IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.828 of 2012

1. Shanthamani
2. Minor S.Arsath
3. Minor S.Karthik Prasath
(Respondents 2 & 3 rep. By their guardian
mother Santhamani)
4. K.Venkatasamy
5. V.Dhanalakshmi ... Appellants/Petitioners

vs.

1.Mohamed Ali
2. Fathima
3. I.Mansoor
4. Bajaj Alliance General Insurance Company Ltd.,
People's Park, 3rd Floor,
Arts College Road, Coimbatore – 641 018.
...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2011 in MCOP.No.1 of 2009 passed by the Motor Accident Claims Tribunal(Additional District and Sessions Judge/FTC-I) Coimbatore.

For Appellants : Mr.Karthikeyan
For Mr.V.Nicholas

For Respondents: Mrs.R.Sree vidhya-R4
R3 – served – no appearance
Not ready in notice – Reg. R1 & R2

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimants seeking enhancement of the compensation under the Impugned Award dated 22.09.2011 passed by the Motor Accident Claims Tribunal (Additional District and Sessions Judge/FTC-I) Coimbatore. in MCOP.No.01 of 2009.

2. A person by name V.Sunil Kumar, died on 27.11.2007, as a result of an accident caused by a motor-cycle viz., Bajaj Boxer, bearing Registration No. TN 37 AQ 2721, owned by the third respondent and insured with the 4th respondent/Insurance Company. As a result of the said accident, the deceased sustained grievous injuries in his head and all over the body and he died.

3. The claimants are wife, two minor children and the parents of the deceased, who are the Appellants herein. They have preferred a claim before the Motor Accidents Claims Tribunal (Additional District and Sessions Judge/FTC-I) Coimbatore in MCOP No.01 of 2009, seeking compensation for the death of V.Sunil kumar.

4. The Motor Accidents Claims Tribunal by its Award dated 22.09.2011 in MCOP No.01 of 2009 directed the respondents to pay a compensation of a sum of Rs.6,13,000/- to the appellants/claimants, together with interest and costs. However, the Tribunal has exonerated the liability of the fourth respondent, since the driver of the insured vehicle was not possessing the driving license at the time of the accident.

5. The break-up details of the award passed by the Tribunal in favour of the appellants/claimants are as follows:

Sl.No.	Heads	Award
1	Loss of dependency	5,44,000/-
2	Medical Bills	34,000/-
3	Transportation	5,000/-
4	Loss of love & affection	25,000/-
5	Loss of consortium	5,000/-
	Total	6,13,000/-

6. The appellants, unsatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal, seeking enhancement of compensation. The appellants have also challenged the finding of the Tribunal exonerating the liability of the fourth respondent.

7. Heard Mr.Karthikeyan, learned counsel for the Appellants / claimants and Mrs.R.Sree vidhya, learned counsel for the 4th Respondent/Insurance Company. There is no representation for the respondents1 to 3.

8. Before the Tribunal, the claimants have filed twelve documents, which were marked as Ex.P1 to Ex.P12 and four witnesses were examined viz., PW1 to PW4. On the side of the respondents, four documents were filed which were marked as Ex.R1 to Ex.R4 and two witnesses were examined viz., RW1 and RW2 before the Tribunal.

9. Before the Tribunal, the appellants/claimants, in their claim petition, have pleaded that the deceased V.Sunil kumar was running an Auto Consultantancy business in the name and style of 'K.Ayyasamy and Sons', earning Rs.9,000/- per month at the time of the accident. Before the Tribunal, the appellants/claimants have filed the saral forms of the deceased for the assessment year 2005-2006 and 2006-2007, which were marked as Ex.P8 and P9 respectively. As seen from the saral forms, the salary income of the deceased was disclosed as Nil. But, for the assessment year 2005-2006, the annual income of the deceased from other sources was declared as Rs.1,01,500/- . Similarly, for the assessment year 2006-2007, the annual income of the deceased from other sources, was disclosed as Rs.1,08,000/-. However, his income from the salary was disclosed as nil. Since the appellants/claimants have not filed any documentary evidence before the Tribunal to substantiate their claim that the deceased was earning Rs.9,000/- per month, the Tribunal has fixed the notional monthly income of the deceased at Rs.4,000/- The accident had happened in the year 2007. After giving due consideration to the avocation, saral forms viz., Ex.P8 and P9 and the year of the accident, this Court is of the considered view that the Tribunal ought to have fixed the monthly income of the deceased at a higher sum. This Court, therefore, fixes the same at Rs.4,500/-. The Tribunal has also failed to award any compensation towards loss of future prospects to the appellants/claimants, which they are legally entitled to as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680.

10. The deceased was aged 32 years at the time of the accident, which has not been disputed by the respondents as seen from the evidence available on record. As per the decision of the Hon'ble Supreme Court in the case of Pranay Shethi referred to supra, for a person aged 32 years, loss of future prospects will have to be awarded at 40%. Accordingly, the same is awarded by this Court.

11. The Tribunal has erroneously deducted $1/3^{rd}$ towards personal expenses of the deceased. Since the dependents of the deceased are five in number, the Tribunal ought to have deducted $1/4^{th}$ towards the personal expenses of the deceased instead of $1/3^{rd}$. Accordingly, the same is modified by this Court. The

Tribunal has rightly applied ''17'' multiplier, since the deceased was aged 32 years at the time of the accident. In view of the enhancement of the monthly income of the deceased from Rs.4,000/- to Rs.4,500/- and the addition of loss of future prospects at 40% and the deduction of 1/4th towards personal expenses of the deceased by adopting '17' multiplier, the loss of dependency for the appellants/claimants is enhanced from Rs.5,44,000/- to Rs.9,63,900/- (Rs.4725/-X12X17) by this Court.

12. The Tribunal has awarded Rs.34,000/- as compensation to the appellants/claimants towards reimbursement of medical bills, Rs.25,000/- towards loss of love and affection and another sum of Rs.5,000/- towards transportation, which in the considered view of this Court, cannot be treated as unreasonable.

13. The Tribunal has awarded only a meagre sum of Rs.5,000/- as compensation to the first appellant/first claimant towards loss of consortium, which is enhanced to Rs.40,000/- in accordance with the judgment of Pranay sethi referred to supra.

14. The Tribunal has also failed to award any compensation towards funeral expenses and loss of estate. As per Pranay Sethi judgment referred to supra, this Court awards a sum Rs.15,000/- each as compensation towards funeral expenses and loss of estate.

15. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award to the appellants/claimants is enhanced in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	5,44,000/-	9,63,900/-
Medical Bills	34,000/-	34,000/-
Transportation	5,000/-	5,000/-
Loss of love & affection	25,000/-	....
Loss of consortium	5,000/-	40,000/-
Funeral expenses	....	15,000/-
Loss of estate	....	15,000/-
Total	6,13,000/-	10,72,900/-

Conclusion:

16. In the result, the appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The fourth respondent/Insurance Company is directed to deposit the modified award amount i.e,

Rs.10,72,900/- along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.01 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment.

17. On such deposit being made, the Tribunal is directed to transfer the share of the 1st , 4th and 5th Appellants as per the order of this Court through RTGS within a period of four weeks thereafter.

18. Insofar as the share of the second and third appellants/minor claimants are concerned, the same shall be deposited in a fixed deposits in any one of the Nationalized Banks till they attain the age of majority, and till such time, the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank. If the minor claimants have attained the age of majority, it is open to them to file a formal petition before the Tribunal to get their share of apportionment.

19. It is settled law that if the driver of the insured vehicle was not possessing a driving license at the time of the accident, the Insurance Company will have to pay the compensation to the claimants and recover the same from the owner of the vehicle (insured). In the case on hand, the driver of the insured vehicle was admittedly not possessing a driving license at the time of the accident. Despite the settled law, the Tribunal has erroneously exonerated the liability of the fourth respondent absolutely. Accordingly, this Court directs the fourth respondent/insurance company to pay the compensation amount as assessed by this Court to the appellants/claimants and recover the same from the third respondent by filing an execution petition before the same Tribunal.

20. In the result, the Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(Additional District and Sessions Judge/FTC-I)
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.29138

BS(CO)
CB(08/09/2021)