IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.30.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2601 of 2014

C.T.Chokalingam (Blind) (died)
1.K.Mahadevi
2.C.Nagalakshmi ... Appellants/Claimants 2 & 3

vs.

1.Hari Prabhu
(Remained exparte before the Trial Court)
2.ICICI Lombard General Insurance Co. Ltd.,
Chotabhai Centre, 2nd & 3rd Floors,
140, Nungambakkam High Road,
Chennai - 600 034. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 10.04.2014 MACTOP.No.2399 of 2010 on the file of the Special Sub Judge - I, (Motor Accident claims Tribunal) Chennai.

For Appellants : Mr.R.Kalaiarasan
for Mr.N.M.Muthurajan

For Respondents : R1 - Exparte
Mrs.R.Sree vidhya 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 10.04.2014 passed by the Motor Accident Claims Tribunal (Special Sub Judge dealing with the Motor Accident Claims cases, Chennai) in MCOP.No.2399 of 2010.

2. A person by name C.Rajammal died on 07.07.2010 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellants/claimants are the legal heirs of the deceased

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C.Rajammal. They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.2399 of 2010 seeking compensation for the death of C.Rajammal.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent to pay the Appellants/claimants a compensation of Rs.4,61,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Pecuniary loss	3,96,000/- (4500 – 1/3 = 3000 x 12 x 11)
Loss of love and affection	50,000/-
Funeral expenses	15,000/-
Total	4,61,000/-

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

5. Heard Mr.R.Kalaiarasan, learned counsel for the Appellants and Mrs.R.Sree Vidhya, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

6. Before the Tribunal, the Appellants/claimants have filed seven documents which were marked as Ex.P1 to Ex.P7 and two witnesses were examined on their side namely the first Appellant who is the daughter of the deceased as PW1 and an eyewitness to the accident as PW2. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

7. The first claimant before the Tribunal namely C.T.Chokalingam, the husband of the deceased died during the pendency of MCOP.No.2399 of 2010 and the second and third claimants namely K.Mahadevi and C.Nagalakshmi who are his daughters became his legal heirs.

8. In the claim petition, the claimants have pleaded that the deceased C.Rajammal was a servant-maid working at various houses and her monthly income was Rs.4,500/-. The Tribunal has accepted the same and has fixed the notional monthly income of the deceased at Rs.4,500/-. The accident happened in the year 2010. After giving due consideration to the year of the accident, this Court is in agreement with the findings of the Tribunal as regards the monthly income of the deceased.

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9. However, the Tribunal has erroneously failed to award any compensation towards loss of future prospects to the Appellants/claimants which they are legally entitled to as per the decision of the Constitution Bench judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC). As per the said decision, since the deceased was aged 50 years at the time of the accident, the Appellants/claimants are entitled to 25% towards loss of future prospects. Accordingly, the same is granted by this Court.

10. The Tribunal has rightly deducted 1/3rd towards the personal expenses of the deceased, since the claimants are two in number.

11. However, the Tribunal has erroneously adopted 11 multiplier instead of 13 which is the correct multiplier to be adopted as the deceased was aged 50 years at the time of the accident in accordance with 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. Accordingly, this Court modifies the multiplier to be adopted to 13 instead of 11.

12. In view of the addition of loss of future prospects and modification of the multiplier, the loss of dependency is enhanced by this Court from Rs.3,96,000/- to Rs.5,85,000/-(4500 + 25% = 4950 - 1/3 = 3300 x 12 x 13) by this Court.

13. The first claimant C.T. Chockalingam, who is the husband of the deceased C.Rajammal was a blind man and he also died during the pendency of MCOP.No.2399 of 2010 before the Tribunal. K.Mahadevi and C.Nagalakshmi are the daughters of the deceased and presently they are the only surviving legal heirs. The Tribunal has awarded a compensation of Rs.50,000/- towards loss of love and affection to the Appellants/claimants which in the considered view of this Court is a correct assessment. Accordingly, the same is confirmed by this Court.

14. The Tribunal has rightly granted Rs.15,000/- towards funeral expenses of the deceased in accordance with Pranay Sethi's Judgment referred to supra and the same is confirmed by this Court.

15. However, the Tribunal has erroneously failed to award any compensation towards loss of estate which the Appellants/claimants are legally entitled to as per Pranay Sethi's Judgment referred to supra. Accordingly, this Court awards a compensation of Rs.15,000/- towards loss of estate.

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16. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.4,61,000/- to Rs.6,65,000/- by this court in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss	3,96,000/- (4500 – 1/3 = 3000 x 12 x 11)	5,85,000/- (4500 + 25% = 5625 – 1/3 = 3750 x 12 x 13)
Loss of love and affection	50,000/-	50,000/-
Funeral expenses	15,000/-	15,000/-
Loss of estate	---	15,000/-
Total	4,61,000/-	6,65,000/-

Conclusion:

17. In the result, this Appeal is partly allowed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The second respondent Insurance company is directed to deposit the enhanced award amount along 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.2399 of 2010 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 respective shares of the award amount along with accrued interest lying to the credit of MCOP.No.2399 of 2010 to the bank account of the respective Appellants /claimants through RTGS as per the ratio apportioned by the Tribunal within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Vehicles Accidents Claims Tribunal,
  Special Sub Judge - I, Chennai

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

+1cc to Mr.N.M.Muthurajan, Advocate Sr.32233

C.M.A.No.2601 of 2014

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