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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.51 of 2016

1. Bharathi

2. Minor M.Malar

rep.by.her mother and next friend 1st Petitioner

3. Kokila

... Appellants/Petitioners

Versus

1. M.Thulasiraman

2. The Bharti AXA General

Insurance Co. Ltd.,

No.162, 2nd Floor,

Metro Plaza,

Anna Salai,

Chennai - 2.

... Respondents/Respondents

(The 1st respondent exparte in lower Court,
hence notice may be dispense with)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 04.08.2015 made in M.C.O.P. No.743 of 2013 on the file of Motor Accident Claims Tribunal (III Additional District Court), Poonamallee.

For Appellants

: Mr.K.Varadha Kamaraj

For Respondents

: Mr.S. Arun Kumar for R2
R1 - Exparte

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated



04.08.2015 passed by the Motor Accident Claims Tribunal (III Additional District Court), Poonamallee in MCOP No.743 of 2013 .

2. Mr.Murugavel died as a result of an accident on 23.05.2013 caused by a vehicle owned by the first respondent and insured with the second respondent. The first appellant is the wife of the deceased; the 2nd respondent is the daughter of the deceased and the 3rd appellant is the mother of the deceased. They preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the death of B.Murugavel. The Tribunal under the impugned award directed the second respondent to pay a compensation of Rs.34,19,600/- together with interests and costs as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary loss of the deceased Rs.25,454/- - $1/3 = 16970 \times 12 \times 15$	30,54,600
Mental Agony	1,00,000
Funeral expenses	15000
Pain and suffering to the 1 st petitioner	1,00,000
Pain and suffering to the 2 nd petitioner	1,00,000
Pain and suffering to the 3rd petitioner	50000
Total	34,19,600/-

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

4. Heard Mr.K.Varadhakamaraj, learned counsel for the appellants and Mr.S.Arunkumar, learned counsel for the second respondent / Insurance Company. The first respondent was set ex-parte before the Tribunal, hence notice to the first respondent is dispensed with.

5. This Court has perused and examined the impugned award



before the Tribunal.

6. The deceased was a Police Head Constable at the time of the accident. Before the Tribunal, the appellants / claimants have filed eight documents, which were marked as Exs.A1 to 8 and two witnesses were examined on their side viz., the first appellant / first claimant as PW1 and an eye witness to the accident as PW2. On the side of the second respondent / Insurance Company ten documents were filed, which were marked as Exs.P1 to P10 and two witnesses were examined on their side viz., RW1 and RW2.

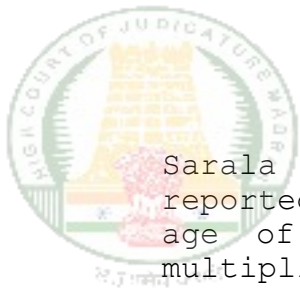
7a. The appellants / claimants have filed the salary slip of the deceased, who was a police Head Constable at the time of accident, which was marked as Ex.P7 and the Tribunal has rightly accepted the same and fixed the monthly income of the deceased at Rs.25,454/-. The deceased was aged 45 years at the time of the accident which is an undisputed fact. For a person aged 45 years, the Tribunal ought to have awarded a compensation at the rate of 30% towards loss of future prospects as per 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, which the Tribunal failed to award. The Tribunal has observed that since the first appellant / first claimant is the wife of the deceased has applied for Compassionate appointment, she is not entitled for loss of future prospects which in the considered view is not a ground for rejection. Hence, this Court awards the same to the appellants / claimants. Thus the total income of the deceased per annum is Rs.3,97,080/- (Rs.25,454/- + Rs.7,636/- = Rs.33,090/- x 12). Out of this amount, income tax payable by the deceased has to be deducted. During 2013, i.e., the year of the accident, the income tax payable is shown hereunder :-

For earning upto Rs.2,50,000/-	: Nil
For earning between Rs.2,50,001/- and Rs.5,00,000/- (10%)	: Rs.19,708

Total	Rs.19,708/-

Therefore, after deduction of income tax payable by the deceased, the yearly income works out to Rs.3,77,374/- (Rs.3,97,082/- Less Rs.19708/-).

7b. However, the Tribunal has adopted a wrong multiplier of 15 instead of 14 for a person aged between 41 to 45 years, as per the decision of the Hon'ble Supreme Court in the case of



Sarala Verma & Ors vs Delhi Transport Corporation & Another reported in 2009 6 SCC 121. Thus by taking into account the age of the deceased at 45 years, this Court modifies the multiplier to 14 instead of 15, fixed by the Tribunal.

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7c. The Tribunal has also rightly deducted 1/3rd towards personal expenses of the deceased since the dependants of the deceased are three in number. Thus the compensation under the head Pecuniary loss works out to Rs.35,22,157/- (Rs.25,454/- (salary p.m.) + 30%(Future prospects) x12 = Rs.3,97, 082/- Less 10%(Income Tax) = Rs.3,77,374/- per annum x 14 x 1/3)

8. The Tribunal has instead of awarding loss of future prospects to the appellants / claimants has erroneously awarded compensation towards mental agony, pain and suffering of the first appellant /first claimant, pain and suffering of the second appellant / second claimant and pain and suffering of the third claimant / third claimant which has to be set aside by this Court as it is not in accordance with law and the same is set aside.

9. However, the Tribunal failed to award any compensation towards loss of consortium to the first appellant / first claimant and loss of love and affection to the second and third appellants who are the daughter and the mother of the deceased. In accordance with Pranay Sethi's case of the Hon'ble Supreme Court referred to supra, this Court awards a compensation of Rs.40,000/- towards loss of consortium to the first appellant and Rs.80,000/- towards loss of love and affection to the second and third appellants / second and third claimants (Rs.40,000/- each), which the Tribunal failed to award.

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

11. Insofar as compensation of Rs.15,000/- awarded by the Tribunal towards funeral expenses is concerned, the same is confirmed as it is in accordance with the settled law.

12. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :



three months, directly from the Bank. If the second claimant / minor claimant attained the age of majority, it is open to her to file formal petition before the Tribunal to get her share of apportionment is concerned. The requisite Court fee, if any has to be paid by the appellants before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The III Additional District Judge,
Motor Accident Claims Tribunal
(III Additional District Court),
Poonamallee.
2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.25748

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.25718

C.M.A.No.51 of 2016

CA(CO)
SU(04/10/2021)