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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.5 of 2016

1. Mala

2. V. Murugavel (Minor)

3. V. Sathish (Minor)

2nd and 3rd appellants are
represented by their Mother
and next friend Mala

... Appellants/Petitioners

Versus

1. V. Babu

2. Royal Sundaram Alliance Insurance Co. Ltd.,
Subramaniam Building
2nd Floor,
No.1, Club House Road,
Anna Salai,
Chennai - 2.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 17.03.2015 made in MACTOP No.3495 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes, Chennai.

For Appellants : Mr. Terry Chella Raja

For Respondents : Mr.K.Vinod
for M/s.ElVeera Ravindran for R2

R1 - Exparte



JUDGMENT

(Heard Video Conference)

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This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 17.03.2015 passed by the Motor Accidents Claims Tribunal, Chief Judge, Small Causes, Chennai in MACTOP No.3495 of 2013.

2. The Tribunal under the impugned award directed the respondents to pay the appellants / claimants a compensation of Rs.11,30,000/- together with interest and costs as detailed below :-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of pecuniary benefits Rs.7500/- x 2/3x 12 x 15	9,00,000/-
Loss of consortium	50,000/-
Loss of love and affection (Rs.50000/- x 3)	1,50,000/-
Funeral expenses	25,000/-
Transportation charges	5,000/-
Total	11,30,000/-

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.K.Vinod, 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. The deceased was aged 38 years on 07.06.2013 when the accident happened and he was working as a Mason. The Tribunal has assessed his notional monthly income at Rs.7,500/-. Even before the Tribunal, the second respondent / Insurance Company has agreed that the deceased would have been earning Rs.9,000/- p.m., on the date of the accident, but however, this Court after giving due consideration to the year of the accident which



happened in the year 2013 is of the considered view even that assessment made by the Insurance Company is not correct. According to this Court, a Mason in the year 2013 would have earned a minimum of Rs.10,000/- p.m. Accordingly, the notional monthly income of the deceased is increased to Rs.10,000/- from Rs.7,500/- fixed by the Tribunal. The Tribunal has also failed to award any compensation towards loss of future prospects to the appellants / claimants which they are legally entitled to as per the settled law. Hence, as per the settled law, the appellants/ claimants are entitled to 40% towards loss of future prospects. The deceased was aged 38 years at the time of the accident, and accordingly, the Tribunal has adopted the correct multiplier of 15. The appellants / claimants are the wife and two minor children of the deceased and therefore, 1/3rd will have to be deducted towards personal expenses of the deceased, which the Tribunal has also rightly done so under the impugned award. Accordingly, the loss of dependency will have to be enhanced by this Court from Rs.9,00,000/- to Rs.16,80,120/- as detailed hereunder :

$$\begin{aligned} \text{Rs.10,000/-} + 40\% &= \text{Rs.14,000/-} \text{ Less } 1/3^{\text{rd}} \\ &\times 12 \times 15 = \text{Rs.16,80,120/-} \end{aligned}$$

7. As regards the compensation awarded by the Tribunal towards transportation charges at Rs.5,000/- is concerned, the same will not arise as it is a fatal accident claim. Hence, the same is set aside by this Court.

8. The Tribunal has also awarded a higher compensation of Rs.25,000/- towards funeral expenses which has to be reduced to Rs.15,000/- in accordance with the settled law as laid down in the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi & others reported in 2017 16 SCC 680.

9. The Tribunal has also awarded a higher compensation towards loss of consortium at Rs.50,000/- and towards loss of love and affection at Rs.1,00,000/- which has to be reduced in accordance with the settled law as per the aforesaid decision of the Hon'ble Supreme Court. Accordingly, this Court reduces the compensation towards loss of consortium to Rs.40,000/- and towards loss of love and affection only to two minor children at Rs.40,000/- each totally amounting to Rs.80,000/-, instead of Rs.50,000/- awarded to all the appellants / claimants .

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 Court awards a compensation of Rs.15,000/-



towards loss of amenities.

11. 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 pecuniary benefits * Rs.7500/- x 2/3x 12 x 15 # Rs. 10,000/- + 40% = Rs.14,0000/- Less 1/3 rd x 12 x 15	9,00,000/- *	16,80,120/- #
Loss of consortium	50,000/-	40,000/-
Loss of love and affection (Rs.50000/- x 3)	1,50,000/-	80,000/-
Funeral expenses	25,000/-	15,000/-
Transportation charges	5,000/-	-
Loss of amenities	-	15,000/-
Total	11,30,000/-	18,30,120/-

12. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.11,30,0000/- to Rs.18,30,120/-, 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 claim petition till the date of realization, less the amount, if any, already deposited to the credit of MACTOP No.3495 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes, Chennai, 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 1st appellant / major claimant, through RTGS, within a period of two weeks thereafter. Insofar as the share of the 2nd and 3rd appellants / minor claimants are concerned, the same shall be deposited in Fixed deposit in any one of the Nationalised Banks, till they attain the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank. Necessary Court fee,



if any has to be paid by the appellants / claimants before receiving the copy of this Judgment.

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Sd/-
Assistant Registrar(P&A)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Chief Judge,
Motor Accidents Claims Tribunal
Small Causes,
Chennai.

Copy to:

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

+1cc to M/s.M.Malar, Advocate, S.R.No.29078

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.28933

CMA No.5 of 2016

AJS (CO)
SU (09/11/2021)