



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.254 of 2016

1. Kuppu
2. Lakshmi
3. Kuppusamy
4. Kumarasamy

...Appellants/Petitioners

Versus

1. G. Sasikumar
2. Royal Sundaram Alliance Insurance Co. Ltd.,
No.6, 1st Floor,
Sorrento Building,
L.B. Road,
Adyar,
Chennai - 20.

...Respondents/Respondents

(R1 remained exparte before the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 26.06.2015 and made in MACTOP No.2844/2010 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge No.1 to deal with MCOP cases), Chennai,

For Appellants : Mr. Terry Chella Raja
For Respondents : Mr.G. Vasudevan for R2
R1 - Exparte

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 26.06.2015 passed by the Motor Accidents Claims Tribunal, (Special Sub Judge No.1 to deal with MCOP cases), Chennai in MACTOP No.2844/2010.

2. The Tribunal under the impugned award directed the respondents to pay the appellants / claimants a compensation of Rs.4,25,000/- together with interest and costs as detailed below :-



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Heads	Amount awarded by the Tribunal (Rs.)
Loss of Dependency to the family of the deceased	3,24,000
Loss of consortium to the 1 st petitioner	50000
Loss of love and affection to the petitioners 3 and 4 at Rs.20,000/- each	40000
Funeral and ritual expenses	11000
Total	4,25,000

3. The appellants / claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has filed this appeal seeking for enhancement.

4. Heard Mr.Terry Chella Raja, learned counsel for the appellants / claimants and Mr.G. Vasudevan, learned counsel for the 2nd respondent / Insurance Company. R1 was set ex-parte before the Tribunal, hence notice to R1 is dispensed with.

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

6. As seen from the award, the Tribunal has failed to award any compensation towards loss of future prospects in accordance with the settled law. The deceased was aged 60 years and was a Washerman (Dhobi) at the time of the accident. 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 appellants / claimants are entitled for loss of future prospects at 10%, after giving due consideration to the age and avocation of the deceased. The Tribunal has erroneously failed to award the same under the impugned award. Hence, this Court awards a compensation of 10% towards loss of future prospects to the appellants / claimants. With regard to the assessment of the monthly income of the deceased at Rs.4,500/- is concerned, the same is confirmed by this Court in view of the fact that the accident happened on 28.12.2007 when the deceased was aged 60 years and was a Washerman. The Tribunal has deducted 1/3rd towards personal expenses of the deceased, which is correct. The deceased was aged 60 years at the time of the accident, and accordingly, the Tribunal has adopted the correct multiplier of 9. Accordingly, the loss of dependency will have to be enhanced by this Court from Rs.3,24,000/- to Rs.3,56,400/- as detailed hereunder :



$$\begin{aligned} \text{Rs.4,500/-} + 10\% &= \text{Rs.4,950/-} \text{ Less } 1/3^{\text{rd}} \\ &\times 12 \times 9 = \text{Rs.3,56,400/-} \end{aligned}$$

7. The Tribunal has awarded a lesser compensation of Rs.11,000/- towards funeral expenses which has to be enhanced to Rs.15,000/- in accordance with the settled law, as per the decision of the Pranay Sethi's case referred to supra.

8. However, the Tribunal has awarded a higher compensation of Rs.50,000/- towards loss of consortium to the first claimant which has to be reduced to Rs.40,000/- in accordance with the settled law. Therefore, this Court reduces the compensation towards loss of consortium to Rs.40,000/- instead of Rs.50,000/- fixed by the Tribunal.

9. The Tribunal has also erroneously awarded a lesser compensation towards loss of love and affection to two children of the deceased, which has to be necessarily enhanced to Rs.80,000/-, calculated at Rs.40,000/- to each of the children.

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

12. 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.)
Loss of Dependency * Rs.4,500 x 12 x 1/3 rd x 9 # Rs.4,500 + 40% - 1/3 rd x 12 x 9	324000 *	356400 #
Loss of consortium to the 1 st petitioner / 1 st claimant	50000	40000
Loss of love and affection to the petitioners / claimants 3 and 4 **at Rs.20,000/- each ## at Rs.40,000/- each	40000 **	80000 ##



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Funeral and ritual expenses	11000	15000
Loss of estate	-	15000
Total	425000	506400

13. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.4,25,000/- to Rs.5,06,400/- as indicated above. No costs.

14. 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 MACTOP No.2844/2010 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge No.1 to deal with MCOP cases), 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 1, 3 and 4 / 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 appellants 1,3 and 4/ claimants before receiving the copy of this Judgment.

15. The second appellant, who claims to be the second wife of the deceased is not entitled to any compensation as she is not the legally wedded wife and further no evidence has been placed on record before the Tribunal to prove that she was a dependant of the deceased. So, the Tribunal has rightly not apportioned any amount of compensation to the second appellant, which is confirmed by this Court.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi2



To

1. The I Special Sub Judge
for MCOP cases,
Motor Accidents Claims Tribunal
Chennai.

Copy to

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

+1 Cc to Ms.M. Malar, Advocate sr 29079.

CMA No.254 of 2016

GJ(CO)
SP(29/10/2021)