



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA Nos.2837 of 2014 and 2759 of 2015
and
MP No.1 of 2014

ICICI Lombard General
Insurance Company Ltd.,
Mint Street,
Walltax Road,
Chennai - 600 002.

...Appellant/2nd Respondent in CMA No.2837 of 2014

1. Shanthi
2. Minor - Santhosh
3. Minor - Ganesh
Minor Petitioners are
Rep. By their mother Shanthi
4. Shanmugam
5. Amsa

...Appellants/ Petitioners in CMA No.2759 of 2015

Versus

1. Shanthi
2. Minor - Santhosh
3. Minor - Ganesh
Minor Respondents are
Rep. By their mother Shanthi
4. Shanmugam
5. Amsa ... Respondents 1 to 5 / Petitioners
6. S. Sesuraj

...6th Respondent/Ist Respondent in CMA No.2837 of 2014

1.S. Sesuraj
2.ICICI Lombard General
Insurance Company Ltd.,
Mint Street,
Walltax Road,
Chennai - 600 002.

...Respondents/Respondents in CMA No.2759 of 2015



Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.01.2014 in MCOP No.997 of 2011 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Tiruvallur at Poonamallee.

CMA No.2837 of 2014

For Appellant : Ms.R. Sreevidhya
For Respondents : Mr.K.Varadha Kamaraj
for R1 to R5
R6 -unclaimed

CMA No.2759 of 2015

For Appellants : Mr.K.Varadha Kamaraj
For Respondents : Ms.R. Sreevidhya for R2
Not ready in notice reg. R1

COMMON JUDGMENT
(Heard Video Conference)

CMA No.2759 of 2015 has been filed by the claimants seeking enhancement of compensation awarded under the impugned award dated 31.01.2014 passed by the Motor Accidents Claims Tribunal, (II Additional District Court), Poonamalle.

2.The very same award has been challenged by the Insurance Company also in CMA No.2837 of 2014 on the ground that the Tribunal failed to adopt correct multiplier while assessing the compensation payable to the claimants, who are the appellants in CMA No.2759 of 2015.

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

Heads	Amount awarded by the Tribunal (Rs.)
Compensation for loss of revenue	12,24,000/-
Loss of consortium of the 1 st petitioner	25,000/-
Loss of love and affection to 2 & 3 petitioners	10,000/-
Loss of love and affection to 4 & 5 petitioners	5,000/-
Loss of transport expenses	5,000/-
Loss of funeral expenses	5,000/-
Total	12,74,000/-



4. Heard Ms.R. Sreevidhya, learned counsel for the appellant / Insurance Company in CMA No.2837 of 2014 as well as the learned counsel for the 2nd respondent / Insurance Company in CMA No.2759 of 2015 and Mr.K.Varadha Kamaraj, learned counsel for the appellants in CMA No.2759 of 2015 as well as the learned counsel for the respondents 1 to 5 in CMA No.2837 of 2014. Remaining respondent in both appeals were set ex-parte before the Tribunal, hence notice to him is dispensed with.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. In the claim petition, the claimants who are dependants of the deceased have pleaded that the deceased Umapathy was a Collection Supervisor in Jack TV Communications and was doing Shamiana and Pandhal lease business and was aged 34 years earning Rs.20,000/- p.m. at the time of the accident. Before the Tribunal, the appellants in CMA No.2759 of 2015 /claimants have sought for a compensation of Rs.16,00,000/- for the death of Umapathy as a result of an accident caused by a vehicle owned by the first respondent in CMA No.2759 of 2015 and insured with the second respondent in CMA No.2759 of 2015, who is also the appellant in CMA No.2837 of 2014. However, the Tribunal has awarded a compensation of Rs.12,74,000/- to the claimants together with interest and costs against the owner of the vehicle as well as the Insurance Company.

7. Before the Tribunal, the claimants have filed eight documents, which were marked as Exs.P1 to P8 and three witnesses were examined on their side viz., the first appellant in CMA No.2759 of 2015/ first claimant, who is the wife of the deceased as PW1; Gunasekaran, an eye witness to the accident as PW2 and K.Bhaskaran, the alleged employer of the deceased as PW3. However, on the side of the respondents in CMA No.2759 of 2015, neither any witness was examined nor any document filed before the Tribunal.

8. Even though the claimants have pleaded that the deceased was earning Rs.20,000/-p.m. at the time of the accident, the Tribunal has assessed his monthly income at Rs.7,500/-, which in the considered view of this Court is low. The claimants have filed identity card of the deceased, which was marked as Ex.P5 to show that he was working as Collection Supervisor in Jack TV communications, Avadi, Chennai - 67. They have also filed the salary certificate of the deceased, which was marked as Ex.P4 in support of their case that the deceased was earning Rs.20,000/-p.m., on the date of the accident. The alleged employer of the deceased by name K. Bhaskaran has also been examined as a witness by the claimants as PW3, in support of their stand that the deceased was earning Rs.20,000/-p.m. at the time of the



accident. However, the Insurance Company both before the Tribunal as well as before this Court has disputed the avocation of the deceased as a Supervisor in Jack TV Communications and they have also disputed that the deceased was earning Rs.20,000/-p.m. on the date of the accident. Excepting for producing his salary certificate, neither the attendance register nor any other documents like Income Tax returns, salary vouchers / salary slips have been filed by the claimants to support their claim that the deceased was earning Rs.20,000/-p.m., on the date of the accident. The Tribunal was right in fixing the monthly income of the deceased on notional basis. No contra evidence has also been produced by the Insurance Company to disprove the contention of the claimants that the deceased was working as a Supervisor in Jack TV Communications, Avadi, Chennai - 67. Further, no contra evidence has also been produced by the Insurance Company to prove that the salary certificate (Ex.P4) and Identity Card (Ex.P5) are bogus documents. However, this Court is of the considered view that the notional monthly income of the deceased fixed by the Tribunal at Rs.7,500/- is low considering the fact that no contra evidence has been produced by the Insurance Company to disprove the avocation and the salary of the deceased. However, in view of the fact that the Income Tax returns have not been filed nor any salary vouchers has been filed by the appellants / claimants, the monthly income of the deceased can be fixed only on notional basis. However, the Tribunal has also not taken into consideration the year of the accident for the purpose of assessing the monthly income of the deceased. The accident having happened in the year 2011, this Court is of the considered view that a Supervisor in a private concern would have earned a minimum of Rs.9,000/-p.m. Hence, the notional monthly income of the deceased is enhanced from Rs.7,500/- to Rs.9,000/- by this Court instead of Rs.7,500/- fixed by the Tribunal.

9. The Tribunal has erroneously adopted 17 multiplier instead of adopting 16 multiplier, since the deceased was yet to reach 35 years as seen from his Driving Licence (Ex.P7) before the Tribunal, which discloses that his Date of Birth as 14.08.1976, which would reveal that as on the date of the accident i.e. on 07.07.2011, the deceased would have been aged 34 years and 11 months only and would not have reached 35 years as fixed by the Tribunal. Hence for a person aged 34 years, the correct multiplier to be adopted is 16 and not 17 as erroneously fixed by the Tribunal. Hence, this Court adopts 16 multiplier instead of 17 multiplier erroneously adopted by the Tribunal.

10. The Tribunal has also erroneously failed to award any compensation towards loss of future prospects which the appellants / claimants are legally entitled to 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. Accordingly, this Court awards a compensation towards loss of future prospects at 40% in accordance with the settled law.

WEB COPY

11. The Tribunal ought to have deducted 1/4th towards personal expenses of the deceased but instead deducted 1/5th. The claimants are the wife, two minor children and parents of the deceased. Since, there are only 5 dependants, the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased but instead has erroneously deducted 1/5th. Accordingly the same is modified by this Court.

12. Thus, the compensation for loss of earning is fixed by this Court at Rs.18,14,400/-, as detailed hereunder, instead of Rs.12,24,000/-, fixed by the Tribunal to the appellants / claimants.

$$\begin{aligned} \text{Rs.9,000/-} + 40\% - 1/4\text{th} &= \text{Rs.9450/-} \times 16 \times 12 \\ &= \text{Rs.18,14,400/-} \end{aligned}$$

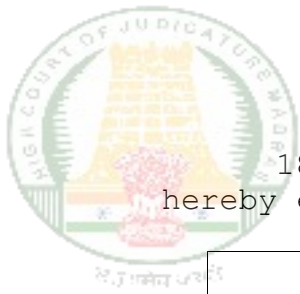
13. The Tribunal has awarded a compensation of Rs.25,000/- towards loss of consortium which is low and not in accordance with Pranay Sethi's case referred to supra. In accordance with the said judgment, the loss of consortium has to be fixed at Rs.40,000/-.

14. Similarly, the compensation awarded by the Tribunal under the head loss of love and affection at Rs.15,000/- is also low and it has to be enhanced to Rs.80,000/-. Accordingly, the same is enhanced to Rs.80,000/- in accordance with the settled practice.

15. The Tribunal has awarded Rs.5,000/- towards transportation which is a just compensation and the same is confirmed by this Court.

16. The Tribunal has awarded a compensation of Rs.5,000/- towards funeral expenses, which is not in accordance with law as per the decision of Pranay Sethi's case, where the compensation was awarded at Rs.15,000/-. Accordingly, the compensation towards funeral expenses is enhanced to Rs.15,000/- from Rs.5,000/- by this Court.

17. The claimants are legally entitled for loss of estate in accordance with settled law. However, the Tribunal has erroneously failed to award any compensation towards the said head. Accordingly, this Court awards a compensation of Rs.15,000/- to the claimants towards loss of estate in accordance with the settled law.



WEB COPY

18. 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.)
Compensation for loss of revenue * Rs.7,500/- Less 1/5th = Rs.6,000 x 12 x 17 # Loss of earning Rs.9,000/- Add 40% Less 1/4th x 12 x 16	12,24,000/- *	18,14,400/- #
Loss of consortium of the 1 st petitioner	25,000/-	40,000/-
Loss of love and affection to 2 & 3 petitioners	10,000/-	40,000/-
Loss of love and affection to 4 & 5 petitioners	5,000/-	40,000/-
Loss of transport expenses	5,000/-	5,000/-
Loss of funeral expenses	5,000/-	15,000/-
Loss of estate	-	15,000/-
Total	12,74,000/-	19,69,400/-

19. In the result, the appeal filed by the appellant / Insurance Company in CMA No.2837 of 2014 is dismissed and the appeal filed by the appellants / claimants in CMA No.2759 of 2015 stands partly allowed by enhancing the compensation from Rs.12,74,000/- to Rs.19,69,400/-, as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

20. The appellant in CMA No.2837 of 2014 as well as 2nd respondent in CMA No.2759 of 2015 / 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 M.C.O.P. No.997 of 2011, on the file of Motor Accidents Claims Tribunal (II Additional District Court), Poonamalle, 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 respondents 1st,



4th and 5th / major claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. Insofar as the share of the 2nd and 3rd respondents / 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 in CMA No.2759 of 2015 / claimants before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Motor Accident Claims Tribunal,
II Additional District Judge,
Tiruvallur at Poonamalle.

Copy to:

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

+1cc to M/s.R.Sree Vidya, Advocate Sr No.31097

CMA Nos.2837 of 2014
and 2759 of 2015

LN (CO)
PR (02/11/2021)