

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.16.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3067 of 2014

1.Poonguzhali
2.Rajesh
3.Varalakshmi
4.Mulaviammal

.... Appellants/Claimants

vs.

1.S.Parthiban
2.Cholamandalam MS General Insurance Co. Ltd.,
NSC Bose Road,
Chennai - 69.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 17.06.2014 made in MCOP.No.3961 of 2012 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondent 2 : Mrs.R.Sreevidhya

Respondent 1 : No such person

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 17.06.2014 passed by the Motor Accident Claims Tribunal (IIIrd Court of Small Causes, Chennai) in MCOP.No.3961 of 2012.

2. A person by name Narayanan died on 26.06.2012 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellants herein are the legal heirs and dependents of the deceased Narayanan who died at the age of 45 years. They preferred a claim before the Motor Accident Claims Tribunal in

MCOP.No.3961 of 2012 seeking compensation of Rs.20,00,000/- for the death of Narayanan.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent to pay the Appellants a compensation of Rs.9,50,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Pecuniary loss	8,10,000/- (6000 - $\frac{1}{4}$ = 4500 x 12 x 15)
Loss of consortium	25,000/-
Loss of love and affection	1,00,000/-
Funeral expenses	15,000/-
Total	9,50,000/-

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

5. Heard Mr.KVaradhakamaraj, learned counsel for the Appellant and Mrs.R.Sree Vidhya, learned counsel for the second respondent. The notice sent to the first respondent has been returned with the endorsement "No such person". Since the first respondent has remained exparte before the Tribunal, notice to the first respondent is dispensed with by this Court.

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 the wife of the deceased who is the first Appellant/first claimant herein as PW1, an eyewitness to the accident as PW2 and the employer of the deceased as PW3. On the side of the respondents, one document was filed namely copy of family card Ex.R1 and no witness was examined, before the Tribunal.

7. In the claim petition, the Appellants/claimants have pleaded that the deceased Narayanan was aged 45 years and was a painting contractor earning Rs.500/- per day. The alleged employer (PW3) has issued the salary certificate (Ex.P7) which reveals that the deceased Narayanan was earning Rs.500/- per day at the time of the accident. However, the Tribunal has fixed the notional monthly income of the deceased at Rs.6,000/- which in

the considered view of this Court is low. Eventhough the salary certificate (Ex.P7) cannot be accepted in entirety, the Tribunal ought to have considered the fact that no contra evidence has been produced by the respondents to disprove the contention of the appellants/claimants that the deceased was a painting contractor earning Rs.500/- per day at the time of the accident. If proper consideration was given, the Tribunal would have certainly fixed the notional monthly income of the deceased at a higher sum. This Court after giving due consideration to the materials and evidence available on record, fixes the notional monthly income of the deceased at Rs.7,500/- instead of Rs.6,000/- fixed by the Tribunal.

8. The Tribunal has also 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). Since the deceased was aged 45 years at the time of the accident and as per Pranay Sethi's Judgment, the Appellants/claimants are entitled to 25% towards loss of future prospects. Accordingly, the same is awarded by this court.

9. The Tribunal has erroneously adopted 15 multiplier instead of 14 multiplier 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, since the deceased was aged 45 years at the time of the accident as per postmortem certificate (Ex.P3). Accordingly, the same is modified by this Court.

10. The Tribunal has rightly deducted 1/4th towards the personal expenses of the deceased as per Sarla Verma's Judgment, since the dependents of the deceased are four in number.

11. For the foregoing reasons, the loss of dependency payable to the Appellants/claimants is assessed by this Court at Rs.11,18,208/- instead of Rs.8,10,000/- fixed by this Court.

12. The Tribunal has erroneously awarded a meagre compensation of Rs.25,000/- towards loss of consortium to the first Appellant/first claimant who is the wife of the deceased instead of Rs.40,000/- which is the settled practice as per Pranay Sethi's Judgment. Accordingly, this Court awards a compensation of Rs.40,000/- towards loss of consortium to the first Appellant/first claimant.

13. The Tribunal has rightly awarded a compensation of Rs.15,000/- towards funeral expenses in accordance with the settled practice as per Pranay Sethi's Judgment.

14. However, the Tribunal has 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. This Court awards a compensation of Rs.15,000/- towards loss of estate to the Appellants/claimants in accordance with Pranay Sethi's Judgment.

15. The Tribunal has rightly awarded a compensation of Rs.1,00,000/- towards loss of love and affection to the Appellants/claimants which is confirmed by this Court.

16. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.9,50,000/- to Rs.13,51,208/- which is rounded off to Rs.13,51,000/- by this Court in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss	8,10,000/- (6000 - $\frac{1}{4}$ = 4500 x 12 x 15)	11,81,208/- (7500 + 25% = 9375 - $\frac{1}{4}$ = 7031 x 12 x 14)
Loss of consortium	25,000/-	40,000/-
Loss of love and affection	1,00,000/-	1,00,000/-
Funeral expenses	15,000/-	15,000/-
Loss of estate	--	15,000/-
Total	9,50,000/-	13,51,208/-
Rounded off	9,50,000/-	13,51,000/-

Conclusion:

17. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% per annum is confirmed. The second respondent/Insurance company is directed to deposit the modified award amount together 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.3961 of 2012 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.3961 of 2012 to the bank account of the respective Appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
III Small Causes Judge, Chennai.

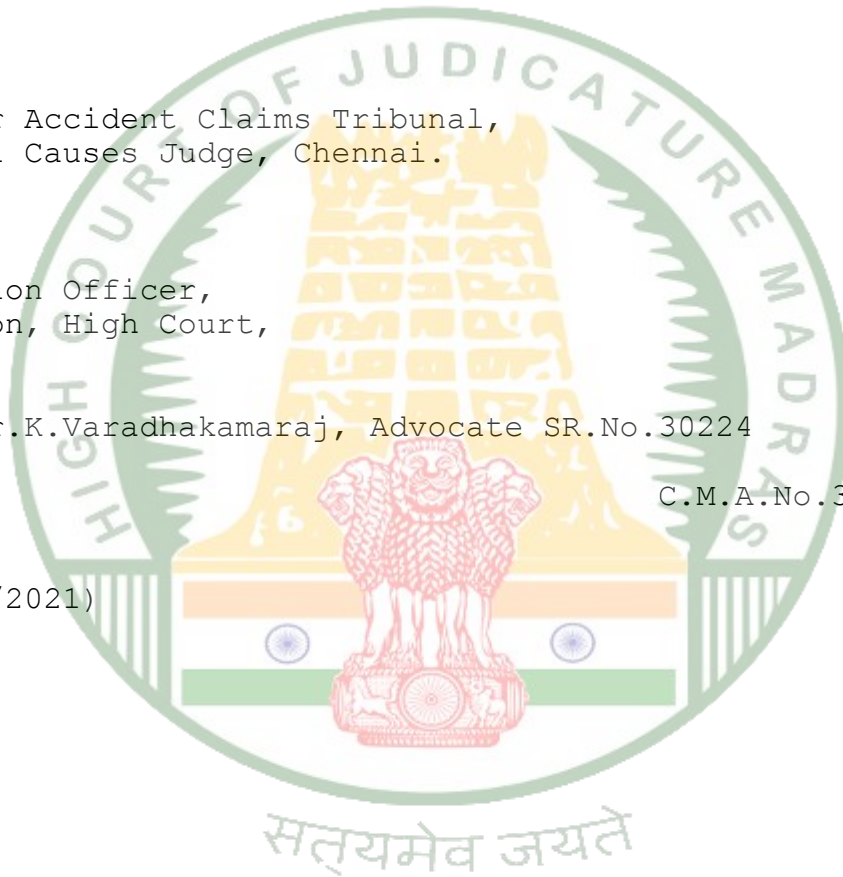
Copy To

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

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.30224

C.M.A.No.3067 of 2014

NR (CO)
GMY (21/04/2021)



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