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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.18.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2665 of 2014

D.Geetha

(name amended as per order in MP.No.3044/2013)

2.D.Vijayalakshmi

3.T.Jayakumar

4.T.Om Prakash

5.S.Kamatchi

... Appellants/Petitioners

vs.

1.G.Thangarasu(Set Exparte before the Tribunal)

2.Shriram General Insurance Co. Ltd.,
No.66, 2nd Floor, City Centre Complex,
Thirumalai Pillai Road, T.Nagar,
Chennai - 17.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 14.03.2014 MACT.O.P.No.4135 of 2010 on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

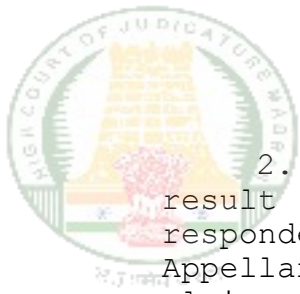
For Appellant : Mr.R.Kalai Arasan

For Respondents : No appearance for R1
Mr.S.Dhakshanamoorthy 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 14.03.2014 passed by the Motor Accident Claims Tribunal (IVth Court of Small Causes, Chennai) in MCOP.No.4135 of 2010.



2. A person by name S.Thiyagarajan died on 22.10.2010 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellants who are the legal heirs of the deceased preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the death of S.Thiyagarajan.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent to pay the Appellants/claimants a compensation of Rs.1,85,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Pecuniary loss	1,20,000/- (2000 x 12 x 5)
Loss of love and affection	50,000/-
Funeral Expenses	15,000/-
Total	1,85,000/-

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

5. Heard Mr.R.Kalai Arasan, learned counsel for the Appellants and Mr.S.Dhakshanamoorthy, learned counsel for the second respondent. Despite service of notice on the first respondent, there is no representation on his side.

6. Before the Tribunal, the Appellants/claimants have filed seven documents which were marked as Ex.P1 to Ex.P7 and three witnesses were examined on their side namely, Mr.Om Prakash, the fourth Appellant herein as PW1, Mr.R.Subramani, an eyewitness to the accident as PW2 and Mr.K.Parthasarathy, a co-worker of the deceased as PW3. On the side of the respondents, neither any document was filed nor any witness examined, before the Tribunal.

7. In the claim petition, the Appellants/claimants had pleaded that the deceased S.Thiyagarajan was a carpenter aged 58 years and was a self-employed person earning Rs.300/- per day. However, the Tribunal under the impugned award has fixed the notional monthly income of the deceased at Rs.4,000/-, since no documentary evidence was produced by the Appellants/claimants to substantiate their claim that the deceased was earning Rs.300/- per day at the time of the accident. The accident happened in the year 2010. The co-worker of the deceased namely PW3 has also



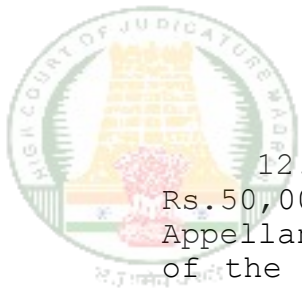
been examined on the side of the Appellants/claimants in order to prove that the deceased was earning Rs.300/- per day. The Tribunal ought to have given due consideration to the year of the accident and the evidence adduced by the co-worker of the deceased (PW3). If due consideration was given, then the notional monthly income of the deceased cannot be fixed at Rs.4,000/-. This Court after giving due consideration to the evidence placed on record as well as the pleadings of the Appellants/claimants as well as the evidence adduced by the co-worker of the deceased PW3 and also the year of the accident is of the considered view that the notional monthly income of the deceased has to be fixed at Rs.7,200/- instead of Rs.4,000/- erroneously fixed by the Tribunal.

8. The Tribunal has erroneously deducted 50% towards the personal expenses of the deceased who was not a bachelor. The Appellants even though are five in number, they are not the dependents of the deceased. Hence, this Court deducts $1/3^{\text{rd}}$ towards the personal expenses of the deceased instead of 50% erroneously deducted by the Tribunal.

9. The Tribunal has erroneously adopted 5 multiplier. The Appellants/claimants have not produced any documentary evidence to support their contention that the deceased was aged 58 years at the time of the accident. The Postmortem certificate (Ex.P3) cannot be the only document which will prove the age of the deceased. The Tribunal under the impugned award has also observed that the deceased may be aged above 60 years. When there is no conclusive documentary evidence produced by the Appellants/claimants before the Tribunal, this court deems it fit to assess the age of the deceased to be between 61 to 65 years. Accordingly, the correct multiplier to be adopted for a person aged between 61 to 65 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 is 7. Accordingly, this Court adopts the seven multiplier for the purpose of calculating the pecuniary loss suffered by the Appellants/claimants.

10. For the foregoing reasons, the pecuniary loss suffered by the Appellants/claimants is enhanced from Rs.1,20,000/- to Rs.4,03,200/- ($7200 - 1/3 = 4800 \times 12 \times 7$).

11. The Tribunal has awarded a compensation of Rs.15,000/- towards funeral expenses of the deceased which is confirmed by this Court as it is in accordance with 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).



12. The Tribunal has erroneously awarded a compensation of Rs.50,000/- towards loss of love and affection to the Appellants/claimants. The Appellants/claimants are the children of the deceased who are all adults. They are aged 36 years, 34 years, 32 years, 30 years and 28 years respectively. Since all of them are married and aged above 25 years, the Tribunal ought not to have granted the compensation towards loss of love and affection. Instead the Tribunal ought to have awarded compensation towards parental consortium. Accordingly, the same is modified by this Court as parental consortium to each of the Appellants/claimants at Rs.20,000/- totally amounting to Rs.1,00,000/- instead of Rs.50,000/- awarded by the Tribunal towards loss of love and affection.

13. The Tribunal has also not awarded any compensation towards loss of estate which the Appellants/claimants are legally entitled to as per Pranay Sethi's Judgment referred to supra. In accordance with the said judgment, this Court awards a compensation of Rs.15,000/- towards loss of estate to the Appellants/claimants.

14. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,85,000/- to Rs.5,33,200/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss	1,20,000/- (2000 x 12 x 5)	4,03,200/- (7200 -1/3 = 4800 x 12 x 7)
Loss of love and affection	50,000/-	1,00,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	---	15,000/-
Total	1,85,000/-	5,33,200/-

Conclusion:

15. 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 modified 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.4135 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.4135 of 2010 to the bank account of the respective Appellants/claimants through RTGS as per the ratio of apportionment made by the Tribunal within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents claims Tribunal,
IV Small Causes Court, Chennai.

Copy to
The Section Officer,
VR Section, High Court,
Chennai.

+lcc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.30454
+lcc to Mr.N.M.Muthurajan, Advocate, S.R.No.30796

C.M.A.No.2665 of 2014

PP(CO)
CB(14/09/2021)