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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1412 OF 2016

1.A.Priya
2.Minor Yasha Shree
3.Minor Abhi Shree
(Appellants 2 & 3 are
represented by next friend
Guardian mother A.Priya)
4.Rajathi

... Appellants/Petitioners/Claimants

Vs

1. Sathishkuttan
2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Mettupalayam Road,
Coimbatore.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 03.02.2016 made in MCOP.No.232 of 2014 on the file of the Motor Accident Claims Tribunal cum Sub Court, Sathiyamangalam.

For Appellants : Mr.K.Sudhakar

For Respondent 2 : Mr.M.Arun

For R1 : Notice is dispensed with

JUDGMENT

(Heard through video conferencing)

This civil miscellaneous appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 03.02.2016 passed by the Motor Accident Claims Tribunal, (Sub Court, Sathiyamangalam) in MCOP.No.232 of 2014.



2. Heard Mr.K.Sudhakar, learned counsel for the Appellants and Mr.M.Arun, learned counsel for the second respondent. Since no adverse orders are going to be passed against the first respondent, notice to the first respondent is dispensed with by this Court.

3. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this appeal seeking for enhancement. The Tribunal under the impugned award directed the second respondent Transport Corporation to pay a compensation of Rs.5,36,000/- to the Appellants as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of dependency	3,06,000/- (6000 x 12 x 17 x $\frac{1}{4}$)
Loss of consortium	1,00,000/-
Loss of love and affection to the children (Claimants 2 & 3)	80,000/-
Loss of love and affection to the mother (Claimant 4)	25,000/-
Funeral expenses	25,000/-
Total	5,36,000/-

4. The accident happened on 24.05.2014 which resulted in the death of Ananthakumar. The Appellants/claimants are the wife, two children and his mother. The findings of the Tribunal as regards the cause of the accident has now attained finality as no appeal has been filed by the Transport Corporation. The only question that arises for consideration in this appeal is whether the quantum of compensation awarded by the Tribunal is a just compensation or not as the deceased Ananthakumar was a mason aged 30 years at the time of the accident. In the claim petition, the Appellants/claimants have pleaded that he was earning Rs.20,000/- per month at the time of the accident. However, since no documentary evidence was produced in support of monthly income of the deceased, the Tribunal has fixed the monthly income on notional basis at Rs.6,000/- per month. This Court is of the considered view that if the year of the accident was taken into consideration by the Tribunal, it ought to have fixed the monthly income of the deceased at a higher sum. After giving due consideration to the year of the accident, this Court fixes the monthly income of the deceased at Rs.7,000/- instead of Rs.6,000/- fixed by the Tribunal.



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5. The Tribunal has also failed to award any compensation towards loss of future prospects which the Appellants/claimants are legally entitled to as per the Judgment of the Hon'ble Supreme Court in the case of National Insurance Company vs. Pranay Sethi & others reported in (2017) 16 SCC 680. Since the deceased was aged 30 years and was a mason and in accordance with Pranay Sethi's Judgment referred to supra, this Court fixes the compensation towards loss of future prospects of the Appellants/claimants at 40%.

6. It was also brought to the notice of this Court by the learned counsel for the Appellants that there was a calculation mistake while calculating the loss of dependency. The Tribunal while calculating the compensation towards loss of dependency has erroneously multiplied $1/4^{\text{th}}$ towards personal expenses of the deceased instead of deducting $1/4^{\text{th}}$. If $1/4^{\text{th}}$ was correctly deducted, the Tribunal ought to have fixed the compensation towards loss of dependency at Rs.9,18,000/-. Since this Court has enhanced the notional monthly income of the deceased at Rs.7,000/-, the loss of dependency is assessed by this Court at Rs.14,99,400/- as detailed hereunder:

$$(7000 + 40\% = 9800 \times 12 \times 17 - \frac{1}{4} = 14,99,400/-)$$

7. The Tribunal has awarded a compensation of Rs.1,00,000/- towards loss of consortium to the first Appellant/wife of the deceased which in the considered view of this Court is excessive and not in accordance with Pranay Sethi's Judgment referred to supra. This Court in accordance with the said judgment, reduces the compensation towards loss of consortium to the first Appellant/wife of the deceased to Rs.40,000/- instead of Rs.1,00,000/- erroneously fixed by the Tribunal.

8. However, the Tribunal has awarded a correct compensation to the children of the deceased namely the second and third Appellants at Rs.40,000/- each totally amounting to Rs.80,000/- and the same is confirmed by this court.

9. However, the Tribunal has awarded a lesser compensation to the mother of the deceased who is the fourth Appellant at Rs.25,000/- which has to be enhanced to Rs.40,000/- by this Court in accordance with the settled law. Accordingly, the compensation towards loss of love and affection to the fourth Appellant/mother of the deceased is enhanced to Rs.40,000/- by this Court.

10. The Tribunal has awarded a higher compensation towards funeral expenses of the deceased at Rs.25,000/- which is not in accordance with Pranay Sethi's Judgment referred to supra. This Court reduces the same to Rs.15,000/- in accordance with Pranay Sethi's judgment referred to supra, from Rs.25,000/- fixed by the Tribunal.



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11. The Tribunal has erroneously failed to award any compensation towards loss of estate which the Appellants/claimants are legally entitled to as per Pranay Sethi's Judgment referred to supra. Accordingly, this Court awards a compensation of Rs.15,000/- towards loss of estate to the Appellants/claimants.

12. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.5,36,000/- to Rs.16,89,400/- in the following manner:

Heads	Amount awarded by this court (Rs.)	Amount awarded by the Tribunal (Rs.)
Loss of dependency	3,06,000/- (6000 x 12 x 17 x $\frac{1}{4}$)	14,99,400/- (7000 x 12 x 17 x $\frac{1}{4}$)
Loss of consortium	1,00,000/-	40,000/-
Loss of love and affection to the children (Claimants 2 & 3)	80,000/-	80,000/-
Loss of love and affection to the mother (Claimant 4)	25,000/-	40,000/-
Funeral expenses	25,000/-	15,000/-
Loss of estate	--	15,000/-
Total	5,36,000/-	16,89,400/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the award amount from Rs.5,36,000/- to Rs.16,89,400/-. The second respondent Transport Corporation is directed to deposit the modified award amount of Rs.16,89,400/- after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.232 of 2014 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 lying to the credit of MCOP.No.232 of 2014 to the bank account of the Appellants 1 & 4 /claimants 1 & 4 through RTGS as per the ratio apportioned by the Tribunal within a period of one week thereafter. Since the Appellants 2 & 3 are minors their respective shares of award amount shall be deposited in interest bearing fixed deposit in any one of the Nationalised Banks till they attain the age of majority. Till they attain the age of



majority, the first Appellant/the mother of the minors shall be permitted to withdraw the interest accrued once in six months for the welfare of the minors. If the minors attain the age of majority, it is open for them to file a formal petition to declare them as major. No costs.

Sd/-
Assistant Registrar(CS-I)

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Sub Assistant Registrar

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To

1. The Subordinate Judge,
The Motor Accident Claims Tribunal,
Sathiyamangalam.
2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.K.Sudhakar, Advocate, S.R.No.39899

C.M.A.No.1412 of 2016

SSD(CO)
RLP(28/10/2021)