IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.20.07.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.562 of 2014

1. D.Gowri
2. Santhosh
3. Noresh
Petitioners 2 and 3 are minors represented by mother and next friend
4. G.Devaki ... Appellants

vs.

1.S.Senthilkumar
2.Royal Sundaram Alliance Insurance, Company Limited, No.6, L.G.Road, Soronto Building, Adyar, Chennai-600 020. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 08.11.2013 in MCOP.No.1902 of 2010 passed by the Motor Accident Claims Tribunal(Special Sub Judge-I) Chennai.

For Appellants	:	Mr.K.Varadha Kamaraj
For 2nd Respondent	:	Mr.R.Rajadurai for Mr.N.Vijayaragavan
1st Respondent	:	Ex-parte

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimants seeking enhancement of the compensation passed under the Impugned Award dated 08.11.2013 by the Motor Accident Claims Tribunal (Special Sub Judge-I), Chennai in MCOP.No.1902 of 2010.

Brief facts leading to the filing of the instant appeal are as follows:

2. A person by name Devadoss, died on 15.04.2010 in an accident, caused by a lorry, bearing Registration No. TN 22 AR 3745, owned by the first respondent and insured with the second respondent/Insurance Company. The accident happened when the deceased Devadoss was riding a Motor cycle bearing Registration No.TN.21 K 2045 on Vandalur Main Road and at that time, the lorry bearing Registration No. TN 22 AR 3745 driven by the driver, come from opposite direction, dashed against the motor-cycle. As a result of the said accident, the deceased sustained fatal injuries and he died.

3. The claimants are wife, two minor children and the mother of the deceased, who are the Appellants herein. They have preferred a claim before the Motor Accidents Claims Tribunal (Special Sub Judge-I), Chennai in MCOP No.1902 of 2010, seeking compensation for the death of Devadoss.

4. The Motor Accidents Claims Tribunal by its Award dated 08.11.2013 in MCOP No.1902 of 2010 directed the second respondent Insurance Company to pay a compensation of a sum of Rs.9,20,000/- to the claimants, together with interest and costs, as detailed hereunder:-

Sl.No.	Heads	Award
1	Pecuniary loss of income	8,10,000/-
2	Loss of Consortium	50,000/-
3	Loss of love and affection	50,000/-
4	Funeral expenses	10,000/-
	Total	9,20,000/-

5. The appellants, unsatisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal, seeking enhancement.

6. Heard Mr.P.Varadha Kamaraj, learned counsel for the Appellants / claimants and Mr.R.Rajadurai, learned counsel for the Second Respondent/Insurance Company. The first respondent has remained exparte both before the Tribunal as well as this Court.

7. Before the Tribunal, the claimants have filed 10 documents, which were marked as Ex.P1 to Ex.P10 and three witnesses were examined viz., PW1, the wife of the deceased; PW2- co-worker of the deceased and PW3 – eyewitness. On the side of the respondents, neither any witness was examined nor any document filed.

8. According to the Appellants/claimants, the income fixed by the Tribunal at Rs.6,000/- per month is too low and the tribunal ought to have fixed the income of the deceased at Rs.15,000/- per month based on the Employer's evidence (PW2), and as per the documentary evidences Exs.P6 and P7. It is also the contention of the appellants that the compensation awarded by the tribunal under various heads are also too low. It is also their case that the loss of future prospects has also not been granted. This Court has perused and examined the impugned award. The findings, as regards negligence of the driver of the insured vehicle has attained finality, since no appeal has been filed by the insurance company challenging the said findings.

9. The age and avocation of the deceased have not been disputed by the second respondent/insurance company before the tribunal as seen from the evidence available on record. The age of the deceased as well as the avocation are also proved through Ex.P4 and Ex.P7. The employer of the deceased, who was also examined as PW2, has deposed that the deceased was earning a sum of Rs.15,000/- per month at that time of the accident. Even though the employer has deposed that the deceased was earning Rs.15,000/- per month at the time of the accident, the tribunal was not satisfied with the deposition of the employer of the deceased and has fixed the monthly income of the deceased on notional basis at Rs.6,000/- per month. No contra evidence has been produced by the second respondent, as seen from the evidence available on record before the Tribunal to rebut the claim of the appellants that the deceased was earning a sum of Rs.15,000/- per month, at the time of the accident. The deceased was employed as a Tar plant operator at S.P.Builders, Pudhunellore Road, Somangalam, Chennai.

10. Considering the year of the accident and in view of the fact that no contra evidence has been produced by the second respondent/insurance company before the Tribunal to disprove the claim of the appellants, this Court is of the considered view that the notional monthly income of the deceased fixed by the tribunal at Rs.6,000/- is low. Being a Tar plant operator in the year 2010, the deceased would have definitely earned more than Rs.6000/- per month. Accordingly, this Court fixes the same at Rs.8,000/- instead of Rs.6,000/- fixed by the Tribunal. The tribunal, under the impugned award has also not awarded any compensation towards loss of future prospects, which the appellants/claimants are legally entitled to as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680. Accordingly, as per the aforesaid decision, the appellants/claimants are entitled to loss of future prospects at 40% over and above the monthly income of Rs.8,000/- assessed by this Court. The tribunal has rightly deducted 1/4th share towards personal expenses of the deceased, considering the fact that he

left behind four dependents, who are the appellants herein. The tribunal has also rightly applied the multiplier '15'. The compensation awarded by the tribunal towards loss of love and affection at Rs.50,000/- is also a just one, which is in accordance with the settled practice. However, the tribunal has awarded only a sum of Rs.10,000/- as compensation towards funeral expenses, which needs to be necessarily enhanced to Rs.15,000/- as per Pranay Shetty judgment referred to supra. The tribunal has also failed to award any compensation towards loss of estate, which the appellants are legally entitled to and accordingly, a sum of Rs.15,000/- is granted as compensation towards loss of estate to the appellants/claimants. But the tribunal has awarded a sum of Rs.50,000/- as loss of consortium which is not in accordance with Pranay Shetty judgment, which has fixed the same at Rs.40,000/-. Therefore, the loss of consortium awarded by the tribunal at Rs.50,000/- is reduced to Rs.40,000/- by this Court.

11. For the foregoing reasons, the compensation awarded by the tribunal under the impugned award to the appellants is enhanced in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary loss of income	8,10,000/-	15,12,000/- (Rs.8400X12X15)
Loss of Consortium	50,000/-	40,000/-
Loss of love and affection	50,000/-	50,000/-
Funeral expenses	10,000/-	15,000/-
Loss of estate	---	15,000/-
Total	9,20,000/-	16,32,000/-

Conclusion:

12. In the result, the appeal is partly allowed. 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 i.e, Rs.16,32,000/- along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.1902 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 share of the first and fourth Appellants as per the order of this Court through RTGS

within a period of four weeks thereafter. Since the second and third Appellants are minors, their respective share of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first Appellant once in three months. The claimants/appellants have to pay the required court fee, if any, for the enhanced compensation amount awarded by this Court. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(Special Sub Judge-I) Chennai.

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

C.M.A.No.562 of 2014

SSV(CO)
A.SK(28.10.2021)