

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.827 of 2014

1. C.Selvamani @ C. Mani
 2. M.Devika
 3. C. Radhakrishnan
 4. C.Dhanasekar
- ...Appellants/Petitioners

vs.

1. John Varkhase
 2. IFFCO-TOKIO General Insurance Company Ltd.,
Sahas embassy,
No.145/131, Ground Floor,
Nelson Manickam Road,
Mehta Nagar,
Chennai - 600 029.
- ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2013 in M.C.O.P.No.3433 of 2010 on the file of the IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.K.A. Ravindran
for
Mr.A.Shanmugaraj

For Respondents : Ms.K.Saraswathi for R2
R1- Exparte

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the appellants / claimants seeking enhancement of compensation under the impugned award dated 19.08.2013 passed by the learned IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai, in M.C.O.P.No.3433 of 2010.

2. A person by name, M.Chandran died on 30.09.2009 as a result of an accident caused by a vehicle owned by the first

respondent and insured with the second respondent. The appellants/ claimants are the legal heirs and dependants of the deceased. They preferred a claim before the Motor Accident Claims Tribunal (IV Judge, Small Causes Court), Chennai in M.C.O.P.No.3433 of 2010 seeking compensation for the death of M.Chandran.

3. The Motor Accident Claims Tribunal, (IV Judge, Small Causes Court), Chennai under the impugned award directed the respondents to pay the appellants / claimants a compensation of Rs.1,70,000/- together with interests and costs, as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary loss is calculated as Rs.2,000 x 12 x 5	1,20,000
Loss of love and affection to the petitioners	40000
Funeral expenses	10000
Total	1,70,000

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

5. Heard Mr.K.A.Ravindran, learned counsel for the appellants and Ms.K.Saraswathi, learned counsel for the second respondent. The first respondent remained ex-parte both before the Tribunal as well as before this Court.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Before the Tribunal, the appellants / claimants have filed ten documents which were marked as Exs.P1 to P10 and two witnesses were examined on their side viz., the daughter of the deceased M.Devaki as PW1 and an Eye witness to the accident P.Mani as PW2. On the side of the second respondent, one document was filed viz., the death certificate of the deceased M.Chandran, which was marked as Ex.R1 but no witness was examined on their side.

8. In the claim petition, the appellants / claimants have pleaded that the deceased M.Chandran was a Lodge Manager at Aishwarya Ajith Lodge, Kandanchavadi Chennai - 96, aged 65 years earning Rs.5,000/- p.m. at the time of the accident. However, the Tribunal has fixed the notional monthly income of the

deceased at Rs.3,000/-, since no documentary evidence was produced by the appellants/claimants in support of their contention that the deceased was earning Rs.5,000/-p.m., at the time of the accident. The year of the accident is 2009. No contra evidence has also been produced by the second respondent before the Tribunal to disprove the contention of the appellants / claimants that the deceased was a Lodge Manager. The Hon'ble Supreme Court in the case of Syed Sadiq etc. Versus the Divisional Manager, United India Insurance Company reported in (2014) 2 SCC 735 has fixed the notional monthly income of an accident victim, who was a vegetable vendor at Rs.6,500/- for an accident that happened in the year 2009. In the instant case, the deceased was aged 69 years, as seen from the Death certificate, which was marked as Ex.R1 before the Tribunal. Since, the deceased was an aged person and has crossed the period of retirement, the same yardstick as laid down by the decision of the Hon'ble Supreme Court in Syed Sadiq's case referred to supra cannot be applied in toto. However, this Court is of the considered view that the Tribunal ought to have accepted the pleadings of the appellants / claimants, who have pleaded that the deceased was earning Rs.5,000/-p.m. as a Lodge Manager, which is a reasonable sum. Accordingly, this Court fixes the notional monthly income of the deceased at Rs.5,000/- instead of Rs.3,000/- erroneously fixed by the Tribunal.

9. The appellants / claimants, who are the children of the deceased. As seen from the evidence available on record, they are dependants of the deceased at the time of the accident. Since, they are four in number, the Tribunal ought to have deducted $1/4^{\text{th}}$ towards personal expenses of the deceased but has erroneously deducted only $1/3^{\text{rd}}$. The multiplier adopted by the Tribunal is correct. Thus, the pecuniary loss is enhanced to Rs.2,25,000/- by this Court from Rs.1,20,000/- as assessed by the Tribunal. Accordingly, the same is modified by this Court, as detailed hereunder :-

$$\begin{aligned} &\text{Rs.5,000/- Less } 1/4^{\text{th}} = \text{Rs.3,750/-} \\ &\quad : \quad \text{Rs.3,750/-} \times 12 \times 5 = \text{Rs.2,25,000/-} \end{aligned}$$

10. The Tribunal has awarded a compensation of Rs.40,000/- towards loss of love and affection to the appellants / claimants, which in the considered view of this Court is a just compensation.

11. The Tribunal has erroneously awarded a meagre compensation of Rs.10,000/- towards funeral expenses, which has to be enhanced to Rs.15,000/- by this Court in accordance with the the decision in the Pranay Sethi's case referred to supra.

12. The Tribunal has erroneously failed to award any compensation towards loss of Estate which the appellants/claimants are legally entitled to as per Pranay

Sethi's Judgment. Accordingly, a sum of Rs.15,000/- is awarded by this Court as compensation to the appellants / claimants towards loss of Estate.

13. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pecuniary loss is calculated *Rs.3,000 - 1/3 = Rs.2,000 x 12 x 5 # Rs.5,000-1/4=Rs.3,750/- x 12 x 5	1,20,000 *	2,25,000 #
Loss of love and affection	40000	40000
Funeral expenses	10000	15000
Loss of Estate	-	15000
Total	1,70,000	2,95,000

14. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.1,70,000/- to Rs.2,95,000/- as indicated above. No costs.

15. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.3433 of 2010 on the file of the Motor Accident Claims Tribunal (IV Judge, Small Causes Court), Chennai, 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 award amount directly to the bank account of the appellants / claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellants/claimants before receiving the copy of this Judgment.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The IV Judge,
Small Causes Court
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
V.R. Section,
Madras High Court.

+1cc to Mr.A.Shanmugaraj, Advocate, sr no.30850
+1cc to Mr.C.R.Krishnamoorthy, Advocate, sr no.30634

C.M.A.No.827 of 2014

GP (CO)
RMP (10/06/2021)



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