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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NOS.3203 & 3204 OF 2014

In CMA.No.3203 of 2014

1.S.Jeyamani
2.J.Babu
3.J.Suresh
4.Vanitha

... Appellants/Petitioners
in CMA.No.3203 of 2014

S.Jeyamani

... Appellant/Petitioner
in CMA.No.3204 of 2014

vs.

1. P.Dhandayuthabani
(was set exparte in the Trial Court.
Notice may be dispensed with)
2. Shriram General Insurance Company Limited,
No.66, Thirumalai Pillai Street,
T.Nagar, Chennai - 600 017.

...Respondents/Respondents
in both Appeals

Common Prayer:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Common Judgment and decrees dated 30.07.2014 made in MACTOP.Nos.1953 & 1954 of 2012 on the file of the IV Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants
in both Appeals

: Mr.K.Varadhakamaraj
for Mr.M.Saravanan

For Respondents
in both Appeals

: Mr.K.Poomalai for R2
R1 - Exparte



COMMON JUDGMENT

[These Appeals have been taken up for hearing through Video Conferencing]

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These appeals have been filed by the claimants challenging the common award dated 30.07.2014 passed by the Motor Accident Claims Tribunal (Court of Small Causes, Chennai) in MCOP.Nos.1953 & 1954 of 2012. MCOP.No.1953 of 2012 pertains to a death claim and MCOP.No.1954 of 2012 pertains to an injury claim.

2. One Vasantha died and the Appellant in CMA.No.3204 of 2014 sustained injuries on 16.01.2012 as a result of an accident caused by a vehicle insured with the second respondent and owned by the first respondent. The legal representatives of the deceased Vasantha and the Appellant in CMA.No.3204 of 2014 preferred two separate claims before the Tribunal and the Tribunal has passed the following awards under a common judgment: In CMA.No.3203 of 2014 (MCOP.No.1953 of 2012)

Heads	Award Amount (Rs.)
Loss of pecuniary benefits	3,74,400/- (3000 - 1/5 = 2400 x 12 x 13)
Loss of consortium	25,000/-
Loss of love and affection	30,000/-
Funeral expenses	10,000/-
Total	4,39,400/-

In CMA.No.3204 of 2014 (MCOP.No.1954 of 2012)

Heads	Award Amount (Rs.)
Disability	90,000/-
Transportation	5,000/-
Extra Nourishment	10,000/-
Pain and Suffering	25,000/-
Loss of income	15,000/-
Medical Bills	22,402/-



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Heads	Award Amount (Rs.)
Attender Charges	3,000/-
Damages towards Clothing and Articles	2,000/-
Total	1,72,402/-

3. The respective claimants unsatisfied with the quantum of compensation awarded by the Tribunal preferred these appeals seeking for enhancement.

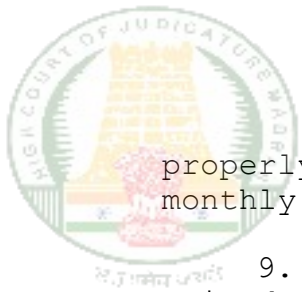
4. Heard Mr.K.Varadhakamaraj, learned counsel representing Mr.M.Saravanan, learned counsel for the Appellants in both the Appeals and Mr.K.Poomalai, learned counsel for the second respondent in both the Appeals. Despite service of notice on the first respondent in both the appeals, there is no representation on his side.

5. Before the Tribunal, the claimants in both the appeals have filed 14 documents which were marked as Ex.P1 to Ex.P14 and three witnesses were examined on their side namely, PW1 to PW3. On the side of the second respondent insurance company, neither any document was filed nor any witness examined.

6. This Court shall first deal with the award passed in MCOP.No.1953 of 2012 which is a death claim.

7. The deceased Vasantha was aged 50 years and was a tuition teacher at the time of the accident. The age of the deceased is proved through the Postmortem Certificate (Ex.P9), before the Tribunal. No contra evidence has also been produced by the respondents to disprove the contention of the claimants that the deceased was aged 50 years and was a tuition teacher at the time of the accident. Therefore, the Tribunal is right in assessing the age of the deceased as 50 years.

8. In the claim petition filed by the Appellants in CMA.No.3203 of 2014 before the Tribunal, they have pleaded that the deceased was earning Rs.15,000/- per month as a tuition teacher. Since no documentary evidence was produced by the Appellants, the Tribunal has fixed the monthly income of the deceased Vasantha on notional basis at Rs.3,000/-. The year of the accident is 2012. No contra evidence has also been produced by the respondents before the Tribunal to disprove the contention of the claimants that the deceased was a tuition teacher. There is also no admission made by the witnesses examined on the side of the Appellants/claimants that the deceased was not a tuition teacher. If the above factors were



properly considered, the Tribunal could not have assessed the monthly income of the deceased at Rs.3,000/- which is too low.

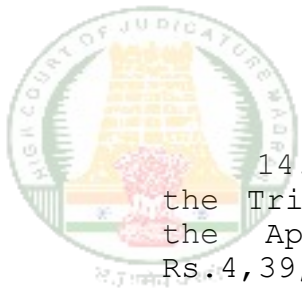
9. The Hon'ble Supreme Court in the case of Syed Sadiq vs. United India Insurance Company Limited reported in (2014) 2 SCC 735 has assessed the monthly income of the deceased, in case of a vegetable vendor for an accident that took place in the year 2008 at Rs.6,500/-. In the case on hand, the accident took place in the year 2012 and when no contra evidence has been produced to disprove the contention of the Appellants that the deceased was a tuition teacher, the Tribunal ought to have fixed the notional monthly income of the deceased at a higher sum. This Court after examining the materials available on record is of the considered view that the notional monthly income of the deceased Vasantha will have to be enhanced to Rs.7,000/- which will be a correct assessment. Accordingly, the notional monthly income of the deceased is fixed by this Court at Rs.7,000/- instead of Rs.3,000/- fixed by the Tribunal.

10. The Tribunal has also not awarded any compensation towards loss of future prospects to the Appellants which they are legally entitled to as per the Constitution Bench Judgement of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi reported in (2017) 16 SCC 680. The deceased was aged 50 years at the time of the accident. Hence, as per the aforesaid judgment of the Hon'ble Supreme Court, 10% has to be added towards loss of future prospects. Accordingly, the same is added by this Court.

11. The Appellants are the legal representatives of the deceased who are four in number and hence, the Tribunal ought to have deducted only $1/4^{\text{th}}$ towards personal expenses of the deceased, but has erroneously deducted $1/5^{\text{th}}$. Accordingly, this Court deducts only $1/4^{\text{th}}$ towards personal expenses of the deceased instead of $1/5^{\text{th}}$ erroneously deducted by the Tribunal.

12. With regard to the compensation awarded by the Tribunal under various other heads namely funeral expenses, loss of love and affection and loss of consortium are concerned, the Tribunal has awarded Rs.10,000/-, Rs.30,000/- and Rs.25,000/- respectively which is confirmed by this Court in view of the fact that the same is a just compensation.

13. However, the Tribunal has not awarded any compensation towards loss of estate which they are legally entitled to as per the Constitution Bench Judgement of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi reported in (2017) 16 SCC 680 and this Court awards a sum of Rs.15,000/- towards the said head of compensation.



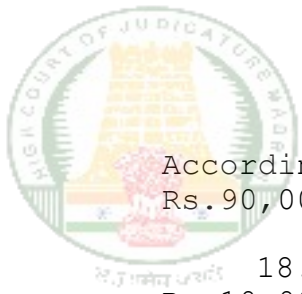
14. For the foregoing reasons, the compensation awarded by the Tribunal to the claimants in MCOP.No.1953 of 2012 who are the Appellants in CMA.No.3203 of 2014 is enhanced from Rs.4,39,400/- to Rs.9,80,900/- in the following manner:

Heads	Amount Awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of pecuniary benefits	3,74,400/- (3000 - 1/5 = 2400 x 12 x 13)	9,00,900/- (7000 + 10% = 7700 - 1/4 = 5775 x 12 x 13)
Loss of consortium	25,000/-	25,000/-
Loss of love and affection	30,000/-	30,000/-
Funeral expenses	10,000/-	10,000/-
Loss of estate		15,000/-
Total	4,39,400/-	9,80,900/-

15. This Court shall now consider CMA.No.3204 of 2014 which involves an injury claim made by the Claimant S.Jeyamani arising out of the same accident.

16. The Appellant sustained the following injuries namely (a) Right Zygomatic Maxillary Complex Fracture (b) Right Frontal Hemorrhage Contusion and (c) Left hand both hand fracture as a result of the accident.

17. The Doctor, (PW2) who examined the Appellant/claimant has assessed his disability at 50%. However, the Tribunal reduced the same to 45% and has awarded a disability compensation of Rs.90,000/- calculated at Rs.2,000/- per percentage of disability. The year of the accident is 2012. It is settled practice that if the year of the accident is 2012, the Court will have to assess the disability compensation at Rs.3,000/- per percentage of disability. Therefore, this Court is of the considered view that the assessment of disability compensation at Rs.2,000/- per percentage of disability is not a correct assessment and it has to be enhanced to Rs.3,000/- per percentage of disability. However, the percentage of disability assessed by the Tribunal at 45% is a correct assessment and the disability compensation to be awarded to the Appellant/claimant is assessed by this Court at Rs.1,35,000/- for 45% disability calculated at Rs.3,000/- per percentage of disability.



Accordingly, disability compensation awarded by the Tribunal at Rs.90,000/- is enhanced to Rs.1,35,000/- by this Court.

18. Insofar as the compensation awarded by the Tribunal at Rs.10,000/- towards extra nourishment, Rs.25,000/- towards pain and suffering, Rs.15,000/- towards loss of income during the period of treatment, Rs.22,402/- towards medical expenses and Rs.2,000/- towards damages to clothing and articles are concerned, the same is a just compensation which does not call for any interference in view of the fact that there is no documentary evidence placed by the Appellant to obtain additional compensation towards the said heads.

19. However, the Tribunal has awarded inadequate compensation towards transportation and attender charges and failed to award any compensation towards loss of amenities. Having sustained grievous injuries and having been hospitalised for two periods namely (a) between 17.01.2012 and 28.01.2012 and (b) between 31.01.2012 and 03.02.2012, as seen from the discharge summaries which were marked as exhibits before the Tribunal, the compensation towards transportation cost has to be enhanced to Rs.10,000/- from Rs.5,000/- and the attender charges will have to be enhanced to Rs.10,000/- from Rs.3,000/-. Since the Tribunal has not awarded any compensation towards loss of amenities, the same is awarded by this Court at Rs.10,000/-.

20. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award passed in MCOP.No.1954 of 2012 is enhanced from Rs.1,72,402/- to Rs.2,39,402/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Disability	90,000/-	1,35,000/-
Transportation	5,000/-	10,000/-
Extra Nourishment	10,000/-	10,000/-
Pain and Suffering	25,000/-	25,000/-
Loss of income	15,000/-	15,000/-
Medical Bills	22,402/-	22,402/-
Attender Charges	3,000/-	10,000/-



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Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Damages towards Clothing and Articles	2,000/-	2,000/-
Loss of amenities	---	10,000/-
Total	1,72,402/-	2,39,402/-

Conclusion:

21. In the result, CMA.No.3203 of 2014 is partly allowed by enhancing the compensation from Rs.4,39,400/- to Rs.9,80,900/- and CMA.No.3204 of 2014 is partly allowed by enhancing the compensation from Rs.1,72,402/- to Rs.2,39,402/-. However, the rate of interest fixed by the Tribunal at the rate of 7.5% 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.Nos.1953 & 1954 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 award amount as per the apportionment made by the Tribunal along with accrued interest lying to the credit of MCOP.Nos.1953 & 1954 of 2012 to the bank accounts of the respective Appellants/claimants through RTGS within a period of two weeks thereafter. No costs. The Appellants/claimants are directed to pay requisite court fee if any for the enhanced award amount before obtaining the Judgment copy. No costs.

Sd/-

Assistant Registrar(CS IX)

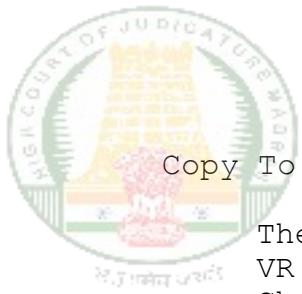
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Sub Assistant Registrar

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To

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



Copy To

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

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C.M.A.Nos.3203 & 3204 of 2014

RP (CO)
CS/23/08/2021