

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED.15.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.1896 of 2014

1.Rajammal
2.Shanmugam

... Appellants/Petitioners

vs.

1.G.Raja
2.National Insurance Company Limited,
Divisional Office II,
Ramakrishna Road,
Salem - 7

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in MCOP.No.848 of 2003 dated 14.10.2005 on the file of the Motor Accident Claims Tribunal, Principal District Judge of Salem.

For Appellants : Mr.K.Kuppusamy
For Respondents : Tapal Returned for R1
Mrs.N.B.Surekha 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 14.10.2005 passed by the Motor Accident Claims Tribunal (Principal District Judge, Salem) in MCOP.No.848 of 2003.

2. A person by name Rajasekaran died on 24.05.2003 as a result of an accident caused by a vehicle (Tractor) owned by the first respondent and insured with the second respondent. The claimants who are the parents and sister of the deceased Rajasekaran, preferred a claim before the Motor Accident claim. During the pendency of the claim, the sister of the deceased also died.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent/Insurance Company to pay the Appellants a compensation of Rs.1,56,000/- together with interest at the rate of 7.5% per annum from the date of claim

till the date of deposit and costs and also granted pay and recovery rights to the second respondent/Insurance Company.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Loss of dependency	1,44,000/- (2000 X 12 X 6)
Loss of love and affection	10,000/-
Funeral Expenses	2,000/-
Total	1,56,000/-

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

6. Heard Mr.K.Kuppusamy, learned counsel for the Appellants and Mrs.N.B.Surekha, learned counsel for the second respondent. Notice sent to the first respondent was returned without any endorsement. Since the first respondent has remained exparte before the Tribunal, notice to the first respondent is dispensed with.

7. The deceased Rajasekaran was a minor aged 10 years and was a student at the time of the accident. Before the Tribunal, the Appellants have made a claim of Rs.10,00,000/- for the death of Rajasekaran.

8. Before the Tribunal, the Appellants/claimants have filed nine documents which were marked as Ex.P1 to Ex.P9 and one witness was examined on their side namely Mrs.Rajammal, the mother of the deceased. On the side of the respondents, two documents were filed which were marked as Ex.R1 & Ex.R2 and two witnesses were examined namely RW1 & RW2.

9. The Tribunal has assessed the notional monthly income of the deceased who was a minor aged 10 years at Rs.2,000/-. The accident happened in the year 2003. The Tribunal ought to have considered the fact that the deceased was the only son of Rajammal and Shanmugam, the Appellants herein and should have taken note of the fact that their only daughter also died, during the pendency of the claim before the Tribunal. If those factors were taken into consideration, the assessment of notional monthly income of the deceased by the Tribunal at Rs.2,000/- is low. Therefore, this Court is constrained to

enhance the notional monthly income of the deceased to Rs.3,000/- instead of Rs.2,000/- fixed by the Tribunal. The Tribunal has erroneously not deducted any amount towards personal expenses of the deceased which ought to have been done as per the settled practice. The deceased being a minor and a bachelor, the Tribunal ought to have deducted 50% towards his personal expenses. The Tribunal has also erroneously adopted six multiplier which is not the correct multiplier to be adopted for a person aged 10 years 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 . The correct multiplier to be adopted is 15. After adopting the correct multiplier of 15 and after deducting 50% towards personal expenses of the deceased, the pecuniary loss suffered by the Appellants/claimants is enhanced from Rs.1,56,000/- to Rs.2,70,000/- by this Court detailed as follows: $3000 \times 50\% = 1500 \times 12 \times 15 = 2,70,000/-$.

10. The Tribunal has erroneously awarded meagre compensation towards loss of love and affection and funeral expenses to the Appellants/claimants. This Court therefore, enhances the compensation towards loss of love and affection from Rs.10,000/- to Rs.40,000/-, out of which, each of the Appellants/claimants are entitled to Rs.20,000/- and this Court also enhances the compensation towards funeral expenses from Rs.2,000/- to Rs.10,000/-.

11. The Tribunal has also erroneously not awarded any compensation towards loss of estate. In view of the settled practice, this Court awards a sum of Rs.10,000/- as compensation to the Appellants/claimants towards loss of estate.

12. The Tribunal has rightly granted pay and recovery rights to the second respondent/Insurance Company, since the driver of the tractor (insured vehicle) did not possess valid driving license at the time of the accident and the trailer attached with the tractor did not have the insurance coverage.

13. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,56,000/- to Rs.3,30,000/- in the following manner:

Heads	Award Amount (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	1,44,000/- (2000 X 12 X 6)	2,70,000/- (3000 - 50 % = 1500 X 12 X 15)

Heads	Award Amount (Rs.)	Modified Award Amount (Rs.)
Loss of love and affection	10,000/-	40,000/-
Funeral Expenses	2,000/-	10,000/-
Loss of estate	---	10,000/-
Total	1,56,000/-	3,30,000/-

Conclusion:

14. In the result, this appeal is partly allowed by enhancing the compensation from Rs.1,56,000/- to Rs.3,30,000/-. However, the finding of the Tribunal granting pay and recovery rights to the second respondent/ insurance company and the rate of interest fixed by the Tribunal at the rate of 7.5% per annum is confirmed. The second respondent/ Insurance Company is directed to deposit the modified award amount together 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.848 of 2003 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 permit the second respondent/insurance company to recover the amount deposited by them from the owner of the vehicle who is the first respondent herein by filing an execution petition before the Tribunal and also directed to transfer the respective shares of the award amount along with accrued interest lying to the credit of MCOP.No.848 of 2003 to the bank accounts of the respective Appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy// सतरादेव जजाने Sub Assistant Registrar

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To
The Motor Accident Claims Tribunal,
Principal District Judge of Salem.
Copy to
The Section Officer,
VR Section, High Court, Chennai.

+1cc to Mr.N.B.Surekha, Advocate SR.No. 30319

C.M.A.No.1896 of 2014

A.SK(20.04.2021)