

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.29.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.93 of 2012

1.V.Lakshmi
2.V.Yuvaraj (minor)
3.V.Praveen (minor)
4.Yesodha Appellants/Claimants
(minors rep. by mother &
N.F. the 1st appellant)

vs.

1.R.Kanda samy
(1st respondent remained exparte)
2.Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites Road,
Chennai - 600 014 Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 31.03.2011 made in MACT O.P.No.3113 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accident Claims Tribunal) Chennai.

For Appellants : Mr.R.Kalaiarasan

For Respondents : R1-Exparte
Mr.E.Rajadurai, for
Mr.N.Vijayaraghavan for R2

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 31.03.2011 passed by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes, Chennai) in MCOP.No.3113 of 2007.

2. A person by name B.Vedagiri died on 11.08.2007 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 wife, minor children and the mother of the deceased. They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.3113 of 2007 seeking compensation for the death of Vedagiri.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent to pay the Appellants/claimants a compensation of Rs.6,78,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Pecuniary loss	6,48,000/- (4500 x 12 = 54000 -1/4 = 40,500 x 16)
Loss of consortium	10,000/-
Loss of love and affection	10,000/-
Transport to hospital and funeral expenses	10,000/-
Total	6,78,000/-

4. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this Appeal seeking for enhancement.

5. Before the Tribunal, the Appellants/claimants has filed eight documents which were marked as Ex.P1 to Ex.P8 and three witnesses were examined on their side namely the first Appellant/first claimant as PW1, an eyewitness to the accident as PW2 and the alleged employer of the deceased as PW3. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

6. Heard Mr.R. Kalaiarasan, learned counsel for the Appellants and Mr.E.Rajadurai, learned counsel representing Mr.N.Vijayaraghavan, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

7. In the claim petition, the Appellants/claimants have pleaded that the deceased Vedagiri was a welder aged 33 years

and earning Rs.8,000/- per month at the time of the accident. The Tribunal has rightly rejected the salary certificate which was marked as Ex.P8, since the said certificate was dated 22.12.2010 which was long after the date of the accident which happened on 11.08.2007. The Tribunal therefore fixed the monthly income of the deceased on notional basis at Rs.4,500/-. The accident happened in the year 2007. No contra evidence has also been produced by the respondents to disprove the nature of avocation of the deceased. After giving due consideration to the year of the accident as well as the avocation of the deceased, this Court fixes the notional monthly income of the deceased at Rs.5,000/- instead of Rs.4,500/- fixed by the Tribunal.

8. The Tribunal has also erroneously failed to award any compensation towards loss of future prospects to the Appellants/claimants which they 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 (2) TN MAC 609 (SC). The deceased was aged 33 years at the time of the accident. For a person aged 33 years, the loss of future prospects to be awarded is 40% as per Pranay Sethi's Judgment referred to supra. Accordingly, the same is awarded by this Court.

9. The Tribunal has rightly adopted 16 multiplier, since the deceased was aged 33 years at the time of the accident. The Tribunal has also rightly deducted 1/4th towards the personal expenses of the deceased, since the Appellants/claimants are four in number.

10. For the foregoing reasons, the pecuniary loss granted by the Tribunal to the Appellants/claimants is enhanced from Rs.6,48,000/- to Rs.10,08,000/- $(5000 + 40\% = 7000 \times 12 \times 16 - 1/3)$ by this Court.

11. The Tribunal has also erroneously awarded a meagre compensation towards loss of consortium and loss of love and affection which is not in accordance with Pranay Sethi's Judgment referred to supra. In accordance with the said judgment, the compensation towards loss of consortium is enhanced to Rs.40,000/- instead of 10,000/- and towards loss of love and affection to Rs.1,00,000/- instead of Rs.10,000/- by this Court.

12. The Tribunal has also erroneously awarded only a meagre compensation of Rs.10,000/- towards transport and funeral expenses which in the considered view of this Court is too low. Accordingly, this Court enhances the same to Rs.15,000/-.

13. The Tribunal has also erroneously failed to award any compensation towards loss of estate which the Appellants/claimants are legally entitled to as per Pranay Sethi's Judgment referred to supra. Accordingly, this court awards a compensation of Rs.15,000/- to the Appellants/claimants towards loss of estate.

14. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.6,78,000/- to Rs.11,78,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss	6,48,000/- (4500 x 12 = 54000 -1/4 = 40,500 x 16)	10,08,000/- (5000 + 40% = 7000 x 12 -1/4)
Loss of consortium	10,000/-	40,000/-
Loss of love and affection	10,000/-	1,00,000/-
Transport to hospital and funeral expenses	10,000/-	15,000/-
Loss of estate	---	15,000/-
Total	6,78,000/-	11,78,000/-

Conclusion:

15. In the result, this Appeal is partly allowed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The second respondent Insurance company is directed to deposit the modified award amount of Rs.11,78,000/- along with interest from the date of claim till the date of deposit, and costs, after deducting the amount already deposited if any to the credit of MCOP.No.3113 of 2007 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 respective shares of the award amount along with accrued interest lying to the credit of MCOP.No.3113 of 2007 to the bank account of the first & fourth Appellants/first & fourth claimants through RTGS within a period of two weeks thereafter. Since the second and third Appellants are minors, their respective shares of the award amount shall be deposited in interest bearing fixed deposit in any one of the Nationalised Banks till they attain majority. The mother of the minors who is the first Appellant herein is permitted to withdraw the interest alone once in six months till the minors attain the age of

majority for the welfare of minors. If the minors attain the age of majority, it is open for them to file a formal petition before the Tribunal to declare them as major. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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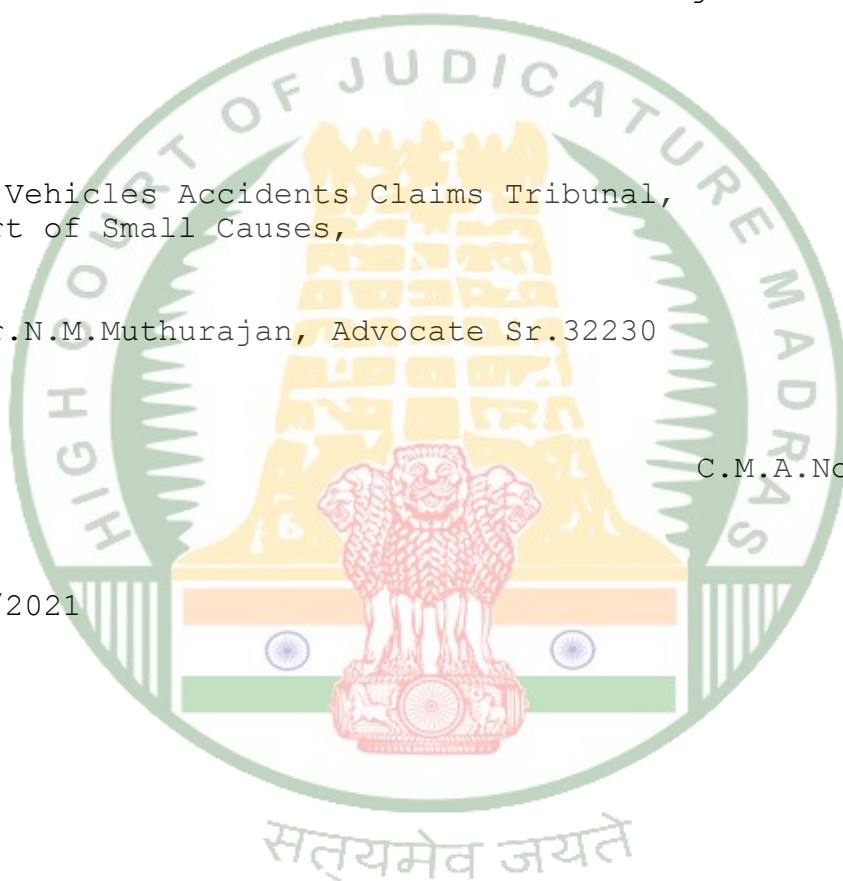
To

The Motor Vehicles Accidents Claims Tribunal,
Chief Court of Small Causes,
Chennai.

+2cc to Mr.N.M.Muthurajan, Advocate Sr.32230

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