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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1396 of 2016

1.A.Sulochana
2.A.Annamalai
3.A.Devika

... Appellants

Vs

1.P.Srinivasan
2.The United India Insurance Co. Ltd.,
Dr.Sankaran Road,
Namakkal

... Respondents

(R1 exparte before the Tribunal and hence, notice is dispensed to him)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgement and Award of the learned Motor Accident Claims Tribunal (Special District Judge Salem in MCOP.No.2247 of 2010 dated 18.04.2015.

For Appellant	: Ms.Prithivi for Mr.S.Kaithamalai Kumaran
For Respondent 1	: Not ready in notice
For Respondent 2	: Mr.M.J.Vijayaraghavan

JUDGMENT

This civil miscellaneous appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 18.04.2015 passed by the Motor Accident Claims Tribunal (Special District Judge, Salem) in MCOP.No.2247 of 2010.

2. Heard Ms.Prithivi, learned counsel representing Mr.S.Kaithamalai Kumaran, learned counsel for the Appellants/claimants and Mr.M.J.Vijayaraghavan, learned counsel for the second respondent Insurance Company. The first respondent has remained exparte both before the Tribunal as well as this Court.

3. The Appellants/claimants are the dependants of the deceased A.Sudhakar who died on 29.07.2010 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellants/claimants



unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this appeal seeking enhancement.

4. The details of the compensation awarded by the Tribunal to the Appellants/claimants are as follows:

Heads	Award Amount (Rs.)
Loss of dependency	10,36,800/- (12000-50% = 6000 x 12 = 72000 x 16 = 1152000 - 10%)
Loss of love and affection (for Appellants 1 & 2)	40,000/-
Loss of love and affection (for Appellant 3)	10,000/-
Funeral expenses	25,000/-
Total	11,11,800/-

5. The deceased A.Sudhakar was a diploma holder in automobile engineering and according to the Appellants/claimants, he was working in various concerns and the last employment offered to him was a Singapore based concern and before he could join the duty in Singapore concern, he met with an accident which resulted in his death.

6. Before the Tribunal, the Appellants/claimants have filed 10 documents which were marked as Ex.A1 to Ex.A10 and two witnesses were examined on their side namely the father of the deceased as PW1 and Selvam, an eye-witness to the accident as PW2. On the side of the second respondent Insurance Company, neither any document was filed nor any witness examined, before the Tribunal.

7. Ex.A8 & Ex.A9 are the salary certificates issued by the employers of the deceased. As per Ex.A8 which is dated 14.12.2009, the deceased was earning Rs.18,000/- per month and as per Ex.A9, which is dated 02.08.2010, the deceased was earning Rs.20,000/- per month. The accident happened on 29.07.2010. Ex.A10 is the appointment letter issued by Sami Engineering and Constructions Private Limited, Singapore by which the said concern has offered the deceased with employment in their concern and they have offered a sum of Singapore dollars 1700 as a monthly salary. However, in the claim petition filed by the Appellants/claimants before the Tribunal, excepting for pleading in the claim petition that the deceased was earning Rs.60,000/- per month as a technical engineer with Sami



Engineering and Constructions Private Limited, Singapore, the details of his past employment with other concerns namely the concerns mentioned in Ex.A8 & Ex.A9 have not been pleaded. Admittedly as seen from the evidence available on record, the deceased never joined employment with Sami Engineering and Constructions Private Limited, Singapore, but he was only offered employment by the said concern. However, the Appellants/claimants have pleaded that the deceased was earning Rs.60,000/- per month at the time of the accident. The employer of the deceased where he was employed as per Ex.A8 & Ex.A9 have also not been examined as witnesses before the Tribunal. The Tribunal has taken into consideration all these factors and after giving due consideration to the year of the accident and the qualification of the deceased, has fixed the notional monthly income of the deceased at Rs.12,000/- for an accident that happened on 29.07.2010. This Court does not find any infirmity in the said finding given by the Tribunal and therefore, the fixation of the notional monthly income of the deceased at Rs.12,000/- by the Tribunal is confirmed by this Court.

8. However, the Tribunal has erroneously failed to award any compensation towards loss of future prospects which the Appellants/claimants are legally entitled to as per the Constitutional Bench 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 obtained his diploma in automobile engineering in the year 2000 and his diploma certificate which has been recognised by the Government of India has also been marked as Ex.A7. Thereafter, the claim of the Appellants/claimants is that he was employed in various concerns and infact, they have filed two salary certificates one issued under Ex.A8 and other issued under Ex.A9. As seen from Ex.A8 & Ex.A9, the deceased was employed in the year 2009 as well as in the year 2010 when the accident happened. Having got his diploma in the year 2000, as an automobile engineer, it can be inferred that he would have been working continuously from 2000 onwards till the date of the accident. Therefore, it can be inferred that the deceased was a permanent employee and hence, the loss of future prospects has to be paid to the Appellants/claimants at 50% in accordance with Pranay Sethi's Judgment referred to supra, since the deceased was aged 31 years at the time of the accident and was in permanent employment.

9. The Tribunal has rightly deducted 50% towards personal expenses of the deceased and also rightly adopted 16 multiplier for assessing the loss of dependency of the deceased as the deceased was a bachelor and aged 31 years at the time of the accident.



10. The deduction of 10% towards income tax by the Tribunal under the impugned award is in accordance with the settled law and the same is hereby confirmed.

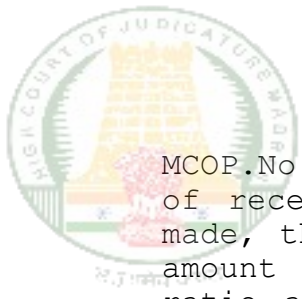
11. The compensation awarded by the Tribunal towards loss of love and affection to the Appellants 1 & 2 at Rs.40,000/- and towards loss of love and affection to the Appellant 3 at Rs.10,000/- is a just compensation and the same is hereby confirmed.

12. Even though the compensation towards loss of estate has not been granted under the impugned award which the Appellants/claimants are legally entitled to and the compensation awarded by the Tribunal towards Funeral expenses at Rs.25,000/- being excessive as under Pranay Sethi's judgment referred to supra, the Appellants/claimants are only entitled to Rs.15,000/-, this Court is therefore not granting any compensation to the Appellants/claimants towards loss of estate.

13. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.11,11,800/- to Rs.16,30,200/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency	10,36,800/- (12000-50% 6000 x 12 = 72000 x 16 = 1152000 - 10%)	15,55,200/- (12000 + 50% = 18000 - 50% = 9000 x 12 =108000 x 16 = 1728000 - 10%)
Loss of love and affection (for Appellants 1 & 2)	40,000/-	40,000/-
Loss of love and affection (for Appellant 3)	10,000/-	10,000/-
Funeral expenses	25,000/-	25,000/-
Total	11,11,800/-	16,30,200/-

14. In the result, this civil miscellaneous appeal is partly allowed. The second respondent Insurance company is directed to deposit the enhanced award amount, after deducting the amount already deposited if any, together with interest from the date of claim till the date of realisation and costs to the credit of



MCOP.No.2247 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the respective shares of award amount to the bank account of the Appellants/claimants in the ratio apportioned by the Tribunal through RTGS within a period of one week thereafter. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special District Judge,
Salem

2.The Record Section,
High Court of Madras

+lcc to Mr.S.Kaithamalai Kumaran,Advocate SR.No. 38356

C.M.A.No.1396 of 2016

SPD(CO)
A.SK(27.09.2021)