

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.05.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CMA No. 184 of 2017

1 P.INDUMATHI

2 MINOR.M.ROKINI THAMARAI

3 S.LAKSHMI

(Minor 2nd Petitioner repy.by her
next friend P.Indumathi) ...Appellant/Petitioner

Vs

1 S.KESAVAN

2 THE CHOLAMANDALAM

MS GENERAL INSURANCE COMPANY LTD,
NO.2, 2ND FLOOR,
N.S.C.BOSE ROAD, CHENNAI-1.

...Respondents/Respondents

Prayer: This is an appeal filed under Section 173 of The Motor Vehicles Act, 1988, to enhance the awarded amount awarded by order dated 27.04.2015 made in MCOP. No.977 of 2013 on the file of the Motor Accident Claims Tribunal/ III, Additional District Court, Poonamalle.

For Appellants : Mr. K.Varadha Kamaraj

For Respondents : Mr. N.Vijayaraghavan for R2

ORDER

This appeal has been taken up for hearing with the consent of both parties. The respondent/insurer has communicated their consent, along with the consent of the counsel appearing on behalf of the claimants which they have obtained through digital mode, namely, Whatsapp messages. This court is satisfied with the consent expressed by both the sides through such digital mode, given the peculiar circumstances created by the pandemic- COVID19.

2.The appeal has been filed by the claimants seeking enhancement in the award from Rs.20,43,696/- with interest, for the death of Mr. S. Muthu Kumaran who was said to be earning Rs.12,711/- per month. The insurer submitted that the award may be justified since there is no single formula for

assessment, and that, as such, there was an unavoidable element of guess work in the estimation.

3.Be that as it may, this court, prima facie, feels that there is material to allow an enhancement. There is credible proof for the age, employment and possible income of the victim. The tribunal has chosen to award as per the assessment in the following table:

Heads	MACT Award
Income Considered	Rs.12,711/-
Deduction towards personal expenses	1/3
Future Prospects	0%
Multiplier	17
Loss of Dependency	Rs.17,28,696/-
Loss of Consortium	Rs.1,00,000/-
Loss of Estate	0
Funeral Expenses	Rs.15,000/-
Love & affection	Rs.2,00,000/-
Total	Rs.20,43,696/-

4.On a perusal of the said award, it is evident, that the multiplier should be 16 instead of 17, as fixed by the tribunal. Simultaneously, the claims tribunal has also wholly ignored the element of future prospects of the victim. The judgement of the Constitution Bench in National Insurance Co. Ltd. vs Pranay Sethi dated 31.10.2017 (SC), the Hon'ble Supreme Court has settled the law for adding future prospects vide age of victim, while assessing Just Compensation.

5.If such is the case, 40% of the accepted earning has to be added towards future prospects. Pecuniary loss would have to be enhanced. Adding other/ conventional heads as permitted in law, the award shall stand modified as follows:-

Heads	Enhanced Award
Income Considered	Rs.12,711/-
Deduction towards personal expenses	1/3
Future Prospects	40%
Multiplier	16
Loss of Dependency	Rs.22,77,811/-
Loss of Consortium	Rs.40,000/-
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Love & affection	Rs.50,000/-

Total

Rs.23,97,811/-
rounded off to Rs.
24,00,000/-

6.I am satisfied that the assessment of compensation on the admitted facts and permissible legal position would result in the appeal being allowed in part, as above. No other changes are called for.

7.In the result, the appeal shall stand allowed in part, enhancing the award from Rs.20,43,696/- with interest at 7.5% p.a from the date of filing the claim petition to Rs.24,00,000/- with interest 7.5% p.a from the date of filing the claim petition, payable by the insurer within two weeks from the date of receipt of this order by E-Mail.

8.The insurer shall deposit the difference in award amount of Rs.3,57,000/- with interest at 7.5% p.a. from the date of filing of the claim petition till the date of deposit, and upon such deposit the claimants shall be entitled to withdraw the same in the same proportion as awarded to them by the Claims Tribunal. No orders as to costs in this appeal.

Sd/-

Assistant Registrar(CO)

//True copy//

सत्यमेव जयते

Sub Assistant Registrar

KP

To

1.III Additional District Court, Poonamalle.

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

CMA No. 184 of 2017

SSV(CO)

GMV(27/04/2021)