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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2628 of 2013

1. N. Dhanalakshmi

2. Minor Aswini

3. Manoranjitham

...Appellants/Claimants

Minor represented by
next friend

N.Dhanalakshmi

W/o.(Late) Narayanan

Vs.

1. P. Ponnurangam

2. The Branch Manager,
Oriental Insurance company Limited,
Branch Office, Jambu Bala Complex,
29-B, Market Road, Vellore-4.

...Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 01.04.2011 passed in MCOP No.708 of 2004 by the Principal District Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellants : Mr.Mukund R.Pandiyan

For II respondent : Mrs. R.Sreevidhya

For R1 : Notice Unserved

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants are before this court to enhance the compensation.

2. The appellants/ claimants have filed a claim petition before the Tribunal seeking compensation of Rs.12,00,000/- for the death of one Narayanan, husband of the first claimant,



father of the second claimant and the son of the third claimant, in a road accident that took place on 26.04.2002.

3. The brief case of the claimants is as follows: On 26.04.2002 at midnight, after attending a conference of Pattali Makkal Katchi, the deceased Narayanan was driving a car bearing registration No.TN-29-Q-9320 along Mahabalipuram - Hosur Road and in that car one Ramesh and Padmavathi were travelled as passengers. While the car was nearing M.C.Road at Pallikondai, a speedy mini lorry bearing registration No.KA-04-A-2706 dashed against the car, due to which he sustained grievous injuries. The contention of the claimants is that the deceased was immediately admitted to Government Hospital, Vellore and then admitted to CMC Hospital, Vellore. Subsequently, he was admitted to NIMHANS Hospital, Bangalore and finally he was admitted in Government Hospital, Hosur and on 09.08.2002 he died, despite various operations and prolonged treatment. According to the claimants, the rash and negligent driving of the driver of the Mini lorry was the cause of accident, and since the first respondent insured his vehicle with the second respondent, both of them are liable to pay compensation to them.

4. The second respondent/ Insurance Company resisted the claim petition by filing counter affidavit.

5. Before Tribunal, on the side of the claimants, the first claimant and one another witness were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P13 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.6,05,490/- as compensation to the claimants under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency (4,000 -1/3 x 12x15)	4,80,000
2	Loss of consortium to the first claimant	6,000
3	Loss of estate	10,000
4	Attender's charges	3,000
5	Transportation charges	3,000
6	Funeral expenses	3,000
7	Medical bills	1,00,490
	Total	6,05,490



Not satisfied with the quantum of compensation, the claimants have filed the present appeal for enhancement of compensation.

7. Heard the learned counsel for the appellants and the learned counsel for the second respondent and I have perused the materials on record.

8. The learned counsel appearing for the appellants/claimants submitted that though the PW1 has given evidence that her husband was working as a driver and was earning a sum of Rs.6,000/- with duty batta, the Tribunal has fixed only a sum of Rs.4,000/- as monthly income and awarded a sum of 4,80,000/- towards " Loss of dependency". He further submitted that as per the decision of the Honourable Supreme court, Future Prospects should be added to the income of the deceased and that the compensation awarded under the other heads are also very meagre and hence, he prayed for enhancement of compensation.

9. The learned counsel appearing for the second respondent/insurance company submitted that no proof of income has been filed to prove that the deceased was earning a sum of Rs.6,000/- as monthly income and hence the Tribunal has rightly fixed the monthly income of the deceased as Rs.4,000/-. He also submitted that the compensation awarded under the other heads are also just and reasonable and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the points for determination is

- (i) Whether the compensation awarded by the Tribunal has to be enhanced.?

11. Point No.1:

The claimants have stated in their claim petition that the deceased was earning a sum of Rs.6,000/- as monthly income. But, to prove the income of the deceased, no documentary evidence was adduced before the Tribunal. At the time of accident, the claimant was aged 38 years. Therefore, taking into account the age of the deceased and the date of accident, the Tribunal has rightly fixed the monthly income as Rs.4,000/-. As per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects and hence the monthly income of the deceased is fixed at Rs.5,600/- ($4000 + 1600 = 5600$). Since the age of the deceased was 38 years on the date of accident, proper multiplier to be adopted in the instant case is ' 15 '. After deducting $\frac{1}{3}$ of income towards personal expenses of the deceased, "Loss of dependency" is fixed at Rs.6,72,000/- ($5,600 - \frac{1}{3} \times 12 \times 8$) Rs.6,71,400/- rounded off to Rs.6,72,000. In addition to that, the first claimant is



entitled to Rs.40,000/- towards " Loss of Consortium " and the second claimant (minor daughter) and the third claimant (mother) are entitled to Rs.40,000/- and Rs.20,000/- towards " Loss of love and affection ". Besides, a sum of Rs.15,000/- each is awarded towards "Loss of Estate" and "Funeral Expenses" respectively and a sum of Rs.12,000/- is awarded towards " Transportation charges" for three months during the treatment period. The compensation awarded under the heads "Attender's charges" and "Medical Bills" do not warrant any interference by this court. Accordingly, the modified compensation awarded by this court under various heads are extracted here under.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/Awarded by this court
1	Loss of dependency	4,80,000 (4,000-1/3x 12x15)	6,72,000 [4000+40%-1/3x 12x15 6,71,400 rounded off to Rs.6,72,000]
2	Loss of consortium to the first claimant	6,000	40,000
3	Loss of Love and affection to the second claimant	-	40,000
4	Loss of love and affection to the third claimant	-	20,000
5	Loss of estate	10,000	15,000
6	Attender's charges during the treatment period	3,000	12,000 (4000x3)
7	Transportation charges	3,000	3,000
8	Funeral expenses	3,000	15,000
9	Medical bills	1,00,490	1,00,490
	Total	6,05,490	9,17,490

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.



12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.6,05,490/- to Rs.9,17,490/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the enhanced compensation of Rs.9,17,490/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

2. The Section Officer,
V R Section,
High Court,
Madras.

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.10515

CMA. No.2628 of 2013

SR(CO)
RGA(12/10/2021)