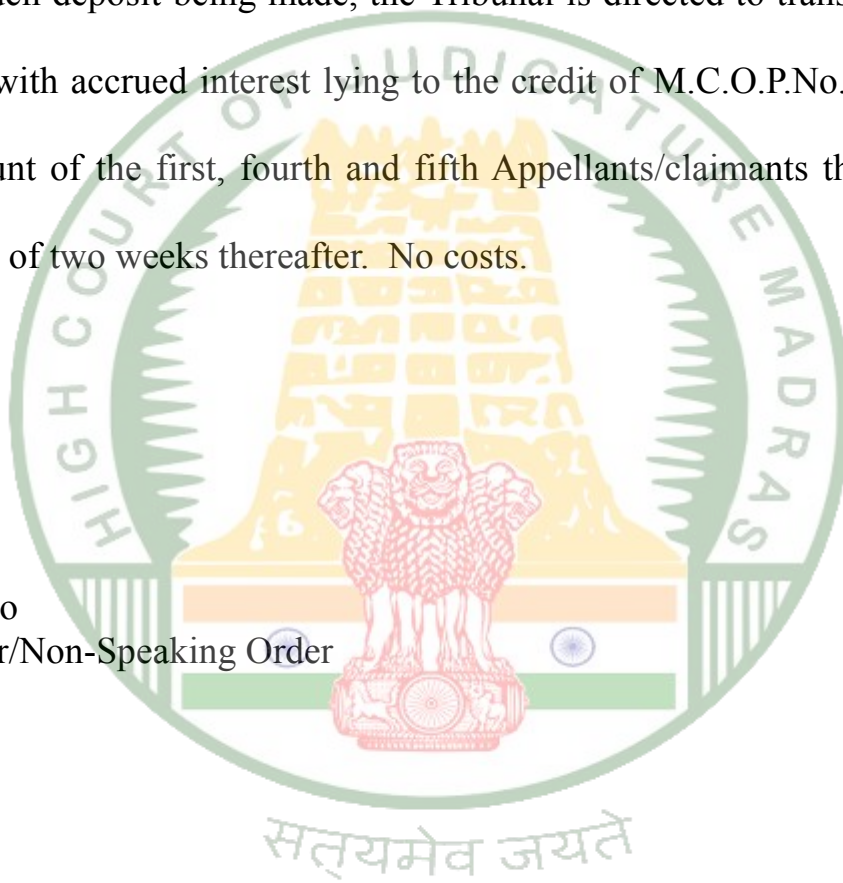
29.09.2020

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order



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ABDUL QUDDHOSE, J.

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To

1.The Motor Accident Claims Tribunal,
Sub Judge, Hosur.

2.The Section Officer,
Vernacular Section,
Madras High Court.



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