

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3122 of 2013

1.Pichiyammal
2.Natarajan
3.Dhanabakiyam ... Appellants/Petitioners

..Vs..

1.Venkataraman
2.United India Insurance Co. Ltd,
No.46, J.Nehru Street, Pondicherry. ... Respondents/Respondents
(The 1st respondent is already set
exparte before the Tribunal; hence
notice may be dispensed with in
this Appeal)

Prayer: Civil Miscellaneous Appeals filed under Section 173 of
the Motor Vehicles Act, 1988, against the Judgment and decree
passed in MCOP No.411 of 2008 dated 07.09.2010 on the file of
the MACT/Principal District Court at Villupuram.

For Appellants : Mr.Ma.P.Thangavel
For Respondent 2 : Mr.Rajadurai
for Mr.N.Vijayaraghavan
R1 - Exparte

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
07.09.2010 passed by the Motor Accident Claims Tribunal
(Principal District Court at Villupuram) in MCOP.No.411 of 2008.

2. The claimants being unsatisfied with the quantum of
compensation awarded by the Tribunal under the impugned award,
have filed this appeal. The details of the impugned award passed
by the Tribunal are as follows:

Heads	Amount (Rs.)
Pecuniary Loss of Income	1,50,000/- (3,750 - 1/3 = 2,500 x 5 x 12)
Loss of Estate	10,000/-
Funeral Expenses	5,000/-
Total	1,65,000/-

3. The finding given by the Tribunal regarding the negligence of the driver of the insured vehicle has now attained finality, since no appeal has been filed by the second respondent insurance company challenging the said finding.

4. The only question that will have to be decided by this Court is whether the compensation awarded by the Tribunal is a just compensation or not and whether the Appellant is entitled for enhancement.

5. The deceased Palanisamy was a contract labourer employed by Lucas TVS, Chennai at the time of the accident which took place on 31.05.2008. The Appellants/claimants who are the dependents of the deceased in their claim petition have pleaded that the deceased was earning a sum of Rs.7,500/- per month at the time of the accident.

6. Before the Tribunal, the Appellants/claimants filed 9 documents which were marked as ExA1 to Ex.A9 and three witnesses were examined on their side namely the mother of the deceased as PW1, an eye-witness to the accident as PW2 and the employer of the deceased as PW3. On the side of the second respondent / insurance company, neither any document was filed nor any witness examined.

7. Even though the Appellants/claimants in their claim petition had claimed that the deceased was earning a sum of Rs.7,500/- per month at the time of the accident, PW3, the employer of the deceased in his deposition has deposed that the deceased was earning Rs.150/- per day. The Tribunal neither accepted the statement of the Appellants/claimants nor accepted the deposition of PW3, but on its own has fixed the notional monthly income of the deceased at the time of the accident at Rs.3,750/-. No contra evidence was also produced by the second respondent/Insurance company before the Tribunal to disprove the contention of the Appellants/claimants. Since the year of the accident is 2008, the assessment of monthly income of the deceased by the Tribunal at Rs.3,750/- is low in the considered

view of this Court. The Tribunal ought to have accepted the statement made by the employer of the deceased (PW3) in his deposition that the deceased was earning Rs.150/- per day which works out to Rs.4,500/- per month at the time of the accident. Accordingly, this Court assesses the monthly income of the deceased at Rs.4,500/- instead of Rs.3,750/- fixed by the Tribunal.

8. Being a fatal accident, the Tribunal ought to have awarded compensation towards loss of future prospects to the Appellants/claimants for the death of Palanisamy as per the settled position of law as laid down by 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 Tribunal has failed to award compensation towards loss of future prospects and hence, the same is granted by this Court at 40%.

9. The multiplier adopted by the Tribunal under the impugned award is also erroneous, since the Tribunal has taken into consideration the age of the mother of the deceased instead of the deceased himself. The deceased was aged 22 years at the time of the accident which is also proved through Ex.P4 Postmortem certificate. Therefore, the correct multiplier to be applied is 18 multiplier instead of 5 which was erroneously adopted by the Tribunal.

10. The deceased was a Bachelor at the time of the accident. But the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased instead of 50% as per the settled position of law laid down by the judgment of the Hon'ble Supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 SC Supreme Court referred to supra. Accordingly, this Court deducts 50% towards the personal expenses of the deceased instead of 1/3rd as awarded by the Tribunal.

11. The Tribunal has also awarded a meagre compensation towards loss of estate and funeral expenses which has to be necessarily enhanced by this Court following the decision of the Hon'ble Supreme Court in Pranay Sethi's case referred to supra. Accordingly, the compensation awarded by the Tribunal under the heads loss of estate and funeral expenses are enhanced to Rs.15,000/- each.

12. The Tribunal has not awarded any compensation towards loss of love and affection which the Appellants/claimants are legally entitled to as per Pranay Sethi's Judgment referred to supra. Since the Appellants/claimants are the parents and an unmarried sister, each of them are entitled for a sum of

Rs.40,000/- as compensation towards loss of love and affection and in all amounting to a total of Rs.1,20,000/- as per Pranay Sethi's Judgment referred to supra.

13. The Tribunal has not awarded any compensation towards transportation charges. Accordingly, this Court awards a sum of Rs.5,000/- as compensation towards Transportation charges.

14. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.1,65,000/- to Rs.8,35,400/- as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss of income	1,50,000/- (3,750 - $1/3 = 2,500$ $\times 5 \times 12$)	6,80,400/- (4,500 + 40% = 6,300 - 50% = 3150 $\times 12 \times 18$)
Loss of Love and Affection	Nil	1,20,000/-
Funeral Expenses	5,000/-	15,000/-
Loss of Estate	10,000/-	15,000/-
Transportation Charges	Nil	5,000/-
Total	1,65,000/-	8,35,400/-

Conclusion:

15. In the result, this Appeal is partly allowed by enhancing the amount awarded by the Tribunal from Rs.1,65,000/- to Rs.8,35,400/-. The respondents are jointly and severally liable to pay the modified award amount after deducting the amount already deposited if any together with interest at the rate of 9% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.NO.411 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellants/claimants are permitted to withdraw their respective shares of award amount as per the apportionment made by the Tribunal along with accrued interest by filing appropriate applications. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal District Court
Motor Accident Claims Tribunal
Villupuram District

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

C.M.A.No.3122 of 2013

GP(CO)
SP(02/11/2020)



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