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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1494 of 2016

1.Yasmeen

2.M.Shereen Farhana (minor)

Represented by 1st petitioner mother and N.F.

3.M.Gulnar Bagum

4.A.Mohamed Ali

...Appellants/Petitioners

Vs

1.R.Loganathan

(Remained ex-parte before the Trial Court)

2.United India Insurance Co. Ltd.,

No.70, N.S.C., Bose Road, 3rd Floor,

Chennai - 600 079.

...Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.03.2016 MACT.O.P.No.1559 of 2010 on the file of the Special Sub Judge-I, (Motor Accident Claims Tribunal), Chennai.

For Appellants

: Mr.R.Kalai Arasan

For Respondents

: R1 - Exparte before Tribunal

Mr.P.Sankara Narayanan for R2

J U D G M E N T

This appeal has been filed by the claimants seeking for enhancement of compensation under the impugned Award dated 23.03.2016 passed by the Motor Accident Claims Tribunal, Special Sub Judge-I to deal with MCOP Cases, Chennai in MCOP.No.1559 of 2010.

2.The Tribunal under the impugned Award directed the second respondent Insurance Company to pay the Appellants/claimants a compensation of Rs.15,32,500/- as detailed hereunder:



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Particulars	Award Amount
Loss of financial dependency to the family	Rs.11,47,500
Compensation for consortium to 1st petitioner	Rs.1,00,000
Loss of love and affection to 2nd petitioner	Rs.1,00,000
Loss of love and affection to 3rd and 4th petitioners (Rs.75,000/- each to petitioners 3 and 4)	Rs.1,50,000
Funeral and Ritual expenses	Rs.25,000
Loss of estate	Rs.10,000
Total	Rs.15,32,500

3.The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this appeal seeking for enhancement.

4.Heard Mr.R.Kalai Arasan, learned counsel for the Appellants and Mr.P.Sankara Narayanan, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

5.This Court has perused and examined the impugned Award as well as materials and evidence available on record before the Tribunal.

6.The deceased Samsudeen was aged 26 years at the time of the accident. The deceased was working as a Sales Executive with M/s.Manasarovar Automobiles, Chennai - 42 and his salary certificate was marked as Ex.P6 before the Tribunal. PW3, who is an Officer with M/s.Manasarovar Automobiles, the employer of the deceased has confirmed that Ex.P6 (salary certificate) is a genuine document and that the deceased was earning Rs.12,500/- per month at the time of the accident. However, the Tribunal fixed the monthly income of the deceased only at Rs.5,000/-.

7.The deceased was an employee of M/s.Manasarovar Automobiles only few days prior to the date of the accident as seen from the evidence available on record. Hence, the Appellants/claimants cannot seek for a direction to fix the monthly income of the deceased at Rs.12,500/-. However, this Court is of the considered view that the monthly income of the



deceased fixed by the Tribunal at Rs.5,000/- is too low which has to be necessarily enhanced in view of nature of the avocation of the deceased who was a Sales Executive with M/s.Manasarovar Automobiles, Chennai - 42 and was earning Rs.12,500/- per month at the time of the accident.

8.This Court after giving due consideration to the nature of avocation of the deceased and his salary certificate which has been marked as Ex.P6 and period of his employment with M/s.Manasarovar Automobiles is of the considered view that his monthly income will have to be fixed at Rs.10,000/- instead of Rs.5,000/- fixed by the Tribunal. Accordingly, this Court fixes the monthly income of the deceased at Rs.10,000/-.

9.The Tribunal under the impugned Award has granted 50% to the Appellants\claimants towards loss of future prospects. Since the deceased Samsudeen was not a permanent employee of Manasarovar Automobiles, 50% loss of future prospects ought not to have been awarded by the Tribunal. In accordance with the settled law, whenever the deceased is not in permanent employment, the loss of future prospects will have to be fixed only at 40% and not at 50%. Hence, the same is modified by this Court and the loss of future prospects is fixed at 40% instead of 50% fixed by the Tribunal.

10.The Tribunal has rightly deducted $\frac{1}{4}$ th towards the personal expenses of the deceased. The Tribunal has rightly adopted the correct multiplier of 17, since the deceased was 26 years at the time of the accident. However, in view of enhancement of the monthly income of the deceased from Rs.5,000/- to Rs.10,000/- and the reduction of loss of future prospects from 50% to 40%, the loss of pecuniary benefits and loss of estate to the deceased is enhanced from Rs.11,47,500/- fixed by the Tribunal to Rs.21,42,000/- ($\text{Rs.10,000/-} + 40\% = \text{Rs.14,000} - \frac{1}{4} = \text{Rs.10,500} \times 12 \times 17$) by this Court.

11.The Tribunal has erroneously awarded a higher compensation of Rs.2,50,000/- towards loss of love and affection which is not in accordance with the settled law. The first Appellant is the wife of the deceased; 2nd Appellant is the minor daughter of the deceased; and the 3rd & 4th Appellants are the parents of the deceased. The compensation towards loss of love and affection is therefore reduced from Rs.2,50,000/- to



Rs.1,20,000/- . (calculated at Rs.40,000/- each to the Appellants/claimants 2, 3 and 4).

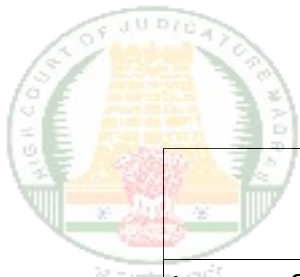
12.The Tribunal has also erroneously awarded a higher compensation towards loss of consortium to the first Appellant, who is the wife of the deceased at Rs.1,00,000/- . The same will have to be reduced to Rs.40,000/- by this Court as per the settled law. Accordingly, the same is reduced to Rs.40,000/- .

13.The Tribunal has also awarded a higher compensation towards funeral expenses at Rs.25,000/- which is in not accordance with the settled law. As per the settled law, the maximum compensation payable towards funeral expenses is Rs.15,000/- . Accordingly, this Court reduces the compensation towards funeral expenses from Rs.25,000/- to Rs.15,000/- .

14.The Tribunal has also awarded a lesser compensation towards loss of estate of the deceased at Rs.10,000/- which has to be enhanced to Rs.15,000/- in accordance with the settled law. Accordingly, this Court enhances the compensation towards loss of estate to Rs.15,000/- from Rs.10,000/- .

15.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.15,32,000/- to Rs.23,32,000/- by this Court as detailed hereunder:

Particulars	Award Amount	Enhanced / modified amount
Loss of financial dependency to the family	Rs.11,47,500	Rs.21,42,000
Compensation for consortium to 1st petitioner	Rs.1,00,000	Rs.40,000
Loss of love and affection to 2nd petitioner	Rs.1,00,000	-
Loss of love and affection to 2nd, 3rd and 4th petitioners	Rs.1,50,000	Rs.1,20,000 (Rs.40,000/- each to petitioners 2, 3 and 4)
Funeral and Ritual expenses	Rs.25,000	Rs.15,000



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Particulars	Award Amount	Enhanced / modified amount
Loss of estate	Rs.10,000	Rs.15,000
Total	Rs.15,32,500	Rs.23,32,000

16. In the result, the appeal is partly allowed. The second respondent Insurance Company is directed to deposit the modified amount awarded by this Court together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit after deducting the amount already deposited if any to the credit MCOP.No.1559 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 lying to the credit of MCOP.No.1559 of 2010 to the bank account of the major Appellants/claimants 1, 3 and 4 as per the ratio apportioned through RTGS, within a period of one week thereafter. Since the second Appellant is a minor, her share of the award amount shall be deposited in interest bearing fixed deposit in any one of the Nationalised Banks, till she attains the age of majority. If the minor Appellant has attained the age of majority, it is open to her to file a formal petition before the Tribunal to get her share of apportionment. The requisite Court fee, if any has to be paid by the Appellants/claimants before receiving the copy of this Judgment. No costs.

Sd/-

Assistant Registrar (CS-VIII)

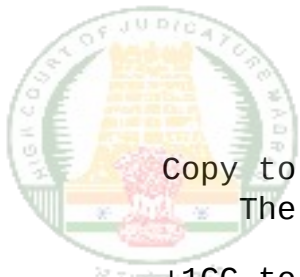
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Sub Assistant Registrar

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To.

The Special Subordinate Judge-I,
Motor Accident Claims Tribunal,
Chennai.



Copy to

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

+1CC to M/s.N.M.Muthurajan, Advocate, SR.No. 25371

+1CC to Mr.P.Sankara Narayanan, Advocate, SR.No. 25156

C.M.A.No.1494 of 2016

KK(CO)

B.VC (13/09/2021)