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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.721 and 722 of 2013

1. R. Mangai
2. A.Ramachandran
3.R.Lakshmi (Minor)
(Minor rep. By mother &
next Friend the 1st appellant)

...Appellants
in C.M.A.No.721 of 2013

J.Balakrishnan

...Appellant
in C.M.A.No.722 of 2013

vs.

1. G.Ramanathan
2. Reliance General Insurance Co. Ltd.,
Balmer Lawrie House,
No.628, Anna Salai,
Teynampet,
Chennai - 600 018

...Respondents
in both C.M.A.s

Prayer in C.M.A.No.721 of 2013:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.07.2012 MACTOP No.3056 of 2008 on the file of the Additional District Cum Sessions Court, Additional Judge, XV (Motor Accidents Claims Tribunal), Chennai.

Prayer in C.M.A.No.722 of 2013:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.07.2012 MACTOP No.3057 of 2008 on the file of the Additional District Cum Sessions Court, Additional Judge, XV (Motor Accidents Claims Tribunal), Chennai.



For Appellant(s) in both C.M.A.s: Mr.R.Kalaiarasan

For Respondents in both C.M.As : R1 - Exparte in Tribunal
Mr.S.Arun Kumar for R2

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COMMON JUDGMENT

(These appeals were taken up for hearing through Video conferencing)

These appeals have been filed seeking for enhancement of compensation under the impugned award dated 25.07.2012 passed by the Motor Accident Claims Tribunal, XV Additional Judge, Chennai.

2. CMA No.721 of 2013 has been filed by the Legal Representatives of the deceased R.Sathiyaraj and CMA No.722 of 2013 has been filed by the injured claimant J.Balakrishnan. The deceased R.Sathiyaraj was the rider and J.Balakrishnan was the pillion rider in the Motorcycle bearing Registration No.TN-59 S 1360 when the accident was caused by a Car insured with the second respondent bearing Registration No.TN-07-S- 3764.

3. The Legal Representatives of the deceased R.Sathiyaraj as well as the injured J.Balakrishnan preferred separate claims in MCOP No.3056 of 2008 and 3057 of 2008 before the Motor Accidents Claims Tribunal seeking compensation for Rs.8,00,000/- and Rs.3,00,000/- respectively.

4. The Motor Accident Claims Tribunal, XV Additional Judge, Chennai, by its common award dated 25.07.2012 passed in MCOP Nos.3056 and 3057 of 2008, directed the second respondent / Insurance company to pay the injured claimant J.Balakrishnan a sum of Rs.64,350/- together with interests and costs and further directed the second respondent to pay the sum of Rs.4,60,000/- together with interests and costs to the Legal Representatives of the deceased R.Sathiyaraj.

5. Aggrieved by the common award dated 25.07.2012, these appeals have been filed by the respective claimants seeking enhancement of compensation.

6. Heard Mr.R.Kalaiarasan, learned counsel for the appellant and Mr.S.Arunkumar, learned counsel for the second respondent.

7. It is the contention of the respective appellants in both these appeals that the compensation awarded by the Tribunal is inadequate and it has to be enhanced.



8. CMA No.721 of 2013: According to the appellants, it is their contention that the notional income of the deceased fixed by the Tribunal at Rs.4,500/- p.m. is meagre. According to them, despite letting in oral evidence through a co-worker of the deceased who has deposed that the deceased was earning Rs.600/- per day, the Tribunal has erroneously fixed the notional income of the deceased at Rs.4,500/- p.m. It is also the contention of the appellants that the Tribunal ought to have applied the multiplier method based on the age of the deceased who was 20 years at the time of the accident. According to them, the Tribunal has erroneously fixed the multiplier based on the age of the mother of the deceased, which is not legally correct. However, it is the contention of the second respondent / Insurance Company that the compensation awarded by the Tribunal is a just compensation. According to them, no documentary evidence has been produced by the appellants before the Tribunal that the deceased was working as a Mason and earning Rs.600/- per day.

9. CMA No.722 of 2013 : The only contention of the appellant in this appeal, who was injured in the said accident is that the Tribunal has mechanically fixed the disability compensation at Rs.30,000/- based on 30% partial and permanent disability suffered by him. According to him, the assessment is on the basis that the appellant is entitled for Rs.1,000/- per percentage of disability by the Tribunal which is not as per the settled practice for the year 2008, i.e., the year of the accident. According to him, higher compensation ought to have been awarded to the appellant towards his disability, considering the nature of the injuries sustained by him as a result of the accident. However, it is the contention of the second respondent / Insurance Company that the Tribunal has awarded a just compensation to the appellant.

10. The cause of the death of the deceased person as stated in MCOP No.3056 of 2008 as well as the injuries sustained by the appellant in CMA No.722 of 2013 has not been disputed by the second respondent / Insurance company before the Tribunal. The avocation of the deceased in CMA No.721 of 2013 as well as the appellant in CMA No.722 of 2013 has also not been disputed. The contention of the learned counsel for the appellant in CMA No.721 of 2008 is that the deceased was earning Rs.600/- per day as a Mason. However, the Tribunal has assessed his monthly income only at Rs.4,500/-p.m. Before the Tribunal, a Co-worker of the deceased was examined as PW4 and he deposed that the deceased was earning Rs.600/- per day, which supports the case of the claimants. Even though the second respondent / Insurance Company disputes the said contention, no contra evidence has been produced by them before the Tribunal in support of their

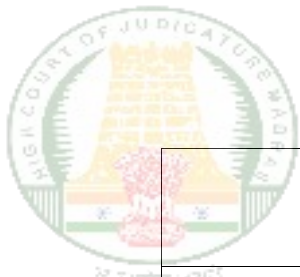


evidence.

11. The year of the accident is 2008. Considering the year of the accident and considering the fact that the contention of the claimants in CMA No.721 of 2013 has been supported through the evidence of a co-worker viz., PW4, this Court is of the considered view that the assessment of the monthly income of the deceased at the time of the accident at Rs.4,500/- p.m. is low. In the considered view of this Court, a sum of Rs.6,500/- p.m. has to be assessed as the monthly income of the deceased at the time of the accident after giving consideration to the deposition of the claimants that the deceased was earning Rs.600/- per day, which is also supported by the oral evidence of a Co-worker of the deceased (PW4). Though PW4 has supported the contention of the claimants that the deceased was earning Rs.600/- per day, the said deposition is not supported by any documentary evidence and hence, it cannot be accepted in toto. However, considering an overall evidence available on record and after considering the year of the accident as indicated earlier, the monthly income of the deceased at the time of the accident has necessarily to be enhanced but it cannot be enhanced to the extent as claimed in the appeal, but it has to be fixed at Rs.6,500/- p.m., which in the view of this Court is a reasonable assessment. The Tribunal under the impugned award has also erroneously applied the wrong multiplier for the purpose of calculating the loss of dependency. The Tribunal has calculated the multiplier based on the age of the mother of the deceased, which is not legally correct. As per the Judgment of the Hon'ble Supreme Court in the case of Sarala Verma & Ors vs Delhi Transport Corporation & Another reported in 2009 6 SCC 121, the multiplier will have to be calculated based on the age of the deceased. Admittedly, the age of the deceased at the time of the accident was 20 years and as per the aforesaid decision, the correct multiplier be applied is 18.

12. The amount awarded by the Tribunal under various other heads viz., Rs.50,000/- towards loss of love and affection; Rs.5,000/- towards funeral expenses which in the considered view of this Court are reasonable and is a just compensation which does not call for any interference. However, the Tribunal under the impugned award has not awarded any compensation to the claimants towards Loss of Estate, which they are entitled as per settled law. Accordingly, this Court awards a sum of Rs.15,000/- towards Loss of Estate to the claimant.

13. In the result, the compensation awarded by the Tribunal under the impugned award to the claimants in CMA No.721 of 2013 is enhanced and modified in the following manner :



Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency * [Rs.4,500/- Less 50% = Rs.2,250/- x 12 x 15 =Rs.405000/- # [Rs.6,500/- Less 50% = Rs.3250/- x 12 x 18	4,05,000/- *	7,02,000/- #
Loss of Estate	-	15,000/-
Funeral expenses	5,000/-	5,000/-
Loss of love and affection	50,000/-	50,000/-
Total	4,60,000/-	Rs.7,72,000/-

14. Insofar as the appellant in CMA No.722 of 2013 is concerned, who is an injured victim and the claimant in MCOP 3057 of 2008, he is also entitled for enhancement. The said appellant has sustained 30% disability and the Tribunal has fixed the disability compensation at Rs.30,000/- calculated on the basis that he is entitled for disability compensation at Rs.1,000/- per percentage of the disability. The year of the accident is 2008. Considering the year of the accident, this Court is of the considered view that the disability compensation of Rs.30,000/- fixed by the Tribunal is low and it has to be necessarily enhanced. Accordingly, this Court increases the same to Rs.2,000/- per percentage of disability instead of Rs.1,000/- per percentage of disability fixed by the Tribunal. Accordingly, for the 30% disability sustained by the appellant, he is entitled to a disability compensation of Rs.60,000/-.

15. The appellant in CMA No.722 of 2013 in his claim petition has claimed that he was a Painter earning Rs.250/- per day, which works out approximately to Rs.7,500/-p.m. However, the Tribunal has fixed his monthly income at Rs.4,500/-. Considering the year of the accident and considering the fact that no contra evidence has been produced by the second respondent insurance company before the Tribunal to disprove the contention of the appellant, the fixation of the notional monthly income at Rs.4500/- for the appellant is low this Court is of the considered view that the accident having happened in the year 2008, the monthly income of Rs.6500/- for



the appellant will be a reasonable assessment. Further as a Painter, the appellant would have suffered loss of income due to the injuries sustained by him as a result of the accident. Under the impugned award, the Tribunal has not awarded sufficient compensation towards loss of income to the appellant based on the monthly income, he would have earned as a Painter. Since, this Court has enhanced the assessment of the monthly income of the appellant to Rs.6,500/-, the loss of income sustained by the appellant after the accident is also proportionately enhanced. Accordingly, the loss of income is enhanced to Rs.19,500/- on the basis that the appellant would have been unable to work for three months after the accident calculated at Rs.6,500/- p.m. for three months. Excepting for enhancing the disability compensation from Rs.30,000/- to Rs.60,000/- and enhancing the compensation towards Loss of income from Rs.9,000/- to Rs.19,500/- the compensation awarded by the Tribunal under various other heads are not interfered with by this Court as they are reasonable and just.

16. In the result, the compensation awarded by the Tribunal under the impugned award to the appellant / claimant in CMA No.722 of 2013 is enhanced and modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
For 30% disablement * at Rs.1,000/- per percentage # at Rs.2,000/- per percentage	30,000/- *	60,000/- #
For medical expenses	350/-	350/-
For pain and sufferings, Nutritious Food and transportation	25,000/-	25,000/-
For Loss of income ## Rs.6500/- x 3	9,000/-	19,500/- ##
Total	64,350/-	Rs.1,04,850/-

17. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced in CMA No.721 of 2013 from Rs.4,60,000/- to Rs.7,72,000/- and in CMA No.722 of 2013 from Rs.64,350/- to Rs.1,04,850/-. Accordingly, both these appeals are partly allowed to the extent indicated above.



18. The second respondent / Insurance Company is directed to deposit the entire award amount awarded by this Court in both these appeals together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.3056 of 2008 and 3057 of 2008 respectively, on the file of the XV Additional Court, Motor Accidents Claims Tribunal, 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 award amount directly to the bank account of the major claimants in CMA No.721 of 2013, as per the same ratio of apportionment made by the Tribunal and the appellant in CMA No.722 of 2013, through RTGS, within a period of two weeks thereafter.

19. It is represented by the learned counsel for the appellant in CMA No.721 of 2013 that the third appellant has attained the age of majority. It is open to her to file formal petition before the Tribunal to get her share of apportionment. Necessary Court fee, if any to be paid by the respective appellants in both these appeals before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Motor Accidents Claims Tribunal,
Additional District Cum Sessions Court,
XV Additional Judge,
Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

C.M.A.Nos.721 and 722 of 2013

GP(CO)
CB(25/08/2021)