



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.03.2021

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CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.904 of 2013

K.Vijayalakshmi

... Appellant / Petitioner

Vs.

1.A.Sharmila

2.Cholamandalam M.S.General

Insurance Co. Ltd.,
Valluvarkottam Road,
Rakshmi Towers
Chennai-34.

R1 Exparte before Tribunal Respondents / Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 08.10.2012 passed in MCOP No.700 of 2009 by the III Additional District & Sessions Judge (Motor Accidents Claims Tribunal) Poonamallee.

For Appellants : Mr.T.G.Balachandran

For Respondents : Mrs.R.Sreevidhya for R2

JUDGMENT

Challenging the judgment and decree passed by the Tribunal awarding a compensation of Rs.16,04,760/-, the claimant/appellant is before this court to enhance the compensation.

2. The claimant/appellant filed a claim petition before the Tribunal seeking compensation of Rs.50,00,000/- for the death of her son, namely Senthilnathan in a road accident that took place on 19.03.2009.



3. The brief case of the claimant is as follows. On 19.03.2009, at about 12.55 noon, while the deceased Senthilnathan was walking through fourth gate of the Ford Company, a Crane Registration No.TN-07-AS-7126 fallen down and run over the deceased, as a result of which, he sustained head injury and died on the way to S.R.M Hospital. The claimant is the only legal representative/dependant of the deceased. Since the 1st respondent is the owner and the 2nd respondent is the insurer of the offending vehicle, they are liable to pay compensation to the claimants.

4. The 2nd respondent/insurance company resisted the claim petition before the Tribunal by filing counter affidavit.

5. Before Tribunal, on the side of the claimant/appellant, the claimant and two other witnesses have examined as PW1 to PW3 and Ex.P1 to Ex.P7 were marked and also, the appointment order of the deceased Senthilnathan was marked before this Court as Ex.P8. No oral or documentary evidence was adduced on the side of the second respondent/insurance company. The first respondent remained exparte.

6. After analysing the evidence on record, the Tribunal has awarded a compensation of Rs.16,04,760/- under the following heads.

Heads	Amount in Rs.
Loss of dependency (11,250x12x15)	20,25,000
Funeral Expenses	10,000
Loss of love and affection	15,000
Total	20,50,000
After deducting a sum of Rs.4,45,240/- disbursed under Ex.R1 Workman compensation Act.	16,04,760

7. Heard the learned counsel appearing for the appellant and the second respondent and also, I have perused the material on record.

8. The learned counsel appearing for the claimant/appellant submitted that the deceased was aged 22 years



at the time of accident and he was a B.E graduate and earned a sum of Rs.20,000/- per month. The claimant has also marked Ex.P5, viz., the salary certificate of the deceased wherein, it is clearly stated that the monthly salary of the deceased was Rs.19,100/-. In this regard, the representative of the employer was examined as PW3 in the claim petition who have also affirmed the monthly salary of the deceased. But, the Tribunal has committed gross error by fixing the monthly salary as Rs.15,000/- per month without any basis. Therefore, fixing the monthly income of the deceased by the Tribunal is totally contrary to the facts as well as the documentary evidence. Therefore, the said monthly income of the deceased has to be modified in the present appeal. Apart from that, the Tribunal has not sufficiently awarded under other heads to the claimant and therefore, the present appeal has to be allowed by enhancing the compensation amount to the claimant. Further, the Tribunal did not appreciate the case of the claimant for awarding 50% of the future prospects as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601. Thus, he is entitled for future prospects by adding the monthly income of the deceased. On this ground also, the appeal is to be allowed by enhancing the compensation amount to the claimant. He further submitted that the Tribunal has awarded a meagre amount of Rs.15,000/- towards "love and affection" and the compensation awarded under the other heads also very meagre and hence, he prayed for enhancement of the compensation.

9. The learned counsel appearing for the respondent/insurance company objected the said contention of the appellant that based on the oral and documentary evidence adduced, the Tribunal has rightly fixed the monthly income as Rs.15,000/- and therefore, there is no need to interfere with the said finding of the Tribunal by enhancing the monthly income of the deceased.

10. Now, the point for determination before this court is

(i) Whether the compensation awarded by the Tribunal has to be enhanced?

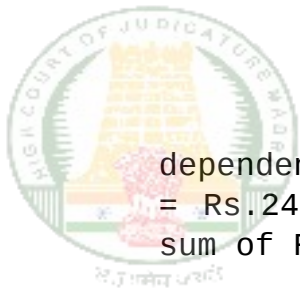
11. Point No.1

The appellant/claimant is the mother of the



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deceased, who died in the accident on 19.03.2009, while he was walking through fourth gate of the Ford Company, a Crane Registration No.TN-07-AS-7126 fallen down and run over the deceased. At the time of the accident, the deceased was working as Graduate Engineer Trainee in M/s.Shapoorji Pallonji & Co. Ltd., Chennai and earned a sum of Rs.20,000/- per month. The appellant has placed the salary certificate of the deceased viz., Ex.P5 which shows that the basic pay of the deceased is Rs.7,500/- and furnishing allowance is Rs.10,100/-, which is more than the basic pay of Rs.7,500/-. The deceased was an engineering graduate and when he was undergoing training and after completion of training, the deceased have been appointed as regular employee in the company and at the time of the accident, the father and mother were the dependants on the deceased son and their son was having a very good future in his life and due to his sudden death in the accident, the entire life has come to an end. The parents were lost their son. After the accident and before filing the claim petition, the father of the deceased died and hence, the mother of the deceased had alone filed the claim petition. Based on the salary certificate, viz., Ex.P5, the deceased has drawn total salary as Rs.19,000/- and the said salary was fixed during the time of the training period of the deceased and on completion of the training period, certainly he would have received higher salary from the company. Therefore, the Tribunal has wrongly reduced the monthly income of the deceased. There was no concrete reason given by the Tribunal in reducing the salary of the deceased and hence, this Court accepted the contention of the appellant that the Tribunal has committed an error in fixing the monthly income of the deceased as Rs.15,000/- per month. The Tribunal has not fixed the future prospects as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601. Therefore, taking note of the fact that 40% of the monthly income should be added towards future prospects. Since the age of the deceased was 22 years on the date of accident, proper multiplier to be adopted in the instant case is '18' years, as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the instant case, the deceased was died as a bachelor. Therefore, 50% of income should be deducted towards personal expenses of the deceased. Also, 10% tax has to be deducted from the salary of the deceased. Thus, loss of



dependency is calculated as $19000 + 7600 = \text{Rs.}26,000 - 10\% (2,600) = \text{Rs.}24,000 - 50\% = 12000 \times 12 \times 18 = 25,92,000/-$. Accordingly a sum of Rs.25,92,000/- is awarded towards " Loss of dependency ".

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12. As far as the compensation awarded under the other heads are concerned, the learned counsel appearing for the appellant submitted that the Tribunal without following the decisions of the Honourable Supreme Court, has awarded a very meagre amounts towards "Funeral Expenses, Love and Affection and hence the same shall be enhanced. Further, the Tribunal has failed to award under the head of "Loss of Estate".

13. Considering the above submissions and also taking into account the facts and circumstances of the case and fatal injuries sustained by the deceased, this court is of the view that it is just and reasonable to enhance the compensation of Rs.40,000/- towards "love and affection" and Rs.15,000/- towards "funeral expenses" respectively. Also, this Court is inclined to award Rs.15,000/- towards "Loss of Estate". Accordingly, the revised compensation awarded under various heads is extracted hereunder.

Heads	Compensation awarded by the Tribunal	Compensation modified by this court
Loss of dependency (11,250 x 12 x 15)	20,25,000	25,92,000 (12,000x12x18)
Funeral Expenses	10,000	15,000
Love & Affection	15,000	40,000
Loss of Estate	---	15,000
Total	20,50,000	26,62,000
After deducting Rs.4,45,240/- disbursed under Ex.R1, (workman compensation act)	16,04,760	22,16,760
Rounded off to		22,17,000



Accordingly, the claimant is entitled to a compensation of Rs.22,17,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

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14. In the result,

(i) The appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 16,04,760/- to Rs.22,17,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation. No costs.

(ii) The 2nd respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.22,17,000/- along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order, less the amount if already deposited.

(iii) On such deposit being made by the 2nd respondent, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Uma

To

1.III Additional District & Sessions Judge,
(Motor Accident Claims Tribunal), Poonamallee.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to M/s.R.Sree Vidya, Advocate, S.R.No.17503

CMA.No.904 of 2013

SSD(CO)
SB(25/10/2021)