

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2139 of 2014

1. S.Alamelu
2. S. Keerthishini (Minor)
3. S.Karthick (Minor)
2nd and 3rd petitioners are minors,
Rep. By their mother and next friend
S.Alamelu
4. Ranjitham Appellants/Petitioners

versus

1. R.Sukumar
2. ICICI Lombard General Insurance,
Company Limited, No.140, Nungambakkam
High Road, Chennai-34. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 08.03.2011 made in MCOP. No.2690 of 2007 (in so far as it relates to disallowed portion of the claim) on the file of the Motor Accident Claims Tribunal (Chief Court of Small Causes), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mrs.R.Sree Vidhya - R2
R1 - Exparte

JUDGMENT

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the claimants seeking enhancement of the compensation awarded under the impugned award dated 08.03.2011 in MCOP. No.2690 of 2007 passed by the Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.
Brief facts leading to the filing of this Appeal:

2. On 30.05.2007, at about 10.30 hours, the deceased was travelling in Tata Sumo car bearing Registration No.TN 07 AK 6933 belonging to the first respondent, from Chennai to Cheyyur and while the vehicle was proceeding near Nallur Koot Road, the driver of the car, hit against the palm tree, due to which, Sundar (deceased) sustained grievous injuries and died. According to the appellants, the accident had happened only due to the rash and negligent driving by the driver of the car bearing Registration No.TN 07 AK 6933, which is owned by the first respondent and insured with the second respondent/Insurance Company.

3. The appellants/Claimants have preferred a claim petition before the Motor Accidents Claims Tribunal, Court of Small Causes, Chennai in MCOP No.2690 of 2007, seeking compensation for the death of Sundar (deceased), as a result of the said accident.

4. By an award dated 08.03.2011 in M.C.O.P. No.2690 of 2007, the Motor Accidents Claims Tribunal, Court of Small Causes, Chennai directed the second respondent/Insurance Company to pay the appellants / claimants, a compensation of Rs.7,18,000/- together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and also awarded costs.

5. The break-up details of the compensation awarded by the Claims Tribunal in favour of the appellants are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	6,88,500/-
Love and Affection	10,000/-
Loss of consortium	10,000/-
Funeral expenses	9,500/-
Total	7,18,000/-

6. Unsatisfied with the quantum of compensation awarded by the Tribunal dated 08.03.2011, in M.C.O.P. No.2690 of 2011, this appeal has been filed by the Appellants / Claimants.

7. Heard Mr.K.Varadha Kamaraj, learned counsel for the Appellant / claimant and Mrs.R.Sree Vidhya, learned counsel for the second respondent/Insurance Company.

8. Before the Tribunal, on the side of the appellants, seven documents were marked as Ex.P1 to Ex.P7 and three witnesses were examined viz., P.W.1 - Mrs.Alamelu, the first appellant/wife of the deceased, P.W.2 - an eyewitness and P.W.3 - the Doctor, who examined the deceased. On the side of the respondents, there was no evidence adduced and there was no witness examined.

9. The main contention of the learned counsel for the appellants is that the monthly income fixed by the Tribunal is low. It is further contended that the Tribunal erred in not awarding any compensation towards loss of future prospects. Further, it is their case that the compensation awarded by the Tribunal under various other heads is too low.

10. The Second respondent/Insurance company has not filed any appeal against the findings given by the Tribunal under the impugned award. Therefore, it is conclusively established that the insured vehicle alone was responsible for the cause of the accident, which resulted in the death of the deceased. Admittedly, the deceased was a mechanic, at the time of the accident. Even though the appellants had claimed in their claim petition that the deceased was earning a sum of Rs.10,000/- per month, at the time of the accident, the Tribunal has assessed the monthly income of the deceased only at Rs.4,500/-, since no documentary evidence was produced. Therefore, the Tribunal has rightly assessed the monthly income of the deceased at Rs.4,500/-, considering the year of the accident being 2007. However, the Tribunal erred in not awarding any compensation towards loss of future prospects which the appellants are legally entitled to, as per settled law as laid down by the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680. As per the said decision, the appellants are also entitled to get 40% future prospects in addition to the income. Accordingly, this Court awards 40% future prospects to the appellants and the loss of dependency assessed by the Tribunal is revised from Rs.6,88,500/- to Rs.9,63,900/- by this Court. The Tribunal has also failed to award adequate compensation to the appellants under the heads (i) loss of love and affection, (ii) loss of consortium and (iii) funeral expenses.

11. The tribunal has awarded only a sum of Rs.10,000/- towards loss of love and affection and another sum of Rs.10,000/- towards loss of consortium and Rs.9,500/- towards funeral expenses and the same is enhanced to Rs.1,00,000/- towards loss of love and affection, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses, respectively. The enhancement is made by this Court in accordance with the constitution Bench Judgment of the Hon'ble Supreme Court referred to supra. The Tribunal has also failed to

award any compensation to the appellants towards loss of estate which they are entitled to, as per the decision of the Hon'ble Supreme Court. Accordingly, a sum of Rs.15,000/- is awarded to the appellants towards loss of estate by this Court.

Conclusion:

12. For the foregoing reasons, the Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal under the impugned award has enhanced in the following manner:-

Heads	Amount awarded by this Court (Rs.)
Loss of dependency	9,63,000/-
Loss of love and affection	1,00,000/-
Loss of consortium	40,000/-
Loss of estate	15,000/-
Funeral expenses	15,000/-
Total	11,33,000/-

13. Admittedly, there was a delay of 735 days in preferring the appeal by the appellants before this Court. For the said delay, the second respondent shall not be held liable to pay future interest to the appellants. Excluding the said period of 735 of days, for the remaining period, the second respondent shall pay interest as per the impugned award.

14. The second respondent/Insurance Company is directed to deposit the modified award amount with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.2139 of 2014, on the file of the Motor Accidents Claims Tribunal (Chief Court of Small Causes), 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 amount to the bank account of the appellants 1 and 4 through RTGS within a period of two weeks thereafter. Insofar as the share of the second and third respondents/minor claimants are concerned, the same shall be deposited in a fixed deposits in any one of the Nationalized Banks till they attain the age of majority, and till such time, the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank. If the second appellant/minor claimant has attained the age of majority, it is open to her to file a formal petition before the Tribunal to get her share of apportionment.

15. In the result, the Civil Miscellaneous Appeal is allowed in part. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(I)

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Sub Assistant Registrar

rli

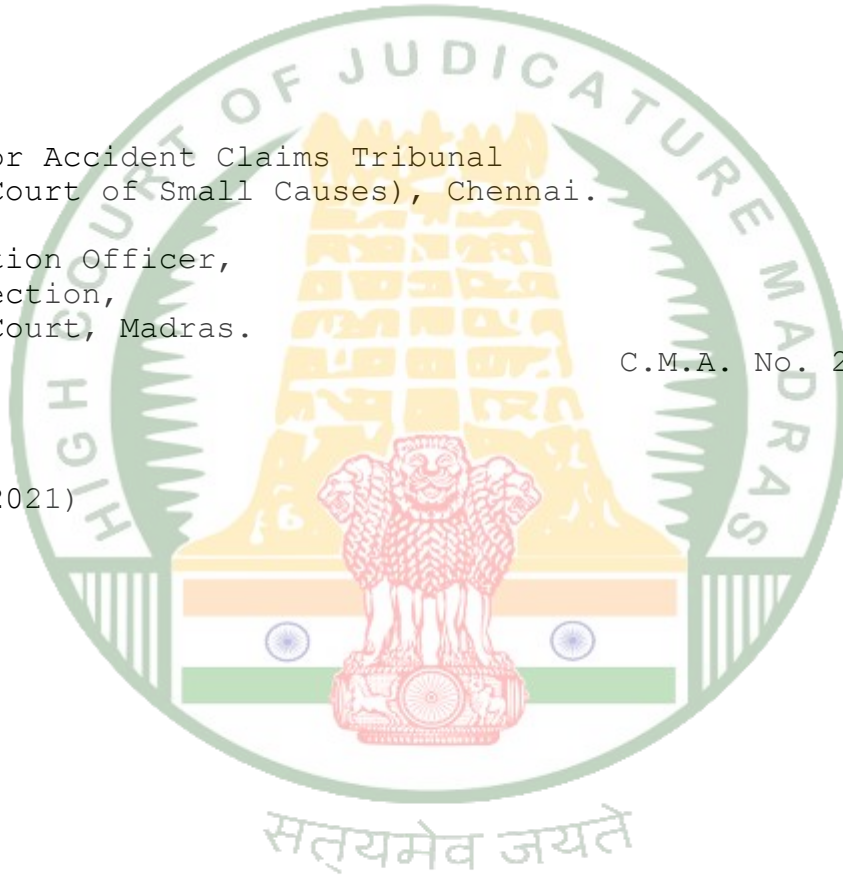
To

1.The Motor Accident Claims Tribunal
(Chief Court of Small Causes), Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A. No. 2139 of 2014

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