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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.337 of 2016

Palaniammal

... Appellant/Petitioner

Versus

1. Kumarasamy

2. The New India Assurance Co. Ltd.,
Branch Office,
1st Floor,
MAJ Apartments,
149, Bharathiyar Road,
Namakkal.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree in MCOP No.786 of 2012, dated 09.02.2015 on the file of Motor Accident Claims Tribunal Principal District Judge, Namakkal.

For Appellant : Mr.C. Paraneedharan

For Respondents : R1 - Exparte
Mr.S. Dhakshinamoorthy for R2

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 09.02.2015 passed by the Motor Accidents Claims tribunal, Principal District Judge, Namakkal in MCOP No.786 of 2012.

2. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has 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.)
Loss of income Rs.3,000 x 12 x 13 x 2/3	3,12,000/-
Loss of love and affection	10,000/-
Funeral expenses	5,000/-
Total	3,27,000/-

4. Heard Mr.C. Paraneedharan, learned counsel for the appellant/claimant and Mr.S. Dhakshinamoorthy, learned counsel for the 2nd respondent/Insurance Company. The first respondent remained ex-parte both before the Tribunal and before this Court.

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

6. The appellant / claimant is the only legal heir of the deceased Valliammal, who died as a result of an accident on 15.07.2012 caused by a vehicle owned by the first respondent and insured with the second respondent. The appellant / claimant is the married daughter of the deceased and she is the only Legal Representative and it is also not disputed by the respondents before the Tribunal. The claimant in her claim petition before the Tribunal has pleaded that the deceased Valliammal was an Agriculturist earning Rs.10,000/- p.m., at the time of the accident. However, the Tribunal has assessed the notional monthly income of the deceased at Rs.3,000/-, which in the considered view of this Court is too low. The Tribunal ought to have taken into consideration the year of the accident which happened in the year 2012 before assessing the notional monthly income of the deceased. If the year of the accident was taken into consideration, this Court is of the considered view that the notional monthly income for the deceased will have to be fixed at Rs.7,000/-. Accordingly, this Court fixes the notional monthly income of the deceased at Rs.7,000/-. The Tribunal has also not applied the ratio laid down by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680 and has not awarded loss of future prospects to the appellant / claimant, which she is legally entitled to. The deceased was aged 52 years at the time of the accident, which has also not been disputed by the respondents before the Tribunal. After giving due consideration to the avocation and the age of the deceased, the Tribunal ought to have awarded compensation at the rate of 10% towards loss of future prospects to the appellant / claimant, which it has



failed to do so under the impugned award. Accordingly, this Court awards a compensation of 10% towards loss of future prospects to the appellant / claimant. The Tribunal has also erroneously adopted 13 multiplier instead of 11 multiplier as the age of the deceased at the time of the accident was 52 years. Accordingly, this Court adopts 11 multiplier for the purpose of calculating the loss of income to the appellant / claimant. The Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased as there is only one Legal Representative. Therefore, the compensation towards loss of income payable to the appellant / claimant is Rs.6,77,600/- instead of Rs.3,12,000/-, fixed by the Tribunal. Accordingly, the same is modified by this Court from Rs.3,12,000/- to Rs.6,77,600/-, as detailed hereunder :

$$\text{Rs.7,000/-} + 10\% = \text{Rs.7,700} \times 12 \times 11 \times 2/3 = \text{Rs.6,77,600/-}$$

7. The Tribunal has awarded a compensation of Rs.10,000/- towards loss of love and affection, which is not in accordance with the settled law (Pranay Sethi's case) and it has to be enhanced to 40,000/-. Accordingly, the same is enhanced by this Court. Similarly, the Tribunal has awarded a meagre compensation of Rs.5,000/- towards funeral expenses, which is also not in accordance with the settled law and it has to be enhanced to Rs.15,000/- by this Court.

8. The Tribunal has also erroneously failed to award any compensation towards loss of estate which the claimant is legally entitled to as per Pranay Sethi's case and accordingly, this Court awards a compensation of Rs.15,000/- under the said head.

9. 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.)
Loss of income *Rs.3,000 x 12 x 13 x 2/3 #Rs.7,000/- + 10% = Rs.7,700 x 12 x 11 x 2/3	3,12,000/- *	6,77,600/- #
Loss of love and affection	10,000/-	40,000/-
Funeral expenses	5,000/-	15,000/-
Loss of estate	-	15,000/-
Total	3,27,000/-	7,47,600/-



10. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.3,27,000/- to Rs.7,47,600/-, as indicated above. No costs.

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11. 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 MCOP No.786 of 2012, on the file of Motor Accident Claims Tribunal Principal District Judge, Namakkal, 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 appellant / claimant through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

Sd/-

Assistant Registrar (ADMN-III)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Principal District Judge,
Namakkal.

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

CMA No.337 of 2016

MG (CO)
CB (09/11/2021)