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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1856 OF 2016

1. Rethinam
2. Lakshmi
3. Karpukarasan
4. Karpagavalli

... Appellants/Petitioners

.Vs.

1. Nagamuthu
2. K.Veerasamy
3. Cholamandalam MS General Insurance Company Ltd.,
No.1, Rashmi Towers,
Village Road, Nungambakkam,
Chennai - 34.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 07.04.2016 made in M.C.O.P.No.109 of 2014 on the file of the Motor Accidents Claims Tribunal, District Judge at Karaikal.

For Appellants : Mr.Poovendra Perumal

For R-3 : Mr.Michael Visuvasam

R-1 & R-2 : Exparte

J U D G M E N T

(This Appeal has been taken up for hearing through Video Conferencing)

This Civil Miscellaneous Appeal has been filed by the Appellants/Claimants seeking enhancement of compensation under the impugned award dated 07.04.2016 passed by the Motor Accident Claims Tribunal, District Judge at Karaikal in MCOP No.109 of 2014.



2. Heard Mr.Poovendra Perumal, learned counsel for the Appellants/Claimants and Mr.Michael Visuvasam, learned counsel for the Third respondent/Insurance Company. Notice to the respondents 1 and 2 is dispensed with, in view of the fact that both of them were set exparte before the Tribunal.

3. The Appellants/claimants, unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this Appeal seeking for enhancement. The details of the compensation awarded by the Tribunal to the Appellants/Claimants are as follows :

Heads	Award Amount (Rs.)
Pecuniary loss	2,43,000/-
Loss of love & affection to appellants 2 to 4	30,000/-
Loss of consortium to the 1 st appellant	10,000/-
Funeral expenses	10,000/-
Total	2,93,000/-

4. The Appellants/Claimants are the husband, two daughters and son of the deceased Peramathal who died on 14.03.2014 as a result of an accident caused by a vehicle insured with the 3rd respondent. In the claim petition, the appellants/claimants have pleaded that at the time of accident, the deceased was selling fish to a wholesale company and was earning a sum of Rs.30,000/- per month. The appellants/claimants have also pleaded that the deceased was aged 59 years at the time of accident.

5. Before the Tribunal, the appellants/claimants have filed thirteen documents which were marked as Exs.P1 to P13 and four witnesses were examined on their side namely the first appellant/first claimant who is the husband of the deceased as PW1, Mrs.Ganga, the co-passenger of the goods vehicle who is also a fish vendor as PW2, Mr.Peramasamy, the whole sale sub-agent for the sale of fish as PW3 and Mr.Ramachandran, the member of the Village Panchayat to which the deceased belongs to, as PW4. On the side of the third respondent, neither any document was filed nor any witness examined before the Tribunal. PW3 and PW4 have supported the contention of the appellants/claimants that the deceased was earning Rs.30,000/- per month as a fish vendor. However, the Tribunal has fixed the monthly income of the deceased at Rs.4,500/-. The accident happened on 14.03.2014. When the appellants/claimants have adduced oral



evidence through PW3 and PW4 to support their contentions and when no oral or documentary evidence has been produced by the respondents before the Tribunal and in view of the fact that the accident happened in the year 2014, fixation of the notional monthly income of the deceased at Rs.4,500/- is low, in the considered view of this Court.

6. Taking into consideration the aforementioned factors, including the deposition of PW3 and PW4, this Court is of the considered view that the notional monthly income of the deceased at the time of accident will have to be enhanced to Rs.10,000/- instead of Rs.4,500/- fixed by the Tribunal. The Tribunal has erroneously deducted 50% towards personal expenses of the deceased. Since the dependents are four in number, namely husband and three children, the Tribunal ought to have deducted $\frac{1}{4}^{\text{th}}$ towards personal expenses but instead has erroneously deducted 50%. Hence, this Court modifies the deduction as $\frac{1}{4}^{\text{th}}$ instead of 50%, erroneously deducted by the Tribunal. The deceased was aged 60 years at the time of accident as per Post-mortem certificate which was marked as Ex.P2 before the Tribunal. The Tribunal has rightly adopted multiplier of 9 which is confirmed by this Court. However, the Tribunal has failed to award any compensation to the appellants/claimants towards loss of future prospects which they are legally entitled to as per settled law. Since the deceased was aged 60 years at the time of accident, in accordance with the decision of the Hon'ble Supreme in the case of `National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680, the appellants/claimants are entitled to 10% towards loss of future prospects. Accordingly, the same is awarded by this Court. Hence, the loss of pecuniary benefits awarded by the Tribunal under the impugned award is enhanced to Rs.8,91,000/- from Rs.2,43,000/-, as detailed hereunder -

$$\text{Rs.10000} + 1000 \quad (10\% \text{ of } 10000) \times 12 \times \frac{3}{4} \times 9 =$$

Rs.8,91,000/-

7. With regard to the compensation awarded by the Tribunal under various other heads namely loss of love & affection, loss of consortium, and funeral expenses are concerned, the same are not in accordance with Pranay Shethi judgment referred to supra. In accordance with the said judgment, the first appellant/claimant who is the husband of the deceased is entitled to a sum of Rs.40,000/- and therefore, this Court is enhancing the compensation towards loss of consortium from Rs.10,000/- to Rs.40,000/-. With regard to the loss of love & affection awarded by the Tribunal to appellants 2 to 4 is concerned, the same is also on the lower side which will have to be enhanced to Rs.1,20,000/- from Rs.30,000/- in view of the fact that the appellants 2, 3 & 4 are the children of the



deceased, each entitled for Rs.40,000/-. Similarly, the Tribunal has awarded only compensation of Rs.10,000/- towards funeral expenses which is low and the same has to be increased to Rs.15,000/- in accordance with Pranay Shethi judgment referred to supra. Accordingly, the compensation towards funeral expenses is enhanced to Rs.15,000/- by this Court. The Tribunal has also erroneously failed to award any compensation towards loss of estate to the appellants/claimants which they are legally entitled to, in accordance with Pranay Shethi judgment referred to supra. In accordance with the said judgment, this Court awards a compensation of Rs.15,000/- to the appellants/claimants towards loss of estate.

8. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.2,93,000/- to Rs.10,81,000/- by this Court, as detailed hereunder -

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pecuniary loss	2,43,000/-	8,91,000/-
Loss of love & affection to appellants 2 to 4	30,000/-	1,20,000/-
Loss of consortium to the 1 st appellant	10,000/-	40,000/-
Funeral expenses	10,000/-	15,000/-
Loss of estate	-	15,000/-
Total	2,93,000/-	10,81,000/-

Conclusion:

9. In the result, this appeal shall stand partly allowed. The Third Respondent/Insurance Company is directed to deposit the amount awarded by this Court i.e. Rs.10,81,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, after deducting the amount already deposited to the credit of MCOP.No.109 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 is directed to transfer the award amount to the bank account of the appellants/claimants through RTGS within a period of one week thereafter. The requisite Court fee, if any has to be paid



by the Appellants/Claimants before receiving the copy of this Judgment. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The District Judge,
The Motor Accidents Claims Tribunal,
Karaikal.

Copy To:-

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

C.M.A.NO.1856 OF 2016

SRA (CO)
PBS/24/11/2021