

DIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3658 of 2013

1. T.Gnanam @ Gnanambal
2. V.Santhi
3. K.Lalitha
4. P.Lakshmi
5. T.Sakthivel ...Appellants/Petitioners 1 to 5

vs.

- 1.Apollo Hospitals Enterprises Ltd
No.21, Greams Road, Thousand Lights,
Chennai - 6.
- 2.National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai - 6. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and decree made in MCOP.No.5108 of 2010 dated 12th day of July 2013 on the file of the Motor Accident Claims Tribunal, III Judge Small Causes Court, Chennai.

For Appellants : Ms.Vasanthamala
for M/s.UM.Ravichandran

For Respondents : R1 - No Appearance
M/s.N.B.Surekha 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 12.07.2013 passed by the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai in MCOP.No.5108 of 2010.

2.Heard Ms.Vasanthamala for M/s.UM.Ravichandran, learned counsel for the Appellants and M/s.N.B.Surekha, learned counsel for the second respondent.

3. A person by name V.Tamil Mani died on 09.09.2010, as a result of the accident caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellants are the claimants and they are the legal heirs of the deceased V.Tamil Mani. They preferred a claim before the Motor Accident Claims Tribunal in MCOP No.5108 of 2010 seeking compensation for the death of V.Tamil Mani. The Motor Accident Claims Tribunal under the impugned award directed the second respondent to pay the appellants/claimants a sum of Rs.5,84,036/- as compensation together with interest and cost as detailed hereunder:

1.Pecuniary Loss to the family 7000x2/3x12x9	-	Rs.5,04,036/-
2.Loss of Consortium to Wife	-	Rs.20,000/-
3. Loss of Love and Affection to Wife-		Rs.10,000/-
4. Funeral Expenses	-	Rs.10,000/-
5.Love and Affection to the Children-		Rs.40,000/-
Total		Rs.5,84,036/-

The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this appeal seeking for enhancement.

4. According to the Appellants, the Tribunal has assessed the monthly income of the deceased at Rs.7,000/-. According to them, the deceased was a Cane Inspector and his monthly income was Rs.15,102/- at the time of accident. The appellants/claimants have also questioned the quantum of compensation awarded by the Tribunal under various other heads which according to them is also too low.

5. Before the Tribunal, the appellants/claimants have filed several documents which were marked as Exhibits and five witnesses were examined on their side as P.W.1 to P.W.5.

6. The only question that arises for consideration in this appeal is whether the appellants/claimants were entitled for enhancement of compensation or not.

7. Before the Tribunal, the appellants/claimants have filed the pay slip of the deceased V.Tamil Mani which was marked as Ex.P6. As per Ex.P.6, the deceased V.Tamil Mani was earning Rs.15,102/- per month. However, the employer of the deceased was not examined as a witness before the Tribunal to support the contention of the appellants/claimants that the deceased was earning Rs.15,102/- per month.

8. The Tribunal has rejected the salary slip (Ex.P6) on the ground that the pay slip is not for the period when the accident had happened. The Tribunal fixed the notional monthly income of the deceased at Rs.7,000/-. The age of the deceased was 59 years at the time of the accident and the year of the accident is 2010. The age and avocation of the deceased at the time of accident has also not been disputed by the second respondent/Insurance company before the Tribunal. As seen from the evidence available on record, as a Cane Inspector in a Public Limited Company Sri Ambika Sugars Limited., he would have earned much more than what was assessed by the Tribunal under the impugned award.

9. This Court is of the considered view that when the second respondent has not disputed the avocation of the deceased, the Tribunal ought to have fixed the notional monthly income of the deceased atleast at Rs.8,000/-, since the year of the accident is 2010. Accordingly, this Court fixes the notional monthly income of the deceased V.Tamil Mani at Rs.8,000/- instead of Rs.7,000/- fixed by the Tribunal. The Tribunal has rightly deducted 2/3rd towards personal expenses of the deceased and also applied correct multiplier of 9 as the deceased was aged 59 years at the time of accident. Accordingly, the pecuniary loss for the appellants/claimants is therefore enhanced to Rs.6,33,600/- instead of Rs.5,04,036/-.

10. The Tribunal has awarded a sum of Rs.20,000/- as compensation towards loss of consortium to wife and another sum of Rs.10,000/- towards loss of love and affection to the wife in all totalling, Rs.30,000/-. As per settled practice, the loss of consortium payable to the wife is Rs.40,000/-. Accordingly, this Court enhances the compensation towards loss of consortium to the wife of the deceased to Rs.40,000/- instead of Rs.30,000/- granted by the Tribunal towards loss of consortium and loss of love to the wife of the deceased.

11. The Appellants 2 to 5 are the three married daughters and the son of the deceased V.Tamil Mani. They are also entitled for loss of love and affection and the tribunal has rightly awarded Rs.40,000/- to them, which is in accordance with settled practice. Therefore, the same is confirmed by this Court.

12. The Tribunal has also awarded a sum of Rs.10,000/- towards funeral expenses which is a reasonable sum and is hereby confirmed by this Court. However, the Tribunal failed to award any compensation towards loss of estate for the appellants/claimants which they are legally entitled to as per settled practice. This Court therefore awards a sum of Rs.10,000/- to the appellants/claimants as compensation towards loss of estate.

the Tribunal under the impugned award is enhanced from Rs.5,84,036/- to Rs.7,33,600/- by this Court in the following manner:

Pecuniary Loss to the Family	
8000+10%*2/3*12*9	- Rs.6,33,600/-
Loss of consortium	- Rs.40,000/-
Funeral Expenses	- Rs.10,000/-
Love and Affection	- Rs.40,000/-
Loss of Estate	- Rs.10,000/-

Total	Rs.7,33,600/-

14.In the result, this appeal is partly allowed. The second respondent is directed to deposit the modified award amount of Rs.7,33,600/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realisation, after deducting the amount already deposited if any, to the credit of MCOP No.5108 of 2010 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai, 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 award amount directly to the bank accounts of the appellants/claimants, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any shall be paid by the appellants before receiving the copy of this Judgment. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

dh

To

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

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

+1cc to Mr.N.B.Surekha, Advocate, S.R.No. 28259

+2cc to Mr.U.M.Ravichandran, Advocate, S.R.No. 28251

C.M.A.No.3658 of 2013

NMI (CO)

GN(18/11/2020)

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