IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.30.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.567 OF 2013

1.Pachiammal
2.Valarmathi
3.Maran
4.Rajan ... Appellants/Petitioners

..vs..

1. S.R.Madhan Kumar
(Remained exparte before the lower court.
Notice may be dispensed with. Batta not paid)

2. Branch Manager,
New India Assurance Company Ltd.,
Katpadi Road, Vellore.
...Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree passed in MCOP.No.85 of 2008 by the Motor Accident Claims Tribunal, Sub Court, Arni dated 29.06.2011.

For Appellants : M/s.P.Satheesh Kumar

For Respondents : R1 - Exparte
Mr.J.Chandran 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 29.06.2011 passed by the Motor Accident claims Tribunal (Sub Court, Arni) in MCOP.No.85 of 2008.

2. A person by name Dharman died on 11.09.2007 as a result of an accident caused by a vehicle owned by the first respondent

and insured with the second respondent. The first Appellant is his wife, the second Appellant is his daughter, and the third and fourth Appellants are his sons who are his only legal heirs. They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.85 of 2008 seeking compensation for the death of Dharman.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent insurance company to pay the Appellants/claimants a compensation of Rs.1,34,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of income	90,000/- (15000 - 1/3 = 10000 x 9)
Loss of love and affection	40,000/-
Funeral expenses	4,000/-
Total	1,34,000/-

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

5. Heard Mr.P.Satheesh Kumar, learned counsel for the Appellants and Mr.J.Chandran, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

6. Before the Tribunal, the Appellants/claimants have filed four documents which were marked as Ex.A1 to Ex.A4 and two witnesses were examined on their side namely the son of the deceased who is the third Appellant herein as PW1 and an eyewitness to the accident as PW2. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

7. In the claim petition, the Appellants/claimants have pleaded that the deceased was an ex-serviceman and earning Rs.5,000/- per month at the time of the accident. The Tribunal under the impugned award has fixed the notional annual income of the deceased at Rs.15,000/- which in the considered view of this Court is low and it has to be necessarily enhanced. Eventhough no documentary evidence was filed before the Tribunal to prove that the deceased was an exserviceman and earning Rs.5,000/- per month at the time of the accident, the Tribunal ought to have

given due consideration to the year of the accident before fixing the notional annual income of the deceased. The accident happened in the year 2007. This Court after giving due consideration to the year of the accident enhances the notional annual income of the deceased from Rs.15,000/- to Rs.36,000/-.

8. The deceased was aged 60 years at the time of the accident. The Tribunal has erroneously adopted 9 multiplier instead of 8 multiplier. As per the decision of the Hon'ble Supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 SC, for a person aged 60 years, the correct multiplier to be adopted is 8 multiplier and not 9. Accordingly, the same is modified by this Court.

9. However, the Tribunal has rightly deducted 1/3rd towards the personal expenses of the deceased, since the Appellants 2 to 4 /claimants 2 to 4 who are the children of the deceased are all married persons and cannot be treated as dependents

10. For the foregoing reasons, the compensation awarded by the Tribunal towards loss of dependency is enhanced from Rs.90,000/- to Rs.1,92,000/- (36000 x 8 - 1/3) by this Court.

11. The Tribunal has awarded a compensation towards loss of love and affection to each of the Appellants/claimants at Rs.10,000/- totaling Rs.40,000/- which they are not entitled to, as the Appellants 2 to 4 /claimants 2 to 4 are not the dependents of the deceased. Instead the Tribunal ought to have awarded compensation of Rs.40,000/- towards loss of consortium to the first Appellant/first claimant who is the wife of the deceased. Accordingly, the same is modified by this Court.

12. The Tribunal has also erroneously awarded a meagre compensation of Rs.4,000/- towards funeral expenses of the deceased which has to be necessarily enhanced in accordance with the decision of 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). Accordingly, the same is enhanced to Rs.15,000/- by this Court.

13. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,34,000/- to Rs.2,47,000/- by this Court in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified award amount (Rs.)
Loss of income	90,000/- (15000 - 1/3 x 9)	1,92,000/- (36000 - 1/3 x 8)
Loss of love and affection	40,000/-	---
Loss of consortium	---	40,000/-
Funeral expenses	4,000/-	15,000/-
Total	1,34,000/-	2,47,000/-

Conclusion:

14. 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 enhanced award amount 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.85 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 Tribunal is directed to transfer the respective shares of the award amount along with accrued interest lying to the credit of MCOP.No.85 of 2008 to the bank account of the Appellants /claimants through RTGS as per the ratio apportioned by the Tribunal within a period of two weeks thereafter. no costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
   The Motor Vehicles Accidents Claims Tribunal, Arni.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.32270

C.M.A.No.567 of 2013

SR(CO)
CS/30/04/2021