IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3465 of 2013

1.S.Govindammal
2.G.Selvam ... Appellants/Petitioners

..Vs..

1.S.Arulprakasam
(R1 exparte in the lower court)
2.M/s.Reliance General Insurance Co. Ltd.,
Heavitree, Unit No.I, III Floor,
No.23, Spur Tank Road, Chetpet,
Chennai - 31. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in MCOP.No.4142 of 2009 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes at Chennai dated 28th day of March 2013.

For Appellants : Mr.T.G.Balachandran

For Respondent 2 : Mr.S.Arunkumar

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 28.03.2013 passed by the Motor Accident Claims Tribunal (IVth Judge, Court of Small Causes, Chennai) in MCOP.No.4142 of 2009.

2. The Appellants/claimants being unsatisfied with the quantum of compensation awarded by the Tribunal under the

impugned award have preferred this appeal seeking for enhancement. The details of the compensation awarded by the Tribunal are as follows:

Heads	Award Amount (Rs.)
Pecuniary loss of income	6,75,000/- (7,500 - 50% = 3,750 x 12 x 15)
Loss of love and affection	20,000/-
Funeral Expenses	5,000/-
Transport charges	3,000/-
Total	7,03,000/-

3. The finding 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 aggrieved by the said finding.

4. The question that needs to be considered by this Court is whether the quantum of compensation awarded by the Tribunal under the impugned award is a just compensation or not and whether the Appellants/claimants are entitled for enhancement of compensation.

5. The Appellants/claimants are the parents of the deceased S.Mani @ Manikandan who died on 21.10.2009 as a result of an accident caused by the insured vehicle. They pleaded in their claim petition that the deceased was a salesman working at Tirumala Milk Products Private Limited, Chennai earning a monthly income of Rs.8,000/-.

6. Before the Tribunal, the Appellants/claimants have filed eight documents which were marked as Ex.P1 to Ex.P8 and three witnesses were examined namely Selvam, the father of the deceased as PW1, R.Duraisamy, an eye-witness to the accident as PW2 and S.Shankar, accounts manager of the company where the deceased was working at the time of the accident as PW3. On the side of the second respondent Insurance Company, neither any document was filed nor any witness examined.

7. PW3 in his deposition had deposed that the deceased was earning a sum of Rs.7,655/- per month at the time of the accident. The Appellants/claimants have established before the Tribunal that the deceased Mani @ Manikandan was earning

Rs.7,655/- as gross salary which is evidenced by Ex.P7 his pay slip. The gross salary includes, conveyance allowance, medical allowance, over time wages and other allowance and also the deduction towards TDS which has to be necessarily deducted for the purpose of assessment of the monthly income of the deceased. If the same is deducted, the deceased would have earned Rs.6,500/- as his net salary at the time of the accident. But erroneously the Tribunal has assessed the monthly income of the deceased at Rs.7,500/- without taking into consideration the above referred allowances. Accordingly, this Court fixes the monthly income of the deceased at the time of the accident as Rs.6,500/- instead of Rs.7,500/- fixed by the Tribunal.

8. Before the Tribunal, the Appellants/claimants have filed copies of pay slips and payment register of one Balaji, a co-worker of the deceased in the same company in the same cadre through PW3 as Ex.P8 which is also applicable for the deceased also, since both were in the same cadre. PW3 in his deposition had deposed that as on date, Balaji was getting Rs.17,459/- per month and if the deceased was alive, he would have got the same amount. However, the Tribunal has not assessed 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). In accordance with the said judgment, this Court fixes the loss of future prospects at 40%.

9. The Tribunal has rightly deducted 50% towards the personal expenses of the deceased, since the deceased was a Bachelor at the time of the accident.

10. The deceased was aged 22 years at the time of the accident and the proof for the same is supported by the postmortem certificate (Ex.P4) as well as the oral evidence adduced by PW1, PW2 & PW3. Since the deceased was aged 22 years at the time of the accident, the correct multiplier to be adopted for the purpose of calculating the loss of dependency is 18 multiplier, but the Tribunal has applied 15 multiplier by erroneously taking into consideration the age of the mother of the deceased instead of the age of the deceased himself. Accordingly, 18 multiplier is adopted for the purpose of calculating the loss of dependency by this Court.

11. The Tribunal has also awarded a meagre compensation of Rs.20,000/- towards loss of love and affection to the Appellants/claimants at Rs.10,000/- each and the same is enhanced by this Court to Rs.40,000/- in accordance with pranay sethi's judgment referred to supra.

12. The funeral expenses awarded by the Tribunal at Rs.5,000/- is also too low and not in accordance with Pranay Sethi's Judgment referred to supra. Accordingly, the same is enhanced to Rs.15,000/-.

13. The Appellants/claimants are not entitled for transportation charges, since the deceased died on the same day of the accident and further the compensation for funeral expenses of Rs.15,000/- to the Appellants/claimants covers the Transportation costs also. Hence, this Court rejects the compensation of Rs.5,000/- awarded by the Tribunal towards Transportation costs.

14. The Tribunal has also not awarded any compensation towards loss of estate to the Appellants/claimants which they are legally entitled to as per Pranay Sethi's Judgment. As per the said judgment, the compensation towards loss of estate is fixed by this Court at Rs.15,000/-.

15. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.7,03,000/- to Rs.10,52,800/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss of income	6,75,000/- (7,500 - 50% = 3,750 x 12 x 15)	9,82,800/- (6,500 + 40% = 9,100 - 50% = 4,550 x 12 x18)
Loss of love and affection	20,000/-	40,000/-
Funeral Expenses	5,000/-	15,000/-
Transportation Charges	3,000/-	Nil
Loss of Estate	Nil	15,000/-
Total	7,03,000/-	10,52,800/-

Conclusion:

16. In the result, this Appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.7,03,000/- to Rs.10,52,800/-. The second respondent Insurance Company is directed to deposit the modified award amount after deducting the amount already deposited if any together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.NO.4142 of 2009 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 lying to the credit of MCOP.No. 4142 of 2009 by filing appropriate applications. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The IV Judge,
   Motor Accident Claims Tribunal,
   Court of Small Causes,
   Chennai.

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

C.M.A.No.3465 of 2013

NMI(CO)
GMY(26/04/2021)