IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2947 of 2014

1.G.Pappathi
2.Govindan
3.G.Magesh (Minor)
4.G.Surya (Minor)
(Minors rep. by their mother &
N.F the 1st petitioner) Appellants/Petitioners

vs.

1.M.Velayutham
(Remained ex-parte before the Trial Court)

2.Tata AIG General Insurance Co. Ltd.,
G4 & 1/F CNC Road Ethiraj Salai,
Egmore,
Chennai – 600 008. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.02.2014 MACT.O.P.No.4573 of 2012 on the file of the IV Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.R.Kalai Arasan

For Respondents : R1- exparte
Mr.E.Rajadurai for R2
for M/s.M.B.Gopalan

JUDGMENT
(This case was heard through Video Conferencing)

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned Award dated 27.02.2014 passed by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai in M.C.O.P.No.4573 of 2012.

2.Heard Mr.R.Kalai Arasan, learned counsel for the Appellants and Mr.E.Rajadurai, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3.The Motor Accident Claims Tribunal under the impugned Award has directed the second respondent Insurance Company to pay the Appellants/claimants a compensation of Rs.6,86,000/- together with interest and cost for the death of G.Rajendran as a result of an accident on 13.09.2012 caused by a vehicle owned by the first respondent and insured with the second respondent.

4.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

| Heads | Awarded by the Tribunal in Rs. |
|---|---|
| Pecuniary loss calculated Rs.3,000x12x16 | 5,76,000/- |
| Loss of Love and Affection | 95,000/- |
| Funeral expenses | 15,000/- |
| Total | Rs.6,86,000/- |

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

6.Before the Tribunal, the Appellants/claimants have filed 7 documents which were marked as Exs.P1 to P7 and two witnesses were examined on their side namely, the first Appellant/first claimant, who is the mother of the deceased as PW1 and an eye witness to the accident as PW2. 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 have pleaded that the deceased G.Rajendran was aged 21 years and running a Panipuri shop earning Rs.750/- per day at the time of the accident. However, since no documentary evidence was produced by the Appellants/claimants in support of their claim that the deceased was earning Rs.750/- per day, the Tribunal fixed the monthly income of the deceased on notional basis and fixed the same at Rs.6,000/- per month. This Court is of the considered view that the said assessment is not a correct assessment in view of the decision of the Hon'ble Supreme Court in the case of Syed Sadiq and Others vs. Divisional Manager, United India Insurance Company Limited reported in (2014) 2 SCC 735. As per the aforesaid decision, for a vegetable vendor for an accident that happened in the year 2008, the Hon'ble Supreme Court fixed the notional monthly income of the vegetable vendor at Rs.6,500/-. Therefore, this Court is of the considered view that the assessment of the notional monthly income of the deceased by the Tribunal under the impugned Award at Rs.6,000/- is low and it has to be enhanced to Rs.6,500/- in accordance with Syed Sadiq judgment referred to supra.

8.The deceased was aged 21 years at the time of the accident. The correct multiplier to be adopted as per the decision of the Hon'ble Supreme Court in the case of Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another reported in (2009) 6 SCC 121 is 18. However, the Tribunal has erroneously adopted 16 multiplier while assessing the pecuniary loss. Accordingly, the same is modified by this Court and the correct multiplier of 18 is adopted for the purpose of calculating the pecuniary loss.

9.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 Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 SCC 680. As per the said decision, this Court fixes the same at 40%. If 18 multiplier is adopted, the compensation payable to the Appellants/claimants towards pecuniary loss will be Rs.9,82,800/- (Rs.9,100 x 12 x 1/2 x18).

10.The Tribunal has awarded a compensation of Rs.95,000/- to the Appellants/claimants towards loss of love and affection and Rs.15,000/- towards funeral expenses which cannot be considered to be inadequate as alleged by the Appellants. Accordingly, the same is confirmed by this Court.

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

12.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.6,86,000/- 11,07,800/- by this Court in the following manner:

| Heads | Awarded by the Tribunal in Rs. | Modified by this Court in Rs. |
|---|---|---|
| Income fixed | 6,000/- | 6,500/- |
| Future prospects (40%) | - | 2,600/- |
| Multiplier | 16 | 18 |

| Heads | Awarded by the Tribunal in Rs. | Modified by this Court in Rs. |
|---|---|---|
| Pecuniary loss | Rs.6,000x12x1/2x16= 5,76,000/- | Rs.9,100x12x1/2x18= 9,82,800/- |
| Loss of love and affection | 95,000/- | 95,000/- |
| Funeral expenses | 15,000/- | 15,000/- |
| Loss of estate | - | 15,000/- |
| Total | Rs.6,86,000/- | Rs.11,07,800/- |

13.The second respondent Insurance Company is directed to deposit the modified award amount of Rs.11,07,800/- after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of claim till the date of realization to the credit of M.C.O.P.No.4573 of 2012, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. Since third and fourth Appellants are minors, their share amount shall be deposited in any nationalised bank till they attain majority and their mother, the first Appellant herein is permitted to withdraw the accrued interest once in three months. On such deposit being made, the Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of M.C.O.P.No.4573 of 2012 to the bank account of the first and second Appellants/claimants through RTGS, within a period of two weeks thereafter. No costs.

14. In the result, the appeal is partly allowed.

Sd/-
Assistant Registrar
dt.16.02.2021

//True Copy//

Sub Assistant Registrar

pam

To

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

2. The Section Officer,
   Vernacular Section,
   Madras High Court.

+2cc to M/s.N.M.Muthurajan, Advocate, S.R.No.32232

C.M.A.No.2947 of 2014

JP(CO)
RGA(10/08/2021)