

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1316 of 2020

1.S.Renuka

2.A.Radhakrishna

3.A.Saivarsaa

[Appellants 2 & 3 are declared as major and their mother and next friend S.Renuka is discharged from the guardianship vide order of Court dated 26.08.2020 and cause title accepted vide order of court dated 26.08.2020 made in C.M.P.No.8869 of 2020 in C.M.A. Sr.No.51440 of 2020]

... Appellants

Vs.

1.M/s.Maruthi Circuits Pvt. Ltd.,
No.16/19, Subramaniam Nagar,
Rengarajapuram, 2nd Street,
Kodambakkam, Chennai - 600024.

2.Bajaj Allianz General Insurance
Co. Ltd.,
"Isana Kattima Buldings",
5th Floor, No.497 & 498,
Poonamallee High Road,
Arumbakkam, Chennai - 600106.

... Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.08.2019 passed in M.C.O.P.No.3729 of 2011 on the file of V Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellants : Mr.Suryanarayanan
for Mr.M.Swamikkannu

For Respondents : Mr.S.Arunkumar [R2]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conference.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its judgment dated 08.08.2019 passed in M.C.O.P.No.3729 of 2011 on the file of V Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai, appellants/claimants have filed the present appeal. The said claim petition was disposed of along with four other claim petitions by a common judgment.

3. The brief facts of the case is as follows:

- (i) Appellants/claimants are wife, son and daughter of the deceased Pichappa. Initially, the claim petition was filed by wife, minor children and father of the deceased Pichappa. Pending claim petition, father of the deceased died and hence, his name was deleted. The other legal heirs of deceased Pichappa have filed the present appeal seeking enhancement of compensation.
- (ii) On 23.04.2011, the deceased had travelled in a Car bearing Registraion No.TN-09-BH-0397, as one of the occupants, from Bangalore to Mangalore. At about 15.15 hours, while the said Car was proceeding on the NH48 National Highways near Soorapan Halli Gate, Tippa Chandra, Magadi Taluk, Ramanagara District, Karnataka, due to the rash and negligent driving of hte Car, it hit on the center median, as a result of which three of the occupants died and the deceased Pichappa was one among them. All others sustained grievous injuries. Appellants/claimants filed a claim petition seeking compensation in a sum of Rs.2,00,00,000/-. The second respondent insurance company has filed a detailed counter resisting the claim made by appellants/claimants.

4. To prove the claim, on the side of claimants (in all claim petitions), totally 6 witnesses were examined and 37 exhibits were marked. On the side of second respondent insurance company, 1 witness was examined and 3 exhibits were marked. 4 Court witnesses were examined and 14 Court exhibits were marked.

5. On appreciation of materials, the Tribunal found that the accident had occurred due to the rash and negligent driving of the Car and held that the second respondent is liable to pay compensation indemnifying the first respondent/owner of the Car. The tribunal awarded compensation in a sum of Rs.40,91,200/-. The break-up is as follows:

Sl.No .	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(29077 + 30% - 1/3)*12*13]	39,31,210.9 2
2.	Loss of love and affection	80,000.00
3.	Loss of consortium	40,000.00
4.	Loss of estate	15,000.00
5.	Funeral expenses	15,000.00
5.	Transport expenses	10,000.00
	Total	40,91,210.0 2
	Rounded off to	40,91,200.0 0

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of deposit. Since the father of the deceased died pending the claim petition, the petition in respect of the father of the deceased was dismissed as abated. The other legal heirs of the deceased have filed the present appeal seeking enhancement of compensation.

6. Learned counsel for appellants/claimants submits that it was the case of appellants/claimants before the tribunal that the age of the deceased was 47 at the time of accident and he was working as Inspector of Customs, Office of the Commissioner of Customs, Chennai and was earning monthly income of Rs.39,245/-. After deducting the conveyance allowance, the gross salary comes to Rs.36,925/-. In support of their claim, appellants/claimants have filed Ex.P5 - salary slip of the deceased for the month of March 2011. However, the tribunal, instead of fixing the gross salary of Rs.36,925/- as the monthly income of the deceased, has fixed only the net income of Rs.29,077/- as the monthly income, which had resulted in awarding an inadequate compensation of Rs.39,31,210.92/-under the head 'loss of dependency'. Submitting as above, learned counsel prays this Court to fix the gross income of Rs.36,925/- as the monthly income of the deceased and accordingly, enhance

the compensation.

7. Per contra, learned counsel appearing for second respondent insurance company submits that on appreciation of materials, the tribunal has passed a well-reasoned award, which does not require any interference. Submitting as above, learned counsel prays for dismissal of the appeal.

8. This Court has considered the rival submissions. Since only the quantum of compensation is challenged, this Court is not dealing with the other aspects of the award.

9. As rightly submitted by learned counsel for appellants/claimants, the tribunal ought to have taken the gross salary as the monthly income of the deceased. Hence, this Court considers that it would be appropriate to fix the monthly income of the deceased at Rs.36,925/- to arrive at a just and proper compensation under the head loss of dependency. Accordingly, the monthly income of the deceased is fixed at Rs.36,925/-. As the deceased was aged 47 at the time of accident, 30% has to be added towards future prospects and if it is so added, the monthly income works out to Rs.48,002/- (39,245+11,077). The annual income would be Rs.5,76,024/- (48,002*12). Further, necessary deductions has to be made towards income-tax from annual income, which the tribunal has failed to do. The calculation, after deduction of income-tax from annual income, is as follows:

Annual Income : Rs.5,76,024/-

Income Tax: (for the AY 2012 - 13)

Income upto Rs.1,80,000/-		Nil
Rs.1,80,001	- 10%	Rs.32,000/-
Rs.5,00,000/-		
Rs.5,00,001	- 20%	Rs.15,205/-
Rs.8,00,000/-		
Total tax to be deducted		Rs.47,205/-

Annual income after deduction

of income tax (5,76,024 - 47,205) = Rs.5,28,819/-

At the time of filing the claim petition, the father of the deceased was alive and he was also one of the claimants. Therefore, at the time of filing of the claim petition, the number of dependents were 4. As the number of dependents were 4, 1/4 is deducted towards the personal expenses of the deceased and if it is so done, the annual income would be Rs.3,96,614/- (5,28,819 - 1,32,205) and taking into consideration the age of deceased i.e. 47 at the time of accident, multiplier '13' is adopted towards arriving at compensation under the head loss of dependency and if it is so applied, the compensation payable

under the head loss of dependency would be Rs.51,55,982/-. In all other aspects, the award of the tribunal is hereby confirmed.

10. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount awarded by the Tribunal	Amount awarded by this Court
		(in Rs.)	
1.	Loss of dependency	39,31,210.92 [(29077 + 30% - 1/3) *12*13]	51,55,982/- [((36925 + 30%) 12 - 47205)) - 1/4 *13]
2.	Loss of love and affection	80,000.00	80,000.00
3.	Loss of consortium	40,000.00	40,000.00
4.	Loss of estate	15,000.00	15,000.00
5.	Funeral expenses	15,000.00	15,000.00
6.	Transport expenses	10,000.00	10,000.00
	Total	40,91,210.02	53,15,982/-
	Rounded off to	40,91,200.00	-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.40,91,200/- awarded by the Tribunal is hereby enhanced to Rs.53,15,982/- [Rupees Fifty Three Lakhs Fifteen Thousand Nine Hundred and Eighty Two only]. Out of the award amount, first appellant/wife of deceased is entitled to a sum of Rs.23,15,982/- and appellants 2 and 3/children of deceased are entitled to sum of Rs.15,00,000/- each. Second respondent insurance company is directed to deposit the enhanced compensation of Rs.53,15,982/- together with interest at 7.5% p.a. from the date of numbering the claim petition till the date of deposit, within a period of six weeks from the date of receipt of this judgment. On such deposit, appellants are entitled to withdraw their respective share on due application. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

gm

To

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

+1cc to Mr.M.Swamikkannu, Advocate SR.No.31315

+1cc to Mr.S.Arun Kumar, Advocate SR.No.31464

C.M.A.No.1316 of 2020

SPD (CO)
GMY (27/04/2021)