IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1998 of 2016

1. E. Kumari
2. E.Dhanacheliyan
3. E.Thangaraj
4. R. Ramayee .... Appellants/Petitioners

Versus

1.K.Haridoss
(was set exparte in the Trial Court)
2. ICICI Lomboard GI. Insurance Co. Ltd.
Arihant Plaza,
No.84/85,
Walltax Road,
Chennai - 600 003.
Now Functioning at
ICICI Lombard GI Insu. Co.
Chotabhai Towers,
No.140, Nungambakkam High Road,
Chennai - 600 006. .... Respondents/ Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 18.12.2012 made in MACT OP No.2825 of 2011 on the file of the Chief Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellants : Ms.P.T.Salim Fathima
For Respondents : R1 - Exparte
R2 - Ms.Shobana for
Mrs.R.Sree Vidhya

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 18.12.2012 passed by the Motor Accident Claims Tribunal, Court of Small Causes, Chennai in MCOP No.2825 of 2011.

2. The appellants are the claimants and the Legal Representatives of the deceased R.Elumalai Gounder, who died

on 12.06.2011 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent.

3. The claimants are the legal representatives and the dependants of the deceased and they are his wife, two sons and his mother. They preferred a claim before the Motor Accidents Claims Tribunal, Court of Small Causes, Chennai against the owners of the vehicle as well as the second respondent Insurance Company seeking a compensation of Rs.16,00,000/-.

4. The Motor Accidents Claims Tribunal (Sub Court, Tiruvallur) by its award dated 18.12.2012 passed in M.A.C.T.O.P. No.2825 of 2011, directed the second respondent / Insurance Company to pay the claimants a sum of Rs.7,34,528/- together with interest at 7.5% per annum from the date of claim till the date of realization. Out of the total compensation, the Tribunal determined the amount payable to the first claimant being the Wife of the deceased at Rs.4,80,000/-, the second and third claimants being two sons of the deceased at Rs.1,00,000/- each and the fourth claimant being the mother of the deceased at Rs.54,528/-.

5.The details of compensation awarded by the Tribunal are as follows:

Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary benefits (4500 + 30% = Rs.5850 - 1/4 = 4388 x 12 x 13)	6,84,528/-
Loss of consortium to the 1st claimant	10,000/-
Loss of love and affection to 2 to 4th claimants	30,000/-
Funeral expenses	10,000/-
Total	7,34,528/-

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

7. Heard Ms.P.T.Salim, learned counsel for the appellants and Ms.Shobana, learned counsel for the second respondent / Insurance Company. R1 was set ex-parte before the Tribunal, hence notice to R1 is dispensed with.

8. The deceased R. Elumalai gounder was aged 49 years and was employed as Security Guard at the time of the accident. In the claim petition, the appellants / claimants have claimed that the deceased was earning Rs.6500/- per month plus batta

and other allowances. However, the Tribunal under the impugned award fixed the notional monthly income of the deceased only at Rs.4,500/- which in the considered view of the Court is low. The Tribunal ought to have given due consideration to the year of the accident before fixing the notional monthly income of the deceased. The accident happened in the year 2011 and considering the same, this Court fixes the notional monthly income of the deceased at Rs.7,500/- instead of Rs.4,500/- fixed by the Tribunal. The Tribunal has awarded 30% to the appellants / claimants towards loss of future prospects, which is not in consonance 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 deceased was aged 49 years and therefore, the loss of future prospects ought to have been fixed at 25% and not at 30% as fixed by the Tribunal. Hence, the loss of future prospects is reduced to 25% from 30% fixed by the Tribunal. The Tribunal has rightly deducted ¼th towards personal expenses of the deceased and has also adopted the correct multiplier of 13 and the same is confirmed by this Court. In view of the enhancement of the notional monthly income of the deceased from Rs.4,500/- to Rs.7,500/- and the decrease in loss of future prospects from 30% to 25%, the loss of pecuniary benefits to the appellants / claimants is enhanced from Rs.6,84,528/- to Rs.10,96,836/- by this Court.

9. The loss of consortium assessed by the Tribunal for the first appellant / claimant, who is the wife of the deceased at Rs.10,000/- is also low and is not in accordance with the Pranay Sethi Judgment referred to supra. Accordingly, the same is enhanced to Rs.40,000/- from Rs.10,000/-. Similarly, the compensation awarded by the Tribunal towards loss of love and affection to the 2nd to 4th appellants at Rs.10,000/- each is also low and it has to be enhanced to Rs.25,000/- each. Accordingly, the compensation towards loss of love and affection to the 2 to 4th appellants is enhanced to Rs.75,000/- from Rs.30,000/- fixed by the Tribunal calculated at Rs.25,000/- each for each of the appellants. The funeral expenses awarded by the Tribunal at Rs.10,000/- is also low and this Court enhances the same to Rs.15,000/- in accordance with the settled law.

10. The Tribunal has also failed to award any compensation towards loss of estate in accordance with the settled law. Accordingly, this Court awards a compensation of Rs.15,000/- towards loss of estate to the appellants / claimants.

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 benefits (4500 + 30% = Rs.5850 - 1/4 = 4388 x 12 x 13)	6,84,528/- *	10,96,836/- #
Loss of consortium to the 1st claimant	10,000/-	40,000/-
Loss of love and affection to 2 to 4th claimants	30,000/-	75,000/-
Funeral expenses	10,000/-	15,000/-
Loss of estate	-	15,000/-
Total	7,34,528/-	12,41,836/-

12. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.7,34,528/- to Rs.12,41,836/-, as indicated above. No costs.

15. 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 claim petition till the date of realization, less the amount, if any, already deposited to the credit of MACT OP No.2825 of 2011 on the file of the Chief Judge, Motor Accidents Claims Tribunal (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 accounts of the appellants /claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Motor Accidents Claims Tribunal ,
Chief Judge, (Court of Small Causes),Chennai

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

+1cc to Mr.Swamikannu, Advocate SR.No. 23630
+1cc to Mrs.R.Sree Vidhya, Advocate SR.No. 23338

C.M.A.No.1998 of 2016

SVI(CO)
A.SK(30.09.2021)