IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2734 & 2735 of 2014
and
M.P.Nos.1 & 1 of 2012

Datchayanee ... Appellant in CMA.No.2734 of 2014

1.P.Jayanthi
2.P.Parasuraman
3.P.Radhalakshmi ... Appellant in CMA No.2735 of 2014

..Vs..

1.K.Durai
2.ICICI Lombard General Insurance company Limited,
No.84 & 85, Waltax Road, Arihant Plaza,
Chennai-03.
... Respondents in both CMAs

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common award and judgment dated 04.01.2012 made in MCOP.Nos.559 & 509 of 2010 on the file of the Motor Accident Claims Tribunal (Fast Tract Court No.2) Poonamallee.

For Appellants in both CMAs : Mr.K.Varadhakamaraj

For Respondent 2 : Mrs.R.Sree Vidhya

R1 – Exparte

COMMON JUDGMENT

(These Appeal have been taken up for hearing through Video Conferencing)

These two appeals have been filed by the respective claimants seeking enhancement of compensation under the impugned common award dated 04.01.2012 passed by the Motor Accident Claims Tribunal (Fast Track Court No.2, Poonamallee in MCOP.Nos.559 & 509 of 2010 respectively. CMA.No.2734 of 2014 arises out of MCOP.No.559 of 201 and CMA.No.2735 of 2014 arises out of MCOP.No.509 of 2010.

2. The findings of the Tribunal under the impugned common award as regards the negligence of the driver of the insured vehicle has attained finality, since no appeal has been filed by the second respondent insurance company challenging the said findings.

3. The only question involved in these appeals are whether the quantum of compensation assessed by the Tribunal for the respective claimants is a just compensation or not.

4. The Tribunal under the impugned award has awarded the compensation to the claimant in MCOP.No.559 of 2010 as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of income	3,12,0000/- (4000 x 1/2=2000 x 12 x 13)
Funeral expenses	10,000/-
Transportation	5,000/-
Love and affection	15,000/-
Total	**3,42,000/-**

5. The Tribunal under the impugned award has awarded the compensation to the claimant in MCOP.No.509 of 2010 as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of income	6,24,000/-
Funeral expenses	10,000/-
Transportation	5,000/-

Love and affection	15,000/-
Total	6,54,000/-

6. Before the Tribunal, both the claimants have filed eleven documents which were marked as Ex.A1 to Ex.A11. The respective claimants have also examined four witnesses namely the claimant in MCOP.No.559 of 2010 as PW1, the third claimant in MCOP.No.509 of 2010 as PW2, an eye witness to the accident as PW3 and the first claimant in MCOP.No.509 of 2010 as PW4. On the side of the second respondent insurance company, neither any witness was examined nor any document filed.

7. Heard, Mr.K.Varadhakamaraj learned counsel for the Appellants in both the Appeals and Mrs.R.Sreevidya, learned counsel for the second respondent. The first respondent remained exparte both before the Tribunal as well as this Court.

CMA.No.2734 of 2014 (MCOP.No.559 of 2010)

8. The Appellant/claimant in her claim petition has claimed that the deceased was aged 27 years, working as a two wheeler mechanic and earning a monthly income of Rs.7,000/-. Since the Appellant/claimant did not file any documentary evidence to prove that the deceased was earning a sum of Rs.7,000/- as monthly income, the Tribunal fixed the monthly income of the deceased on notional basis at Rs.4,000/-. The accident happened on 09.05.2010. The cause of the accident has also not been disputed by the second respondent insurance company as seem from the evidence available on record. Considering the year of the accident which is 2010, that too, when the appellant has claimed that the deceased was a two wheeler mechanic though not supported by any documentary evidence, the fixation of Rs.4,000/- as the monthly income of the deceased in the considered view of this Court is too low. This court is of the considered view that the notional income of the deceased has to be fixed at Rs.7,000/- instead of Rs.4,000/- fixed by the Tribunal. Accordingly, the notional income of the deceased is enhanced from Rs.4,000/- to Rs.7,000/- per month.

9. The Tribunal has rightly deducted 50% towards personal expenses of the deceased, since the deceased was a bachelor at the time of the

accident. However, the Tribunal has applied a wrong multiplier which is not in accordance with the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma vs. Delhi Transport Corporation*** reported in ***2009 (2) TNMAC 1 SC Supreme Court.*** The deceased was aged 27 years at the time of the accident and considering the age of the deceased, the Tribunal ought to have applied 17 multiplier, but erroneously applied 13 multiplier, as seen from the impugned award. Accordingly, the same is modified as 17 multiplier instead of 13 multiplier by this Court.

10. The claimant is the mother of the deceased and she is the only legal representative of the deceased. However, the Tribunal has awarded Rs.15,000/- as compensation to the claimant towards love and affection, even though mother is the only legal representative of the deceased. The compensation towards love and affection ought not to have granted by the Tribunal, since the mother is the only legal representative of the deceased. Accordingly, the said compensation is rejected.

11. The Tribunal has awarded Rs.10,000/- as compensation towards

Funeral Expenses which in the considered view of this Court is too low. As per 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),*** the claimant is entitled to Rs.15,000/- as compensation towards Funeral expenses and another sum of Rs.15,000/- towards loss of estate. Accordingly, this Court enhances the funeral expenses from Rs.10,000/- to Rs.15,000/- and awards a sum of Rs.15,000/- as compensation for loss of estate.

12. Being a fatal accident claim and the death having happened on the same day of the accident, the Tribunal ought not to have granted any compensation towards transportation charges. However, the Tribunal has erroneously granted Rs.5,000/- towards transportation charges to the claimant. Accordingly, this Court rejects the transportation cost of Rs.5,000/- awarded by the Tribunal.

13. For the foregoing reasons, the compensation awarded under the

impugned award passed in MCOP.No.559 of 2010 is modified in the following manner:

Heads	**Amount awarded by the Tribunal (Rs.)**	**Modified Award Amount (Rs.)**
Loss of income	3,12,000/- (4000 – ½ =2000 x 12 x 13)	7,14,000/- (7000 – ½ = 3500 x 12 x 17)
Funeral Expenses	10,000/-	15,000/-
Transportation	5,000/-	-
Love and affection	15,000/-	-
Loss of estate	-	15,000/-
Total	**3,42,000/-**	**7,44,000/-**

CMA.No.2735 of 2014 (MCOP.No.509 of 2010)

14. The claimants are the parents and unmarried sister of the deceased. At the time of the accident, the deceased was aged 26 years which is proved through the postmortem report Ex.P5. The deceased was working as a supervisor. In his claim petition, the claimant has pleaded that the deceased was earning Rs.13,000/- per month. However, as per Ex.P8, salary certificate which reveals that the deceased was earning a sum of Rs.8,000/- per month. The Tribunal has considered Ex.P8 and has rightly fixed the monthly income

of the deceased at Rs.8,000/-. In this case, the Tribunal has not awarded any compensation to the Appellants towards loss of future prospects which they are entitled to as per the Pranay Sethi's judgment referred to supra. Accordingly, the same is fixed at 40% by this Court.

15. The Tribunal has rightly deducted 50% towards personal expenses of the deceased but has erroneously applied 13 multiplier instead of 17 multiplier, since the deceased was aged 26 years at the time of the accident. Accordingly, the same is modified by this Court and the loss of income is fixed by applying 17 multiplier instead of 13 multiplier.

16. The Tribunal in this case has awarded only Rs.10,000/- as Funeral expenses instead of Rs.15,000/- to be fixed as laid down by the Hon'ble Supreme Court in the Pranay Sethi's Judgment referred to supra. Accordingly, the same is enhanced from Rs.10,000/- to Rs.15,000/-.

17. Since the deceased died on the same day of the accident, the

Tribunal ought not to have awarded any compensation towards transportation costs. But the Tribunal erroneously awarded Rs.5,000/- towards the said head. Accordingly, the compensation of Rs.5,000/- awarded towards transportation costs by the Tribunal is rejected by this Court.

18. The Tribunal has also awarded only a sum of Rs.15,000/- as compensation towards loss of love and affection which is low and is not in accordance with Pranay Sethi's Judgment referred to supra and the same is enhanced to Rs.40,000/-.

19. The Tribunal has also not awarded any compensation towards loss of estate. As per the Sarla Verma Judgment, the Appellants/claimants are entitled to Rs.15,000/- towards loss of estate. Accordingly, the same is fixed by this Court.

20. For the foregoing reasons, the amount awarded by the Tribunal in MCOP.No.509 of 2010 is enhanced in favour of the Appellants/claimants in the following manner:

Heads	**Amount awarded by the Tribunal (Rs.)**	**Modified Award Amount (Rs.)**
Loss of Income	6,24,000/-	11,42,400/-
Funeral Expenses	10,000/-	15,000/-
Transportation	5,000/-	-
Love and affection	15,000/-	40,000/-
Loss of estate	-	15,000/-
Total	**6,54,000/-**	**12,12,400/-**

Conclusion

21. In the result, CMA.No.2734 of 2014 is partly allowed by enhancing the award amount from Rs.3,42,000/- to Rs.7,44,000/- and CMA.No.2735 of 2014 is partly allowed by enhancing the award amount from Rs.6,54,000/- to Rs.12,12,400/-. The second respondent insurance company is directed to deposit the modified award amount after deducting the amount already deposited if any together with interest from the date of claim till the date of deposit and cost to the credit of MCOP.Nos.559 & 509 of 2010 within a period of four weeks from the date of receipt of a copy of this common judgment. On such deposit being made, the appellant in

CMA.No.2734 of 2014 is permitted to withdraw the award amount along with accrued interest lying to the credit of MCOP.No.559 of 2010 by filing appropriate application and the Appellants in CMA.No.2735 of 2014 are permitted to withdraw their respective shares of award amount along with accrued interest lying to the credit of MCOP.No.509 of 2010 by filing appropriate applications. Consequently, connected miscellaneous petitions are closed. No costs.

21.07.2020

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order

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To

1.The Section Officer
V.R.Section, High Court of Madras.

ABDUL QUDDHOSE, J.
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C.M.A.Nos.2734 & 2735 of 2014

21.07.2020