IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2233 of 2014

1. J.Mary
2. Y.John Nadar ... Appellants

vs.

1.A.Lokesh Babu (Since deceased)
2. United India Insurance Company Ltd.,
No.26, Ethiraj Salai,
Chennai-08.
3. Arumugam
...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 05.01.2013 in MCOP.No.288 of 2009 on the file of the Motor Accident Claims Tribunal(III Court of Small Causes) Chennai.

For Appellant	:	Mr.K.Varadha kamaraj
For 2nd Respondent	:	Mr.D.Bhaskar
1st Respondent	:	Ex-parte
3rd Respondent	:	Not ready in notice

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimants seeking enhancement of compensation under the common impugned award dated 05.01.2013 passed by the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai in MCOP.No.288 of 2009.

2. The appellants are the legal representatives of the deceased Asir @ Asirvatham, who died on 04.01.2009 as a result of an accident caused by a motor cycle bearing Registration No.TN 05 Y 7335 owned by the first respondent and insured with the second respondent. The appellants/claimants have preferred a

claim before the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai in MCOP.No.288 of 2009 seeking compensation for the death of their son Asir @Asirvatham.

3. The Motor Accident Claims Tribunal, under the impugned award, directed the second respondent/insurance company to pay a compensation of Rs.5,58,000/- together with interest and costs to the appellants/claimants as detailed hereunder:

Head	Award passed by the Tribunal (Rs.)
Pecuniary loss	5,28,000/-
Funeral expenses	10,000/-
Loss of love and affection	20,000/-
Total	5,58,000/-

4. The appellants/claimants, unsatisfied with the quantum of compensation awarded by the Tribunal, under the impugned award, has filed this appeal seeking enhancement.

5. Heard Mr.K.Varadha kamaraj, learned counsel for the Appellants/ claimants and Mr.D.Bhaskar, learned counsel for the Second respondent/Insurance Company.

6. The deceased Asir @ Asirvatham was aged 25 years and he was running a provision store at the time of the accident. Before the Tribunal, in the claim petition, the appellants/claimants have pleaded that the deceased was earning Rs.10,000/- per month. However, since no sufficient documentary evidence was produced by the appellants before the Tribunal, his income was fixed on notional basis at Rs.6,000/- per month.

7. Before the Tribunal, the claimants have filed 14 documents, which were marked as Ex.P1 to Ex.P14 and four witnesses were examined viz., PW1 - mother of the deceased and PW2- Mr.Venkatesan, injured claimant, who was an eyewitness to the accident, PW3 and PW4 - the Doctors, who examined the deceased. On the side of the respondents, neither any witness was examined nor any document filed.

8. Before the Tribunal, the appellants have filed a Membership Card, issued by the Traders Association, which was marked as Ex.P8 to prove that the deceased was a trader.

However, the appellants/claimants have not filed any documentary evidence to prove that the deceased Asir @ Asirvatham was earning Rs.10,000/- per month by running a provision store as pleaded in the claim petition before the Tribunal. Therefore, the Tribunal was constrained to assess the monthly income of the deceased on notional basis at Rs.6,000/- per month.

9. The year of the accident is 2009. The fact that the deceased was a trader, has also not been disputed by the respondents before the Tribunal, as seen from the evidence available on record. This being the case, a person, who is running a provision store in the year 2009, would have difinitely earned much more than Rs.6,000/- per month assessed by the Tribunal, under the impugned award. The notional monthly income of the deceased assessed by the Tribunal at Rs.6,000/- is low. This Court is of the considered view that the deceased would have earned a minimum amount of Rs.7,500/- per month as a proprietor of a provision store. Accordingly, the notional monthly income of the deceased Asir @ Asirvatham is enhanced to Rs.7,500/- from Rs.6,000/- by this Court.

10. The Tribunal has also erroneously not awarded any compensation towards loss of future prospects, which the appellants/claimants are legally entitled to as per the decision of 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, this Court awards 40% as loss of future prospects to the appellants/claimants.

11. The deceased Asir @ Asirvatham was aged 25 years at the time of the accident, which was also proved through his driving license, which was marked as Ex.P9 before the Tribunal. The Tribunal has erroneously deducted 1/3rd share towards personal expenses of the deceased instead of 50% as the deceased was a bachelor at the time of the accident. Accordingly, the loss of pecuniary benefits payable to the appellants/claimants is enhanced from Rs.5,28,000/- to Rs.10,71,000/- by this Court.

12. Insofar as the quantum of compensation awarded by the Tribunal towards funeral expenses at Rs.10,000/- is concerned, the same is confirmed by this Court as it is a just compensation. Insofar as the compensation towards loss of love and affection is concerned, the appellants/claimants of the deceased, who are the parents, are legally entitled to a higher compensation towards the said head. Accordingly, the same is enhanced to Rs.50,000/- from Rs.20,000/- by this Court. The Tribunal has also erroneously not awarded any compensation towards loss of estate, which the appellants/claimants are legally entitled to. Accordingly, this Court grants a sum of Rs.10,000/- towards loss of estate.

13. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award to the appellants/claimants is enhanced from Rs.5,58,000/- to Rs.11,41,000/- in the following manner:

Heads	Award passed by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of Pecuniary benefits	5,28,000/- (6000/-1/3rd X12X11)	10,71,000/- (7500+40%X12X17)
Funeral Expenses	10,000/-	10,000/-
Loss of love and affection	20,000/-	50,000/-
Loss of estate	--	10,000/-
Total	5,58,000/-	11,41,000/-

Conclusion:

14. In the result, the appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second respondent insurance Company is directed to deposit the modified award amount i.e, Rs.11,41,000/- along with interest and costs after deducting the amount, if any, already deposited, to the credit of MCOP.No.288 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment.

15. On such deposit being made, the Tribunal is directed to transfer the share of the Appellants/claimants as per the order of this Court through RTGS within a period of four weeks thereafter.

16. The claimants/appellants have to pay the required court fee, if any, for the enhanced compensation amount awarded by this Court. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.

2.The Section Officer,
VR Section, High Court,
Chennai.

C.M.A.No.2233 of 2014

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srg 04/11/2020