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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CMA.NO.1863 OF 2016

1. Padmavathi
2. J.Rajkumar
3. J.Vinothini (minor)
Represented by her mother &
Next Friend 1st petitioner / appellant
... Appellants/Petitioners

Versus

Metropolitan Transport Corporation,
Chennai Division Ltd.,
Represented by its
Managing Director, Pallavan Salai,
Chennai - 600 002.
... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.03.2016 MACTOP No.7164 of 2013 on the file of the III Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellants : Mr.R.Kalaiarasan

For Respondent : Mr.K.Moorthy

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 24.03.2016 passed by the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai, in MCOP No.7164 of 2013.

2. The appellants / claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking for enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows :



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Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary loss Rs.8,000 + 30% - $1/3^{\text{rd}}$ x 12 x 13	10,81,548/-
Loss of consortium to the 1 st petitioner	1,00,000/-
Loss of love and affection to petitioners 2 and 3 (Rs.75,000/- x 2)	1,50,000/-
Funeral expenses	25,000/-
Total	13,56,548/-

4. Heard Mr.R. Kalaiarasan, learned counsel for the appellants/claimants and Mr.K.Moorthy, learned counsel for the sole respondent/Transport Corporation.

5. This Court has perused and examined the impugned award before the Tribunal.

6. The deceased V. Jayachandran was aged 50 years and was an Assistant Sales Manager in a private concern viz., M/s.Yagava Enterprises looking after their Zones in Andhra Pradesh and Tamil Nadu States. In the claim petition, the appellants/claimants, who are his dependants have stated that the deceased was earning Rs.15,000/- p.m., at the time of the accident.

7. Before the Tribunal, the appellants / claimants have filed six documents, which were marked as Ex.P1 to Ex.P6 and three witnesses were examined on their side viz, the first appellant / first claimant herself as PW1, an eyewitness to the accident viz., R.Krishnamurthy as PW2 and the employer of the deceased viz., M.Rajalakshmi as PW3. On the side of the respondent / Transport Corporation, one witness was examined viz., M.Premkumar, the Driver of the Bus as RW1. However, no documents were filed by them before the Tribunal.

8. PW3, M.Rajalakshmi, who claims to be an employer of the deceased has deposed before the Tribunal that the deceased was earning Rs.15,000/-p.m., as per the salary certificate, which was marked as Ex.P6.

9. The learned counsel for the second respondent / Transport Corporation would submit that even though during the cross examination of PW3, she has deposed that attendance register and salary register are very much available but however, she would



submit that the same has not been produced by PW3 or by the appellants / claimants before the Tribunal. Hence, she would contend that the monthly income fixed by the Tribunal at Rs.8,000/- for an accident that happened in the year 2013 is a correct assessment and does not require any interference by this Court.

10. However, the learned counsel for the appellants/ claimants would submit that the appellants / claimants have examined the employer of the deceased (PW3) and she has deposed that the deceased was working as a Assistant Sales Manager and the monthly income disclosed in the salary certificate Ex.P6 as Rs.15,000/- is correct. Further, he would submit that no contra evidence has been produced by the sole respondent / Transport Corporation before the Tribunal to disprove the contentions of the appellants / claimants that the deceased was earning Rs.15,000/-p.m., at the time of the accident.

11. The accident happened in the year 2013. As seen from the evidence available on record, the sole respondent / Transport Corporation has not disputed the avocation of the deceased, who was an Assistant Sales Manager at M/s. Yagava Enterprises, having its office at Old. No.9, New No.11, Noore Veerasamy Lane, Nungambakkam, Chennai - 600 034. The salary certificate of the deceased was also marked as Ex.P6 which has been issued in the letter head of M/s.Yagava Enterprises. The alleged employer of the deceased by name Rajalakshmi has also been examined as a witness viz., PW3 before the Tribunal, who has deposed that the deceased was earning Rs.15,000/-p.m., at the time of the accident. But excepting for producing the salary certificate, other supporting documents like attendance register, salary register and the appointment letter, etc. have not been filed by the appellants / claimants before the Tribunal. When the respondent / Transport Corporation has disputed that the deceased was earning Rs.15,000/- p.m., at the time of the accident, the appellants / claimants ought to have produced the aforementioned documents in addition to the salary certificate to substantiate their case that the deceased was earning Rs.15,000/-p.m., at the time of the accident. Therefore, the salary certificate (Ex.P6) which discloses that the deceased was earning Rs.15,000/-p.m. cannot be entirely believed. However, it is also not right on the part of the learned counsel for the respondent / Transport Corporation to contend that the assessment of the monthly income of the deceased at Rs.8,000/- is a correct assessment. A person employed as an Assistant Sales Manager looking after Andhra Pradesh and Tamil Nadu Zones in a private concern would have definitely earned a higher monthly income than what was assessed by the Tribunal under the impugned award. This Court though not having accepted the salary certificate (Ex.P6) in entirety is of



the considered view that the deceased V. Jayachandran, who was aged 50 years and was employed as a Assistant Sales Manager looking after Andhra Pradesh and Tamil Nadu Zones in a private concern would have earned a minimum of Rs.13,000/- p.m. Accordingly, this Court fixes the monthly income of the deceased at Rs.13,000/- instead of Rs.8,000/- fixed by the Tribunal.

12. The Tribunal has erroneously awarded a higher compensation towards loss of future prospects to the appellants / claimants. The deceased was aged 50 years at the time of the accident. Hence, this Court is of the considered view that 25% towards loss of future prospects will be an adequate compensation to the appellants / claimants. Accordingly, the compensation towards loss of future prospects is reduced to 25% instead of 30%, awarded by the Tribunal.

13. However, the Tribunal has adopted the correct multiplier of a person aged 50 years as 13. The appellants / claimants, who are the wife, son and the minor daughter of the deceased and therefore, $1/3^{\text{rd}}$ will have to be deducted towards personal expenses of the deceased, which the Tribunal has also rightly done so under the impugned award. Accordingly, the pecuniary loss will have to be enhanced by this Court from Rs.10,81,548/- to Rs.16,89,948/- as detailed hereunder :

$$\begin{aligned} \text{Rs.13,000/-} + 25\% &= \text{Rs.16,250/-} \text{ Less } 1/3^{\text{rd}} \\ \times 12 \times 13 &= \text{Rs.16,89,948/-} \end{aligned}$$

14. The Tribunal has also awarded a higher compensation towards loss of consortium at Rs.1,00,000/- and towards loss of love and affection at Rs.1,50,000/- which has to be reduced in accordance with the settled law as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi & others reported in 2017 16 SCC 680. Accordingly, this Court reduces the compensation towards loss of consortium to Rs.40,000/- and towards loss of love and affection only to the son and daughter of the deceased at Rs.40,000/- each totally amounting to Rs.80,000/-, instead of Rs.1,50,000/- fixed by the Tribunal.

15. The Tribunal has also awarded a higher compensation of Rs.25,000/- towards funeral expenses which has to be reduced to Rs.15,000/- in accordance with the settled law as laid down in the decision of the Hon'ble Supreme Court in the case of Pranay Sethi's, as stated supra.

15. The Tribunal has also failed to award any compensation towards loss of estate to the appellants / claimants, which they are legally entitled to. After giving due consideration to the same, this Court awards a compensation of Rs.15,000/- towards loss of estate.



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16. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pecuniary loss *Rs.8,000 + 30% - 1/3 rd x 12 x 13 # Rs.13,000 x 25% - 1/3 rd x 12 x 13	10,81,548/- *	16,89,948/- #
Loss of consortium to the 1 st petitioner	1,00,000/-	40,000/-
Loss of love and affection to petitioners 2 and 3 ** (Rs.75,000/- x 2) ## Rs.40,000/- x 2	1,50,000/- **	80,000/- ##
Funeral expenses	25,000/-	15,000/-
Loss of estate	-	15,000/-
Total	13,56,548/-	18,39,948/-
Rounded off	13,56,548/-	18,40,000/-

17. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.13,56,548/- to Rs.18,40,000/-, as indicated above. No costs.

18. The sole respondent / Transport Corporation is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MACTOP No.7164 of 2013 on the file of the III Small Causes Court, Motor Accident Claims Tribunal, Chennai, within a period of eight 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 directly to the bank account of the major appellants / major claimants, as per the same ratio of apportionment made by the Tribunal through RTGS, within a period of two weeks thereafter. Insofar as the share of the third appellant / minor claimant is concerned, the same shall be deposited in Fixed deposit in any one of the Nationalized Banks, till she attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the third appellant / minor



claimant has attained the age of majority, it is open to her to file formal petition before the Tribunal to get her share of apportionment. Necessary Court fee, if any has to be paid by the appellants/ claimants before receiving the copy of this Judgment.

Sd/-
Deputy Registrar (ADII)

//True Copy//

Sub Assistant Registrar

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To

1. The III Judge,
III Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

Copy To

The Section Officer,
V.R.Section
High Court of Madras, Chennai - 104.

+1cc to Mr.K.Moorthy, Advocate, S.R.No.30771

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.30643

CMA.No.1863 of 2016

VSNII(CO)
CS/29/10/2021