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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.50 of 2016

Rajagopal (Died)

1. Jaya
2. Udhaya @ Udhayakumari
3. Uma @ Uma Maheswari
4. Gandhimathi

... Appellants/Petitioners 2 to 5

versus

1. K.Thanigaivel

(Since R1 remained exparte before the
Tribunal hence his presence may be
dispensed with)

2. The New India Assurance Company Limited,
No.202 and 204, Mahatma Gandhi Road,
Pondicherry.

... Respondents/Respondents

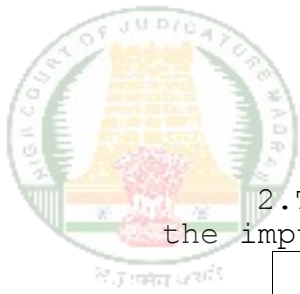
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 03.06.2015 and made in M.A.C.T.O.P. No.2868 of 2013 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellants : Ms. A. Subadra
for Ms.M.Malar

For Respondents : Mr. J.Michael Visuvasam 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 03.06.2015 passed by the Motor Accident Claims Tribunal, Court of Small Causes in Chennai in MCOP No.2868 of 2013.



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2. The details of compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency Rs.4,500 x 3/4 x 12 x 14	5,67,000/-
Loss of consortium	50,000/-
Loss of love and affection to the petitioners 2 to 5 each Rs.50,000/-	2,00,000/-
Funeral expenses	25,000/-
Transport expenses	5,000/-
Total	8,47,000/-

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

4. Heard Ms. A. Subadra, learned counsel for the appellants / claimants and Mr. J. Michael Visuvasam, 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 appellants / claimants are the dependants of the deceased Rajagopal, who died on 14.03.2004 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent.

7. The Tribunal has given a categorical finding that only due to the fault of the vehicle insured with the second respondent, the accident happened, which resulted in the death of Rajagopal. The finding of the Tribunal has attained finality as no appeal has been preferred by the second respondent as against the said finding.

8. The only question that arise for consideration is whether the quantum of compensation awarded to the appellants/claimants is a just compensation or not.

9. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospects which



the appellants / claimants as dependants are legally entitled to. The deceased Rajagopal was aged 42 years and was a Mason at the time of the accident which has not been disputed by the respondents before the Tribunal as seen from the evidence available on record. The Tribunal ought to have 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 should have awarded compensation towards loss of future prospects to the appellants/ claimants under the impugned award. In accordance with the aforesaid judgment of the Hon'ble Supreme Court, this Court awards a compensation at the rate of 25% towards loss of future prospects to the appellants /claimants after giving due consideration to the age and the avocation of the deceased. Therefore, the loss of dependency awarded to the appellants / claimants is enhanced from Rs.5,67,000/- to Rs.7,08,972/- ($\text{Rs.4,500} + 25\% \times \frac{3}{4} \times 12 \times 14$).

10. Insofar as the compensation awarded by the Tribunal under various other heads viz., Rs.50,000/- towards loss of Consortium, Rs.2,00,000/- towards loss of love and affection to the appellants / claimants and Rs.25,000/- towards funeral expenses are concerned, this Court is of the view that the same are on the higher side and accordingly, this Court reduces the same to Rs.40,000/-; Rs.1,60,000/- (Rs.40,000/- each for four claimants) and Rs.15,000/- respectively.

11. The Tribunal has also erroneously failed to award any compensation towards loss of estate, which the appellants / claimants are legally entitled to as per settled law. Accordingly, this Court awards a compensation of Rs.15,000/- to the appellants / claimants towards loss of estate.

12. With regard to the compensation awarded by the Tribunal under the head Funeral Expenses is concerned, the same is a just compensation and does not call for any interference by this Court.

13. 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 $\frac{3}{4}$ x 12 x 14 #Rs.4,500/- + 25% x $\frac{3}{4}$ x 12 x 14	5,67,000/- *	7,08,972/- #
Loss of consortium	50,000/-	40,000/-



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of love and affection to the petitioners 2 to 5 each Rs.50,000/-	2,00,000/-	1,60,000/-
Funeral expenses	15,000/-	15,000/-
Loss of estate	-	15,000/-
Transport expenses	5,000/-	5,000/-
Total	8,47,000/-	9,43,972/-

12. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.8,47,000/- to Rs.9,43,972/- 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 numbering till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. 2868 of 2013 on the file of the Motor Accident Claims Tribunal, Small Causes Court, 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 /claimants, through RTGS, within a period of two weeks thereafter as per the ratio of apportionment fixed by the Tribunal. Necessary Court fee, if any has to be paid by the appellants before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi2

To

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



+1cc to M/s.M.Malar, Advocate, S.R.No.34258

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.34438

CMA No.50 of 2016

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PA(CO)
CB(24/09/2021)