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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CMA NOS.1151 OF 2016 AND 1454 OF 2016

1. Yasodha
2. Veerabathiran

...Appellants in CMA No.1151 of 2016
/Petitioners

1. Kumari
2. Palani

...Appellants in CMA No.1454 of 2016
/Petitioners

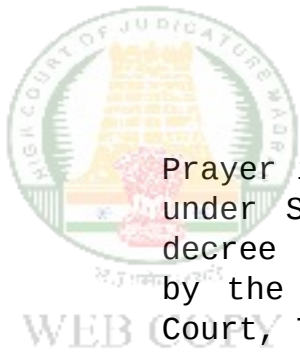
versus

1. M/s.Subiksha Travels,
No.10, Pillayar Koil Street,
Pudupedu Village,
Nandambakkam,
Chennai - 600 069.
(R1-Already set exparte in Lower Court)
(R2-Notice may be dispense with)

2. Bajaj Allianz Gen. Insurance Co. Ltd.,
No.25/26, Prince Towers,
4th Floor,
College Road,
Nungambakkam,
Chennai - 600 006.

...Respondents in both appeals/Respondents

Prayer in CMA No.1151 of 2016 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the order dated 04.02.2016 in MCOP No.864 of 2012 passed by the Motor Accident Claims Tribunal, III Additional District Court, Thiruvallur at Poonamallee.



Prayer in CMA No.1454 of 2016 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the decree and order dated 04.02.2016 in MCOP No.863 of 2012 passed by the Motor Accident Claims Tribunal, III Additional District Court, Thiruvallur at Poonamallee.

For Appellants in both appeals : Ms.Y.Jayanthi Baskar
for Mr.J.Mahalingam

For Respondents in both appeals : Mr.T.K.Premkumar for R2
R1 - Exparte

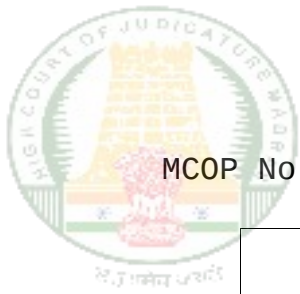
COMMON JUDGMENT

(Heard Video Conference)

These appeals have been filed by the claimants seeking enhancement of compensation under the impugned award dated 04.02.2016 passed by the Motor Accident Claims Tribunal, Additional District Judge- III, Poonamallee in MCOP Nos.863 and 864 of 2012.

2. Both these appeals pertain to the very same accident, which happened on 06.08.2012 caused by a van owned by the 1st respondent and insured with the 2nd respondent, which resulted in the death of P.Hariraj and Jagannathan. Since both these appeals arise out of the same accident and arise out of the same impugned common award, these appeals are disposed of by a common judgment.

3. The parents of the respective deceased have filed separate claims in MCOP Nos.863 and 864 of 2012 seeking for compensation. The Tribunal under the impugned award directed the second respondent / Insurance Company to pay the following compensation to the respective claimants as detailed hereunder :-



MCOP No.863 of 2012 corresponds to CMA No.1454 of 2016

Heads	Amount awarded by the Tribunal (Rs.)
Loss of pecuniary benefits Rs.5,000 x 12 x 16	9,60,000
Loss of love and affection to 1st and 2nd petitioners Rs.50,000/- each	1,00,000
Funeral expenses	25,000
Total	10,85,000

MCOP No.864 of 2012 corresponds to CMA No.1151 of 2016

Heads	Amount awarded by the Tribunal (Rs.)
Loss of pecuniary benefits Rs.10,000 x 12 x 16	19,20,000
Loss of love and affection to the 1st and 2nd petitioners Rs.50,000/- each	1,00,000
Funeral expenses	25,000
Total	20,45,000

4. In both the claims, the deceased were students. P. Hariraj was the deceased in the claim filed in MCOP No.863 of 2012 and he was aged 21years and Jaganathan was the deceased in the claim filed in MCOP No.864 of 2012 and he was aged 20 years at the time of the accident. Both the deceased were final year B.Com students at D.G. Vaishnav College, Chennai. P. Hariraj, the deceased was also a student of ICWA at the Institute of Chartered Accountants. Jagannathan was also a student of Chartered Accountant (Foundation course).

5. Heard Ms. Y.Jayanthi Baskar, learned counsel for the appellants / claimants and Mr.T.K.Premkumar, learned counsel for the second respondent / Insurance Company. R1 remained ex-parte



before the Tribunal, hence notice to him is dispensed with.

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 claimants have filed 57 documents which were marked as Exs.P1 to P57 and exhibits included several meritorious achievements of the respective deceased in academics, sports and other extra curricular activities.

8. The Tribunal has fixed the notional monthly income of the deceased P.Hariraj in MCOP No.863 of 2012 as Rs.10,000/-. The Tribunal has fixed the notional monthly income of the deceased Jaganathan in MCOP No.864 of 2012 at Rs.20,000/-. The accident happened on 06.08.2012. Both the deceased were final year students studying the same course in the same college and admittedly one of them by name Jaganathan was studying C.A. - Foundation course at the Institute of Chartered Accountants and the other by name P. Hariraj was studying ICWA at the Institute of Cost and Works Accountants, at the time of the accident. In both the cases, the respective appellants / claimants have filed documents before the Tribunal to establish their claim that the respective deceased had excelled in academics as well as in sports and other extra curricular activities. However, the Tribunal has fixed the notional monthly income for P.Hariraj, who is the deceased in MCOP No.863 of 2012 at Rs.10,000/- and for Jaganathan, the deceased in MCOP No.864 of 2012 at Rs.20,000/-. The difference between the notional monthly income fixed for Hariraj and Jaganathan is vast and this Court is of the considered view that considering the fact that both the deceased were B.Com final year students studying in the same college and was also preparing for similar type of course as one was studying for ICWA and the other was studying C.A. - Foundation course, the Tribunal ought to have fixed the notional monthly income for both of them on uniform basis. As seen from the documents filed as Exhibits before the Tribunal, it is not the case of the respective claimants that the respective deceased had represented the District, State or National level in any sport and no certificate has also been produced that they had got District, State or National level recognition for their excellence either in academics, sports or



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extra curricular activities. All the documents viz., the meritorious certificates pertain to certificates obtained while the deceased were studying in the 10th and 12th standard and nothing pertains to their proficiency during their college study. The accident happened in the year 2012. Though the students as seen from the documents filed as Exhibits may have excelled in academics as well as in sports and other extra curricular activities, they cannot be equated with persons, who excel in academics, sports and other extra curricular activities in the District, State or National level. Therefore, this Court is of the considered view that the fixation of the notional monthly income of the deceased by the Tribunal for Jaganathan, who is the deceased in MCOP No.864 of 2012 at Rs.20,000/- is on the higher side. After giving due consideration to the documents filed by the claimants before the Tribunal, which were marked as Exhibits, this Court is of the considered view that the notional monthly income of the deceased Jagannathan will have to be reduced to Rs.15,000/- instead of Rs.20,000/- fixed by the Tribunal which is on the higher side. As observed earlier there must be uniformity in assessment when both the deceased are students of similar age and were students of the same college and were also doing the same type of courses and both of them having filed similar certificates of proficiency before the Tribunal. Therefore, the notional monthly income of the deceased P.Hariraj, who is the deceased in MCOP No.863 of 2012 has to be fixed at Rs.15,000/- as is being fixed for the other deceased also by this Court.

9. Therefore, the notional monthly income of the deceased P. Hariraj in MCOP No.863 of 2012 has to be enhanced to Rs.15,000/- from Rs.10,000/- fixed by the Tribunal as it has to be uniform with that of Jagannathan, the other deceased whose notional monthly income is fixed by this Court also at Rs.15,000/-

10. The Tribunal has not awarded any compensation towards loss of future prospects to the respective claimants which they are legally entitled to as per the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680. Since, the respective deceased were aged 21 years and 20 years respectively and were students, the respective claimants are entitled to 40% towards loss of future prospects.



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11. The Tribunal under the impugned award has erroneously adopted 16 multiplier for the purpose of assessing the loss of dependency in respect of both the claims. In MCOP No.863 of 2012, the deceased P.Hariraj was aged 21 years and in MCOP No.864 of 2012, the deceased Jaganathan was aged 20 years. The correct multiplier to be adopted for both of them is 18 and not 16 as erroneously fixed by the Tribunal. Accordingly, this Courts adopts 18 multiplier.

12. The Tribunal has rightly deducted 50% towards the personal expenses of the respective deceased under the impugned award as both of them were bachelors and the same is confirmed by this Court.

13. In view of the re-assessment of the monthly notional monthly income of the respective deceased by this Court, the loss of dependency for the each of the deceased is calculated hereunder :

$$\begin{aligned} \text{Rs.15,000/-} + 40\% &= \text{Rs.21,000/-} \text{ Less } 50\% \times 12 \times 18 \\ &= \text{Rs.22,68,000/-} \end{aligned}$$

14. The Tribunal has awarded a compensation of Rs.1,00,000/- towards loss of love and affection calculated at Rs.50,000/- each for the parents. In a recent decision of the Hon'ble Supreme Court in the case of New India Assurance Co. Ltd., vs. Somwati and others reported in 2020 (9) SCC 644 held that the compensation for the parents of the deceased can be awarded only under the head "loss of Filial consortium".

15. In accordance with Pranay Sethi's case referred to supra, the appellants / claimants, who are the parents of the deceased, are each entitled to Rs.40,000/- towards loss of consortium. Since the Tribunal has awarded an excess compensation of Rs.1,00,000/- towards loss of love and affection, this Court reduces the same but grants the same under the head loss of Filial consortium at Rs.80,000/- instead of Rs.1,00,000/-. The loss of Filial consortium at Rs.80,000/- is applicable to the respective claimants in MCOP Nos.863 and 864 of 2012 .

16. The Tribunal has awarded a compensation of Rs.25,000/- towards funeral expenses to the respective claimants, which has to be necessarily reduced to Rs.15,000/- in



17. The Tribunal has erroneously failed to award any compensation towards loss of estate, which the respective claimants are legally entitled to as per Pranay Sethi's judgment referred to supra. In accordance with the said judgment, this Court fixes the compensation to the respective claimants under the head loss of estate at Rs.15,000/-.

19. For the foregoing reasons, the compensation award to the claimants to the respective claimants is enhanced in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency * Rs.5,000 x 12 x 16 # Rs.15,000/- + 40% = Rs.21,000/- Less 50% x 12 x 18	9,60,000 *	22,68,000 #
Loss of love and affection to 1st and 2nd petitioners **Rs.50,000/- each ## Rs.40,000/- each	1,00,000 **	80,000 ##
Funeral expenses	25,000	15,000
Loss of estate	-	15,000
Total	10,85,000	23,78,000



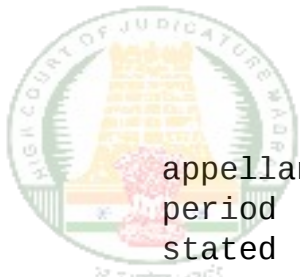
MCOP No.864 of 2012 corresponds to CMA No.1151 of 2016

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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of pecuniary benefits * Rs.10,000 x 12 x 16 # Rs.15,000/- + 40% = Rs.21,000/- Less 50% x 12 x 18	19,20,000 *	22,68,000 #
Loss of love and affection to the 1st and 2nd petitioners **Rs.50,000/- each ## Rs.40,000/- each	1,00,000 **	80,000 ##
Funeral expenses	25,000	15,000
Loss of estate	-	15,000
Total	20,45,000	23,78,000

20. In the result, the appeal filed by the appellants / claimants, in CMA No.1151 of 2016 stands partly allowed by enhancing the compensation from Rs.20,45,000/- to Rs.23,78,000/- as well as the appeal filed by the appellants / claimants in CMA No.1454 of 2016 stands partly allowed by enhancing the compensation from Rs.10,85,000/- to Rs.23,78,000/-, as indicated above. No costs.

21. The second respondent / Insurance Company in both appeals 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. Nos.863 and 864 of 2012 respectively on the file of the III Additional District Court, Motor Accident Claims Tribunal, Thiruvallur at Poonamallee, within a period of eight 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 accounts of the respective



appellants / claimants in both appeals, through RTGS, within a period of two weeks thereafter. On such deposit being made, as stated supra, the appellant / Insurance Company is permitted to recover the said sum from the insured in accordance with law. Necessary Court fee, if any has to be paid by the respective appellants / claimants in both appeals before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

vsi2

To

1. The III Additional District Judge,
Motor Accidents Claims Tribunal,
Thiruvallur at Poonamallee.
2. The Section Officer,
V.R. Section
High Court of Madras, Chennai - 104.

+1cc to Mr.T.K.Premkumar, Advocate, S.R.No.37334

CMA Nos.1151 of 2016 and 1454 of 2016

SR-II(CO)
RLP(09/11/2021)