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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.891 of 2014

1. Karpagam
2. Chitra Devi
3. Vinodha
4. Minor Manikandan
5. Minor Karthik

(Minor 4 & 5 are rep. By their next friend and mother, the first petitioner herein) ...Appellants/Petitioners

vs.

1. Ramu

2. K.Chidambaram

3. Roayl Sundaram Alliance Insurance Co. Ltd.,
Rep. By its Branch Manager,
No.21, Pattullos Road,
Chennai. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 05.11.2013 in MACTOP. No.17 of 2012 on the file of the Motor Accident Claims Tribunal (Principal District Judge) Karaikal.

For Appellants : Mr.U.Prasanna
For Mr.Sai Bharath

For Respondents : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan R3
R1 & R2 - served - no appearance

JUDGMENT

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

This appeal has been filed by the claimants seeking enhancement of compensation under the Impugned Award dated 05.11.2013 passed by the Motor Accident Claims Tribunal (Principal District Judge, Karaikal) in MCOP.No.17 of 2012.

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2. The appellants/claimants have preferred this appeal seeking enhancement of compensation on the ground that the compensation awarded by the Tribunal, is very meagre and it is not a just compensation.

3. A person by name Krishnamoorthy, died on 26.08.2011 as a result of an accident caused by a lorry bearing Registration No.TN 29 AX 5953, owned by the second respondent and insured with the appellant.

4. The appellants are the legal heirs of the deceased Krishnamoorthy. They preferred a claim before the Motor Accidents Claims Tribunal (Principal District Judge) Karaikal, in MCOP.No.17 of 2012 seeking compensation for the death of Krishnamoorthy.

5. The Motor Accidents Claims Tribunal, under the impugned award, directed the first and third respondents to pay the appellants/claimants a compensation of Rs.6,27,000/- together with interest and costs, as detailed hereunder:-

Sl.No.	Heads	Award
1	Loss of dependency	6,00,000/-
2	Funeral expenses	2,000/-
3	Loss of consortium	5,000/-
4	Loss of love & affection	20,000/-
	Total	6,27,000/-

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

7. Heard Mr.U.Prasanna, learned representing counsel for M/s.Sai Bharath, learned counsel for the Appellants / claimants and Mr.E.Rajadurai, learned representing counsel for Mr.N.Vijayaraghavan, learned counsel for the third respondent/Insurance Company and there is no representation on the side of the second and third Respondents.

8. Before the Tribunal, the claimants have filed eleven documents, which were marked as Ex.P1 to Ex.P11 and two witnesses were examined on their side viz., Mrs.Karpagam, wife of the deceased as PW1; Mr.Saravanan - an eyewitness to the accident as PW2. On the side of the respondents, neither any witness was examined nor any document filed before the Tribunal.

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9. Before the Tribunal, in the claim petition, the appellants/ claimants have pleaded that the deceased Krishnamoorthy was a Mason, aged 42 years and 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.5,000/-. Before the Tribunal, the appellants/claimants have also not filed any documentary evidence to prove their contention that the deceased was earning Rs.500/- per day.

10. The accident had happened in the year 2011. This Court is of the considered view that the Tribunal did not give due consideration to the year of the accident, while assessing the notional monthly income of the deceased. The learned counsel for the 3rd respondent/insurance company would rely upon the minimum wage notification issued under the Minimum Wages Act and would submit that the assessment made by the Tribunal is a correct assessment. According to them, as a Mason, the deceased would have earned only Rs.5,000/- per month as per the said notification. However, it is settled practice as followed by various decisions of the Hon'ble Supreme Court as well as the High Courts' that the year of the accident will have to be given due consideration for the assessment of the notional monthly income of the deceased. Accordingly, as per the settled practice, for the year 2011, the notional monthly income of the deceased will have to be fixed at Rs.6,500/- applying the decision of the Hon'ble Supreme Court in the case of Syed Sadiq and others vs. Divisional Manager, United India Insurance Co. Ltd reported in 2017 (2) TNMAC 609 (SC), wherein the Hon'ble Supreme Court fixed the notional monthly income of a vegetable vendor, at Rs.6,500/-, even for an accident that happened in the year 2009. In the case on hand, the accident had happened in the year 2011 and therefore, atleast, the same yardstick will have to be applied. Accordingly this Court fixes the notional monthly income of the deceased at Rs.6,500/-.

11. The Tribunal has failed to award 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 Sethi and Others reported in 2017 (16) SCC 680. The deceased was aged 42 years at the time of the accident. Considering the age of the deceased, the appellants/claimants are entitled to 25% towards loss of future prospects and accordingly, the same is awarded by this Court.

12. The Tribunal has erroneously deducted 2/3rd amount towards personal expenses of the deceased, which is not a correct deduction and the correct deduction is '3/4th ' since the appellants are five in number, as per the decision of the

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Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC).

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13. The Tribunal has also erroneously adopted '15' multiplier, which is not the correct multiplier to be adopted for a person aged 42 years. The correct multiplier to be adopted for a person aged 42 years is '14' multiplier. Accordingly, the same is modified by this Court. For the foregoing reasons, loss of dependency is enhanced from Rs.6,00,000/- to Rs.10,23,750/- (Rs.6,500/- +25% x ¾ x 12 x 14) by this Court.

14. The Tribunal has also awarded only a meagre compensation of Rs.2,000/- to the appellants/claimants towards funeral expenses which is enhanced to Rs.15,000/- by this Court in accordance with the decision of the Hon'ble Supreme Court in the case of Pranay Sethi referred to supra. Similarly, the Tribunal has also awarded a meagre compensation towards loss of consortium to the first appellant/first claimant, which is enhanced to Rs.40,000/- as per the decision of the Hon'ble Supreme Court in the case of Pranay Sethi referred to supra. Similarly, the Tribunal has also awarded a meagre compensation of Rs.20,000/- towards loss of love and affection to the appellants 2,3,4 and 5 which is enhanced to Rs.80,000/- calculated at Rs.20,000/- each, payable to the appellants 2,3,4 and 5 respectively.

15. The Tribunal has also erroneously failed to award any compensation towards loss of estate, which they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded towards loss of estate to the appellants/claimants.

16. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award to the appellants/claimants is enhanced in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	6,00,000/- (Rs.5,000x12x2/3x15)	10,23,750/- (Rs.6,500/- +25% x ¾ x 12 x 14)
Funeral expenses	2,000/-	15,000/-
Loss of consortium	5,000/-	40,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of love & affection	20,000/-	80,000/-
Loss of estate	.....	15,000/-
Total	6,27,000/-	11,73,750/-

Conclusion:

17. In the result, the appeal is partly allowed. No costs. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The third respondent/ Insurance Company is directed to deposit the modified award amount i.e, Rs.11,73,750/- along with interest and costs, after deducting the amount, if any, already deposited, to the credit of M.C.O.P.No.17 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 share of the Appellants 1 to 3/claimants as per the order of this Court through RTGS within a period of four weeks thereafter.

18. Insofar as the share of the respondents 4 and 5/minor claimants are concerned, the same shall be deposited in a fixed deposit in any one of the Nationalized Banks, till they attain the age of majority. Till such time, the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank. If the respondents 4 and 5/minor claimants have attained the age of majority, it is open to them to file a formal petition before the Tribunal to get their share of apportionment.

19. The claimants/appellants have to pay the required court fee, if any, for the enhanced compensation amount awarded by this Court.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
(Principal District Judge)
Karaikkal.

Copy to

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

+1cc to Mr.Sai Krishnan, Advocate, S.R.No.29825

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