

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2945 of 2014

1. Kamatchi
2. Minor S.Dilipkumar
3. Minor S.Monisha
(respondents 2 and 3 are rep.
By their natural guardian and
mother Kamatchi)
4. Sakkubai ... Appellants/Petitioner
vs.

1. A.Malarvizhi
2. Roayl Sundaram Alliance Insurance Co. Ltd.,
New No.3, old. No.2, 2nd Floor,
Khader Nawaz Khan Road,
Nungambakkam,
Chennai-6.
(1st respondent set ex-parte before the Tribunal.
Hence notice may be dispensed with)
...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.06.2013 made in MCOP. No.611 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge) Dharmapuri.

For Appellants : Mr.M.Sivakumar

For Respondents : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan R2
R1 - Ex-parte

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 28.06.2013 passed by the Motor Accident Claims Tribunal (Principal District Judge, Dharmapuri) in MCOP.No.611 of 2011.

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 Sivakumar, died on 12.07.2011 as a result of an accident caused by a lorry bearing Registration No.TN 23 AE 2657 owned by the first respondent and insured with the second respondent/insurance company.

4. The appellants are the dependents of the deceased Sivakumar. They preferred a claim before the Motor Accidents Claims Tribunal (Principal District Judge) Dharmapuri in MCOP.No.611 of 2011, seeking compensation for the death of Sivakumar.

5. The Motor Accidents Claims Tribunal, under the impugned award dated 28.06.2013, directed the second respondent/insurance company to pay the appellants/claimants a compensation of Rs.6,84,100/- together with interest and costs, as detailed hereunder:-

Sl.No.	Heads	Award
1	Loss of dependency	6,33,600/-
2	Funeral expenses	10,000/-
3	Damage	500/-
4	Loss of love & affection	30,000/-
5	Transportation	10,000/-
	Total	6,84,100/-

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

7. Heard Mr.M.Sivakumar learned counsel for the Appellants / claimants and Mr.E.Rajadurai, learned counsel representing Mr.N.Vijayaraghavan, learned counsel for the second respondent/ Insurance Company and there is no representation on the file of the first respondent.

8. Before the Tribunal, the claimants have filed eleven documents, which were marked as Ex.P1 to Ex.P9 and four witnesses were examined viz., Mrs.Kamatchi, wife of the deceased as PW1; Mr.Munusamy, who is the co-worker of the deceased as PW2 and Mr.Anbarasan and Mr.Prabhu, eyewitnesses to the accident, as PW3 and PW4. On the side of the respondents, neither any witness was examined nor any document filed before the Tribunal.

9. Before the Tribunal, in their claim petition, the appellants/ claimants have pleaded that the deceased Sivakumar was aged 34 years and was running a barber shop and was earning Rs.10,000/- per month, at the time of the accident. The appellants/claimants have not produced any documentary evidence to prove their contention that the deceased was earning Rs.10,000/- per day. Therefore, the Tribunal fixed the monthly income of the deceased on notional basis at Rs.4,500/-. The accident had happened in the year 2011. It is settled practice that for an accident of the year 2011, Courts fix the notional monthly income of the deceased at Rs.6,500/-, when no documentary evidence has been produced. Accordingly, this Court fixes the notional monthly income of the deceased at Rs.6,500/- instead of Rs.4,500/- fixed by the Tribunal.

10. The Tribunal has also failed to award any compensation to the appellants/claimants towards loss of future prospects, which they are legally entitled to as per the judgment 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 34 years at the time of the accident and accordingly, this Court awards 40% towards loss of future prospects to the appellants. The Tribunal has rightly deducted 1/4th amount towards personal expenses of the deceased, since the appellants/claimants are four in number. The Tribunal has also rightly adopted the correct multiplier of '16' in accordance with the judgment of the 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). For the foregoing reasons, the loss of dependency is enhanced by this Court from Rs.6,33,600/- to Rs.13,10,400/- $(6,500/- + 40\% \times 12 \times 16 \times \frac{3}{4})$.

11. The Tribunal has awarded a lesser compensation towards funeral expenses and loss of love and affection, which is enhanced to Rs.15,000/- and Rs.80,000/- respectively, in accordance with the judgment of the Hon'ble Supreme Court in the case of Pranay Shethi referred to supra. The Tribunal has erroneously awarded Rs.10,000/- towards transportation cost, which the appellants/claimants are not entitled to, since the claim is a fatal accident claim where the deceased died on the spot. Therefore, the said compensation is removed by this Court.

12. Similarly, the Tribunal has erroneously awarded a sum of Rs.5,000/- towards damages, which the appellants/claimants are not entitled to and therefore, the same is also removed by this court.

13. However, the Tribunal has not awarded any compensation to the appellants/claimants towards loss of estate, which they are legally entitled to, as per the decision of the Hon'ble Supreme Court in the case of Pranay Sethi judgment referred to

supra. As per the said judgment, this Court awards a compensation of Rs.15,000/- towards loss of estate to the appellants/claimants. The Tribunal has also failed to award any compensation towards loss of consortium to the first appellant/claimant, who is the wife of the deceased, in accordance with the decision of the Hon'ble Supreme Court in the case of Pranay Shethi judgment referred to supra. Accordingly, this Court awards a compensation of Rs.40,000/- towards loss of consortium to the first appellant/claimant, who is the wife of the deceased Sivakumar.

14. 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.)
Loss of dependency	6,33,600/-	13,10,400/-
Funeral expenses	10,000/-	15,000/-
Transportation	10,000/-	
Loss of love and affection	30,000/-	80,000/-
Damages	500/-	
Loss of estate		15,000/-
Loss of consortium		40,000/-
Total	6,84,100/-	14,60,400/-

Conclusion:

16. 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.14,60,400/- along with interest and costs, after deducting the amount, if any already deposited, to the credit of MCOP.No.611 of 2011, within a period of four weeks from the date of receipt of a copy of this Judgment.

17. On such deposit being made, the Tribunal is directed to transfer the share of the Appellants 1 & 4/claimants as per the order of this Court through RTGS within a period of four weeks thereafter. No costs.

18. Insofar as the share of the respondents 2 & 3/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 2 & 3/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. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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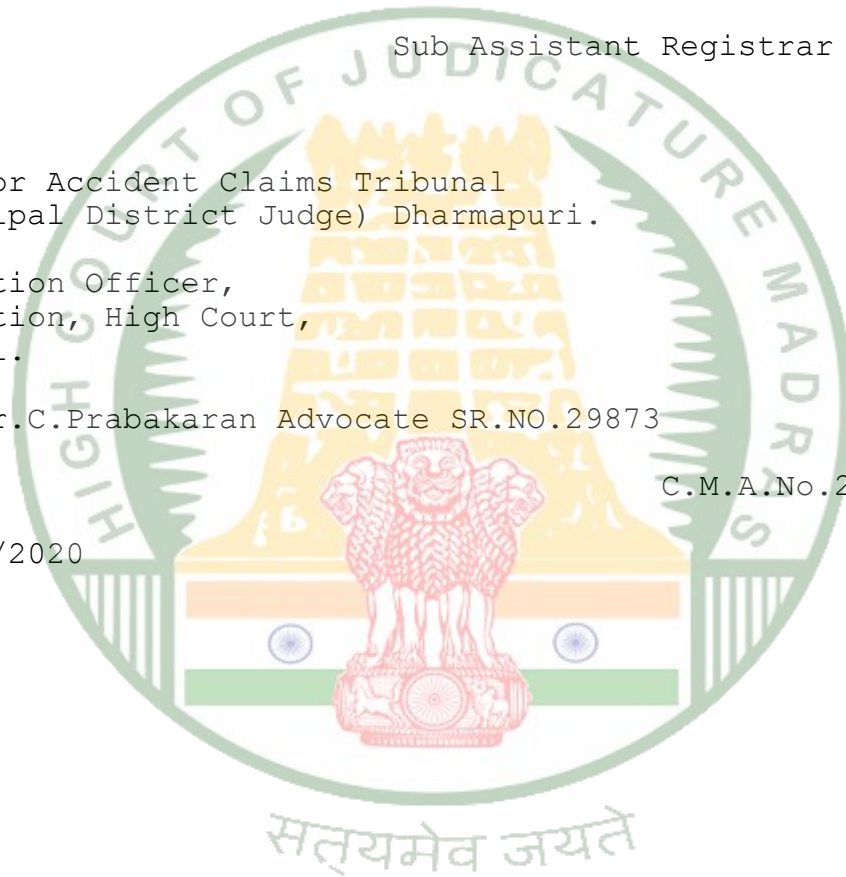
1.The Motor Accident Claims Tribunal
(Principal District Judge) Dharmapuri.

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

+1cc to Mr.C.Prabakaran Advocate SR.NO.29873

C.M.A.No.2945 of 2014

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