



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2359 of 2017

1. Devaraj
2. Purushothaman
3. Parthiban

... Appellants/Claimants

Vs.

1. Poonkodi
(The 1st Respondent remained ex-parte
before the tribunal)

- 2.The National Insurance Company Limited,
751, Anna Salai,
Chennai-600 002.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.04.2015 made in M.A.C.T.O.P.No.147 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Thiruvallur, Poonamallee.

For Appellants : Mr.F.Terry Chella Raja

For Respondents : Mr.D.Bhaskaran (R2)
R1 Notice Dispense with
vide order dated 21.7.2017.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted vide award dated 21.04.2015 made in M.A.C.T.O.P.No.147 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Thiruvallur at Poonamallee.

2.The appellants are the claimants in M.A.C.T.O.P.No.147 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Thiruvallur, Poonamallee. They filed the above said claim petition, claiming a sum of Rs.12,00,000/-



as compensation for the death of one Shanthi, who died in the accident that took place on 05.12.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Motor cycle bearing No.TN-21-AH-9047 belonging to 1st respondent and directed the Second Respondent/Insurance Company to pay a sum of Rs.7,33,000/- (Rupees Seven Lakhs Thirty Three Thousand only) as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that though in the claim statement the age of the deceased was mentioned as 44 years, the Claims Tribunal determined the age of the deceased as 50 years, but he admitted the fact that no documents were filed to prove the age of the deceased. He further submitted that the death certificate was filed, wherein the age of the deceased was mentioned as 45 years, but the Claims Tribunal, without considering this fact has determined the age of the deceased as 50 years, without any basis. Therefore, he submits that the age of the deceased should be fixed as 45 years. He further submitted that the Court below determined the income of the deceased at Rs.4,500/- per month, but in Ex.P7- salary certificate pertaining to May 2013, the salary of the deceased was mentioned as Rs.5,913/- per month and the Claims Tribunal had not taken into consideration, for the purpose of calculating loss of income of the deceased. He further submitted that the Claims Tribunal, without applying the multiplier 14, which is applicable for 45 years had applied the multiplier 13, considering the age of the deceased as 50 and therefore he prays that the multiplier 14 may be applied for calculating the loss of income of the deceased. He further submitted that the Court below has failed to add future prospects as per the Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2009 (2) TNMAC 1 SC Supreme Court 2017 (2) TNMAC 609 (SC). He further submitted that no amount was added towards loss of estate and the same may be awarded.

6. Per contra, the learned counsel for the Insurance Company submitted that the claimants have not produced any documents before the Claims Tribunal to prove the age of the deceased. He further submitted that the claimants could have atleast produced



the ration card or voters I.D. to prove that the age of the deceased was 45 at the time of accident and therefore, the Claims Tribunal observed that since as per legal heir certificate the age of the husband of deceased at the time of occurrence was 55, the age of the deceased would be 50 and hence fixed the age of the deceased as 50 and thus the Claims Tribunal has applied its mind and determined the age of the deceased as 50, which does not warrant interference. He further submits that with regard to the income of the deceased, salary certificate pertaining to the month of May 2013 was produced and no salary certificate was produced, pertaining to the month of December 2013 since the accident was occurred on 05.12.2013 and he fairly submitted that said amount may be taken as income of the deceased for the purpose of calculating loss of income. With regard to the multiplier he submitted that in case if this Court fixes the age of the deceased is 45, multiplier applicable is 14 and the same can be fixed. It is his further contention that as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2009 (2) TNMAC 1 SC Supreme Court future prospects can be taken as 25%. The Court below has awarded a sum of Rs.1,00,000/- towards mental agony and the claimants are not entitled as law laid down by the Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others stated supra. He further submitted that the Claimants were awarded a sum of Rs.1,50,000/- for loss of love and affection and as per the law laid down by the Hon'ble Apex Court in the decision stated supra loss of affection should be awarded only at Rs.40,000/- each. He fairly submitted that no amount was awarded towards transportation expenses and loss of estate and hence a sum of Rs.10,000/- and Rs.15,000/- may be awarded towards these heads.

7. Heard the learned counsel for the appellant as well as 2nd respondent. Perused the records.

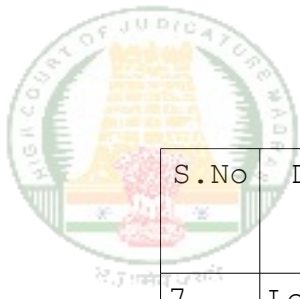
8. The Court below, taking into consideration of the age of the husband of the deceased which was 55 years at the time of occurrence had determined the age of the deceased as 50 years. Admittedly, no documents have been filed on the side of the claimants to prove the age of the deceased. However, in Ex.P2- Post mortem report, the age of the deceased was stated as 45 years. It is settled proposition of law that in the absence of any material with regard to the age, the age as stated in the post mortem report shall be taken for the purpose of determining loss of income of the deceased. But, completely ignoring the age mentioned in the postmortem certificate, the Claims Tribunal



WEB

taking note of the fact that the age of the husband of the deceased as 55 at the time of occurrence, had fixed the age of the deceased as 50, which is not proper. . Hence, this court fixes the age of the deceased as 45 as stated in the post mortem certificate and if the age of the deceased is taken as 45, the multiplier applicable is 14 as has held by the Hon'ble Apex Court in the case of Sarla Verma & others Vs. Delhi Transport Corporation & another reported in 2009 (2) TNMAC 1 SC Supreme Court. Further, the Tribunal failed to award the compensation towards future prospects, as per the law laid down by the Hon'ble Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2009 (2) TNMAC 1 SC Supreme Court . Therefore, in the present case 25% is awarded towards future prospects. Since, the salary of the deceased as per Ex. P7 is Rs.5,913/- the same can be taken as salary of the deceased. Therefore, by taking monthly income at Rs.5913 and by adding future prospects at 25% i.e., Rs.1478 and by deducting 1/3rd towards personal expenses i.e., Rs.2464 and by adopting multiplier 14, the loss of income would be Rs. 8,27,736/- [(5913+1478)-1/3 X 12x14] and the said amount is awarded towards loss of income of the claimants. Further, the claimants are not entitled to any amount towards mental agony, if they are awarded towards loss of love and affection. In the present case, the claimants are entitled to get compensation for loss of love and affection at Rs.40,000/- each, as per Pranay Sethi's case referred supra. A sum of Rs. 15,000/- is awarded towards loss of estate and since no compensation was awarded towards transport charges, a sum of Rs.10,000/- is awarded towards transport charges. The compensation awarded towards Funeral expenses stands confirmed. The amounts awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	4,68,000/-	8,27,736/-
2.	Mental Agony	1,00,000/-	-
3.	Funeral Expenses	15,000/-	15,000/-
5.	Loss of estate	NIL	15,000/-
6.	Transportation	NIL	10,000/-



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
7.	Loss of Love and affection	Rs.1,50,000/-	1,20,000/-
	Total	Rs.7,33,000/-	Rs.9,87,736/-

9.Out of the total enhanced award amount, the first appellant/husband is entitled to a sum of Rs.5,87,736/-, and the appellants and the appellants 2 and 3 are entitled for a sum of Rs.2,00,000/- each.

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,33,000/- is hereby enhanced to Rs.9,87,736/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.147 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Thiruvallur, Poonamallee). On such deposit, the Claims Tribunal is directed to transfer the respective shares to the claimants by way of RTGS within a period of three weeks from the date of deposit or the receipt of Bank details from the claimants or application for withdrawal from the claimant, whichever is later. The appellants are directed to pay the necessary Court fee, if any, on the enhanced compensation. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

arr
To

1. The Motor Accident Claims Tribunal,
III Additional District Judge,
Thiruvallur, Poonamallee.



2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.M.Malar, Advocate Sr.23861

C.M.A.No.2359 of 2017

gp[col]
srg 19/01/2022