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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2367 of 2021

1. P. Devarasu
2. Saroja
3. P. Vaithiyalingam
4. Latchumi
5. P. Dhanasekaran @ Dhanasekar

...Appellants/Petitioners

vs.

1. A. Hemadri
2. The Divisional Manager,
The New India Assurance Co. Ltd.,
DO III Floor, No.179, JN Street,
Puducherry - 605001.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in MCOP No. 2606 of 2018 dt. 25.02.2021 on the file of the Motor Accident Claims Tribunal /1st Additional District & Sessions Judge, Cuddalore.

For Appellants : Ms. Ramya V Rao

For Respondents : Mr. J. Michael Visuvasam
for R2

JUDGMENT

(This case was heard through Video Conferencing)

This Appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 25.02.2021 passed by the Motor Accident Claims Tribunal (Additional District & Sessions Judge at Cuddalore) in MCOP No.2606 of 2018.



2. The Appellants / claimants are the dependants of the deceased Pandian who died on 06.02.2018 as a result of an accident which happened on 05.02.2018 caused by a vehicle owned by the 1st respondent and insured with the 2nd respondent. The cause of the accident has not been disputed by the respondents as the findings of the Tribunal have not been challenged by them. The only question that arises for consideration is whether the quantum of compensation awarded by the Tribunal is a just one or not?

3. The Tribunal under the impugned award directed the second respondent Insurance company to pay the Appellants/claimants a compensation of Rs.4,29,600/- as detailed hereunder.

Heads	Compensation Awarded (in Rs.)
Loss of Income	3,69,600/- (5,500 - 1/5 = 4,400 x 12 x 7)
Loss of love and affection (5,000 x 6)	30,000/-
Transport Expenses	15,000/-
Funeral Expenses	15,000/-
Total	4,29,600/-

4. The deceased Pandian was aged 65 years as per the Postmortem report which has been marked as Ex. P2 before the Tribunal. According to the Appellants/ claimants, the third claimant in the claim petition died before filing this appeal. In the claim petition, the Appellants/claimants who are the dependants of the deceased, have pleaded that the deceased was a flower vendor and earning Rs.15,000/- per month at the time of the accident. Since no documentary evidence was produced, the Tribunal has assessed the notional monthly income of the deceased at Rs.5,500/-. Since the deceased was a flower vendor, aged 65 years at the time of the accident, this Court does not find any infirmity as regards the fixation of notional monthly income of the deceased. Therefore, the same is confirmed by this Court. The Tribunal has adopted the correct multiplier of 7 as the deceased was aged 65 years at the time of the accident. Even though, the Tribunal has wrongly deducted 1/5th towards the personal expenses of the deceased, whereas the correct deduction is 1/4th, considering the fact that the notional monthly income fixed by the Tribunal is only Rs.5,500/-, this Court is not interfering with the assessment made by the Tribunal as regards deduction towards personal expenses of the deceased. Therefore,



the pecuniary loss assessed by the Tribunal at Rs. 3,69,600/- is a correct assessment and the same is confirmed by this Court.

5. Similarly, the compensation awarded by the Tribunal towards transport expenses at Rs.15,000/- and towards funeral expenses at Rs.15,000/- cannot be considered to be inadequate as alleged by the Appellants / claimants and therefore, the same is confirmed by this Court.

6. Insofar as the compensation awarded by the Tribunal towards loss of love and affection at Rs.30,000/- is concerned, the same in the considered view of this Court is low. The claimants are entitled for loss of income at a higher sum as they are 6 in number. In accordance with Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi & Others reported in (2017) 16 SCC 680, this Court awards a compensation of Rs.40,000/- to each of the claimants towards loss of love and affection and therefore, the compensation towards loss of love and affection is enhanced to Rs.2,40,000/- from Rs.30,000/- erroneously fixed by the Tribunal.

7. However, the Tribunal has erroneously failed to award any compensation towards loss of estate which the Appellants / claimants are legally entitled to as per the settled law. This court therefore awards a compensation of Rs.15,000/- towards loss of estate to the Appellants / claimants.

8. The Tribunal under the impugned award granted pay and recovery rights to the 2nd respondent Insurance Company, in view of the fact that the driver of the vehicle did not possess a valid driving licence at the time of the accident and the same is confirmed by this Court.

9. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs. 6,54,600/- instead of Rs.4,29,600/- as detailed hereunder.

Heads	Compensation Awarded by the Tribunal (in Rs.)	Compensation Awarded by this Court (in Rs.)
Loss of Income	3,69,600/-	3,69,600/-
Loss of love and affection (40,000/- x 6)	30,000/-	2,40,000/-
Transport Expenses	15,000/-	15,000/-
Funeral Expenses	15,000/-	15,000/-



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Heads	Compensation Awarded by the Tribunal (in Rs.)	Compensation Awarded by this Court (in Rs.)
Loss of estate	---	15,000/-
Total	4,29,600/-	6,54,600/-

10. In the result, this civil miscellaneous appeal is partly allowed by enhancing the award amount from Rs.4,29,600/- to Rs.6,54,600/-. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.2606 of 2018 within a period of 4 weeks from the date of receipt of copy of this Judgment and recover the same from the first respondent, the owner of the vehicle. On such deposit being made, the Tribunal shall transfer the respective share of award amount lying to the credit of MCOP No. 2606 of 2018 to the bank account of the Appellants/claimants in the ratio apportioned by the Tribunal through RTGS within a period of one week thereafter. Since the third petitioner in the claim petition died before filing this appeal, his respective share of award amount shall be paid to the Appellants/claimants in equal ratio. No Costs.

Sd/-
Assistant Registrar (Admin-II)

//True Copy//

Sub Assistant Registrar

ab

To

The Motor Accident Claims Tribunal
1st Additional District & Sessions Judge,
Cuddalore.

+1cc to Mr.J.Michael Visuwasam, Advocate, S.R.No.47679

+2ccs to M/s.Ramya V.Rao, Advocate, S.R.No.47923

C.M.A.No.2367 of 2021

SRA (CO)
SU (08/11/2021)