

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2020

Pronounced on : 17.08.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.692 of 2016

1.Sundaram

2.S.Sathyamoorthy

3.Seethalakshmi

4.S.Svaraman

..Appellants/Petitioners

/versus/

The Managing Director,

M.T.C.Ltd.,

Pallavan House,

Anna Salai,

Chennai-2.

..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of M.V.Act, 1988, against the judgment and decree dated 17.04.2013 and made in M.C.O.P.No.803 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge-III, Poonamallee.

For Appellants : Mrs.Maithri Mahalingam

For Respondent : Dr.S.S.Swaminathan

J U D G M E N T

(The case has been heard through video conference)

This appeal filed by the claimant for enhancement of compensation.

2. On 27th December 2010 while the deceased Shanthi travelling on the pillion of the motorcycle driven by her husband was hit by MTC bus driven rashly and negligently by its driver. Shanthi died 3 days after the accident . At the time of her death, she was 49 years old working as sithaal (woman help in construction) earning Rs. 250/- per day. Hence, claim petition laid by her husband, two sons and daughter seeking Rs.10,00,000/- compensation.

3. The Tribunal on considering the evidence placed by the claimant and the oral evidence of RW1 the official of the respondent Transport Corporation, awarded Rs.4,41,000 as composition to the claimant's with interest at the rate of 7.5% per annum from 08/04/2011 till the date of deposit with costs. The award amount was apportioned among the claimant's as below:

First claimant	Rs.1,41,000/-
Second claimant	Rs.1,00,000/-
Third claimant	Rs.1,00,000/-
Fourth claimant	Rs.1,00,000/-

4. Not satisfied with the quantum of compensation, the present appeal is filed on the ground that the Tribunal has failed to properly assess the evidence of PW-1 regarding the earning capacity of the deceased. Tribunal failed to consider the future prospect of the deceased while assessing the compensation the multiplier adopted by the Tribunal is wrong it should have applied multiplier '13' since the age of the deceased was only 49 years. For loss of consortium and the loss of happiness, love and affection the Tribunal ought to have ordered compensation is claimed.

5. The learned counsel appearing for the Transport Corporation would submit that the claimants had not proved the avocation of the deceased despite that the Tribunal as fixed generously the income of the deceased as Rs.4000/- notionally. While the Tribunal had taken into consideration of this present status of the claimant's and the likelihood of the pendency as arrived the loss of the pendency as per the prevailing standard and is awarded Rs.4,41,000. Since the subsequent judgement of the Honourable Supreme Court (Pranay Sethi case) has considered granting future prospect for fixed income victims based on their age, the claimants are at the most entitled for an additional 25% to the notional income under the head 'future prospects'.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the Respondent/Insurance Company. Records perused.

7. The Tribunal, in the absence of birth certificate has fixed the age of the victim as 50 years and applied the multiplier '13' as per the second schedule of the Act. In the absence of income proof, her monthly income has been notionally fixed as Rs.4000/- pm. Out of which for her personal expenditure $\frac{1}{3}$ rd has been deducted. The balance $\frac{2}{3}$ rd is taken up for fixing the loss of dependency. Rs.4,16,000/- is awarded under this head. In addition, Rs.15,000/- towards love and affection and

Rs.10,000/- towards funeral expenses awarded by the Tribunal.

8. In the First Information Report (Ex P-1) given by the first claimant the age of the victim is mentioned as about 50 years. In the death certificate Ex.P-2, the occupation of the deceased is mentioned as 'housewife'. She was admitted in the Malar hospital on 27/12/2010. She succumbed to the injuries on 29/12/2010. In the cross examination of PW-1, it is elucidated that the 2nd and 3rd claimants are married and living with their family. The documents Ex.P-1 to Ex P-4 (FIR, Death certificate, legal heir certificate and post-mortem certificate) only prove the death of Shanthi in the motor accident and her legal heirs. There is no proof for her income or earning capacity. Therefore, as submitted by the learned counsel for the respondent, the notional income of Rs.4000/- p.m during the year 2010 is just and fair. The age of the victim has been fixed by the Tribunal as not exceeding 50 years. By fixing so, the claimants get the advantage of fixing the multiplier '13' instead of '11' which is applicable to victims between 50 to 55 years and addition 25% instead of 10% towards future prospect. The Tribunal has fixed the age advantage to the claimant. Therefore the claimants can have no grievance over it.

9. As stated by the learned counsel for the respondent applying the dictum of Pranay Sethi case the claimants will be entitled for addition 25% under the head future prospect. Regarding the loss of consortium for the first claimant and love and affection for the other claimants, the award has to be enhanced as per Pranay Sethi's case and accordingly, fixed as Rs.40,000/- to the first claimant and Rs.15,000/- each to claimants 2 to 4. Further, though no medical bills are produced, for the two days treatment at the hospital, a sum of Rs.10,000/- is awarded for medical expenses.

10. As a result, the award of the Tribunal is modified and enhanced as below:-

Loss of dependency: (4000+1000) x 12 x 13 x 2/3	Rs 5,20,000
Loss of consortium (For 1 st appellant):	Rs. 40,000
Loss of love and affection (For appellants 2 to4): Rs 15,000 x 3	Rs. 45,000
Medical expenses	Rs. 10,000
Funeral expenses.	Rs. 15,000
TOTAL	Rs.6,30,000/-

11. The above award has to be apportioned by the claimants as per the following proportion along with

proportionate interest at the rate of 7.5% per annum from 08/04/2011 till the date of deposit.

First claimant	Rs.2,40,000/-
Second claimant	Rs.1,30,000/-
Third claimant	Rs.1,30,000/-
Fourth claimant	Rs.1,30,000/-

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed as above with costs. The respondent-Corporation is directed to deposit the award amount to the credit of M.C.O.P.No.803 of 2011 on the file of the III Additional District and Sessions Judge(Motor Accident Claims Tribunal), Poonamallee, within 8 weeks from today. On such deposit, the claimants are permitted to withdraw the same on appropriate petition.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:
The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge-III,
Poonamallee.

Copy To:
The Section Officer,
V.R.Section, High Court,
Madras.

C.M.A.No.692 of 2016

BS (CO)
RMP (29/03/2021)