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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1961 of 2016

1. Jayalakshmi
2. Kalaiselvi
3. G. Thirumal

...Appellants

Versus

1. G. Kalyanasundaram
2. Shriram General Insurance Co. Ltd.,
No.66, Thirumalai Pillai Road,
T. Nagar,
Chennai - 2.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to allow this Civil Miscellaneous Appeal against the award and decree passed by the Motor Accidents Claims Tribunal/4th Small Causes Court, Chennai in M.C.O.P. No.2653 of 2011, dated 30.04.2014 awarding Rs.2,00,000/- in so far as awarding is concerned.

For Appellants : Mr.Amar D. Pandiya
for Mr.J.Ramkumar
For Respondents : Mr.K.Poomalai for R2
R1 - Served - No appearance

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 30.04.2014 passed by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai in M.C.O.P. No.2653 of 2011.

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

Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary loss is calculated as Rs.2000 x 12 x 5	1,20,000/-



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Heads	Amount awarded by the Tribunal (Rs.)
Loss of consortium to the 1 st petitioner	20,000/-
Loss of love and affection to the petitioners	45,000/-
Funeral expenses	15,000/-
Total	2,00,000/-

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

4. Heard Mr.Amar D. Pandiya, learned counsel for the appellants and Mr.K.Poomalai, learned counsel for the 2nd respondent / Insurance Company. Despite service of notice on the 1st respondent, there is no representation on his side.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. The deceased A. Gopal was aged 64 years at the time of the accident. In the claim petition filed by the appellants / claimants, who are the legal Representatives and the dependants of the deceased, they have pleaded that A. Gopal was self employed and doing real estate business and was earning Rs.20,000/- p.m. The accident happened on 12.01.2011. However, the Tribunal fixed the notional monthly income of the deceased A. Gopal at Rs.3,000/-. This Court is of the considered view that the Tribunal failed to give due consideration to the year of the accident before fixing the notional monthly income of the deceased. Therefore, after giving due consideration to the year of the accident, this Court fixes the notional monthly income of the deceased at Rs.7,500/- instead of Rs.3,000/- fixed by the Tribunal. The deceased was aged 64 years which is an undisputed fact. However, the Tribunal has adopted a wrong multiplier of 5 instead of 7. For a person aged between 61 to 65 years, as per the decision of the Hon'ble Supreme Court in the case of Sarala Verma & Ors vs Delhi Transport Corporation & Another reported in 2009 6 SCC 121, the correct multiplier is 7. Hence, the same is modified by this Court to 7 instead of 5. The Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased, after giving due consideration to the number of dependants. Therefore, the loss of dependency awarded to the appellants / claimants is enhanced from Rs.1,00,000/- to Rs.3,64,000/- (Rs.6,500 - 1/3 x 12 x 7).



7. The Tribunal has also awarded a lesser compensation towards loss of consortium to the 1st appellant, who is the wife of the deceased, in accordance with the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680. The loss of consortium to the first appellant / first claimant will have to be enhanced from Rs.20,000/- to Rs.40,000/- and accordingly, the same is enhanced.

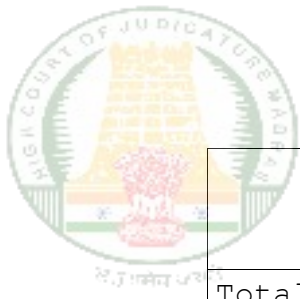
8. The Tribunal has also awarded a lesser compensation of Rs.45,000/- as compensation towards love and affection, which is not in accordance with the settled law. Accordingly, this Court grants compensation towards loss of love and affection to the 2nd and 3rd appellants / 2nd and 3rd claimants, who are the daughter and son of the deceased at Rs.60,000/- (calculated at Rs.30,000/- each).

9. The Tribunal has also erroneously failed to award any compensation towards loss of estate, which the appellants / claimants are legally entitled to as per settled law. Accordingly, this Court awards a compensation of Rs.15,000/- to the appellants / claimants towards loss of estate.

10. With regard to the compensation awarded by the Tribunal under the head Funeral Expenses is concerned, the same is a just compensation and does not call for any interference by this Court.

11. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pecuniary loss is calculated as * Rs.2000/- x 12 x 5 # Rs.6500/- - 1/3 x 12 x 7	1,20,000/- *	3,64,000/- #
Loss of consortium to the 1 st petitioner	20,000/-	40,000/-
Loss of love and affection to the 2 nd and 3 rd petitioners ## (Rs.30,000 x 2)	45,000/-	60,000/- ##
Funeral expenses	15,000/-	15,000/-
Loss of estate	-	15,000/-



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Total	2,00,000/-	4,94,000

12. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.2,00,000/- to Rs.4,94,000/- as indicated above. No costs.

13. The second respondent / Insurance Company 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 numbering till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.2653 of 2011, Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, 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 directly to the bank account of the appellants /claimants, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellants before receiving the copy of this Judgment.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsi2

To

The Judge,
IV Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

+1CC to Mr.K.Poomalai, Advocate, Sr.No.26009

C.M.A.No.1961 of 2016

AK-II (CO)

K.RK. (02.11.2021)