IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2447 of 2013

1.E.Nibalkar
2.N.M.Deepika
(minor rep by her father E.Nibalkar) ...Appellants

Vs

1.S.Sakthivel
2.Bajaj Allianz General Insurance Co., Ltd.,
No.25/26, Prince Towers, IV Floor, College Road,
Nungambakkam,
Chennai - 600 034. ..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.1960 of 2008 dated 27.03.2013 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai.

For Appellants : Ms.A.Salomi

For Respondents :Ex parte - R1
Mr.S.Arun Kumar for R2

J U D G M E N T

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 27.03.2013 passed by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai, in MCOP.No.1960 of 2008

2. On 26.01.2008 while the deceased Manjula along with her husband and child and others were travelling as occupants in a car bearing Regn.No.TN-2-AV-4992 from Chennai to Samayapuram on National High way, driven by Nibalkar, when it was nearing Shekhussainpet, the driver of the lorry bearing Regn.No.TN-41-Q-9784, drove the same in a rash and negligent manner in the same direction from behind and hit against the car. Due to the said impact, she sustained fatal injuries and her husband and child also sustained injuries. Other persons in the car also sustained multiple injuries. Claiming that the deceased was working as an Accounts Assistant in Prime Transport and earning Rs.7300/- per month, the appellants / claimants have filed a claim petition claiming a sum of Rs.15,00,000/-. The Tribunal adjudicated the issues with reference to the documents and evidences. The Insurance Company has defended their case. The Tribunal has awarded a total compensation of Rs.9,68,000/-.

3. The appellants unsatisfied with the quantum of compensation

awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

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

Heads	*Award Amount (Rs.)*
Pecuniary loss to the family	9,18,000/-
Loss of love & affection to the 2nd petitioner	20,000/-
Loss of consortium	20,000/-
Funeral Expenses	10,000/-
Total	**9,68,000/-**

5. Before the Tribunal, the Appellants/claimants examined two witnesses as PW1 and PW2 and filed fifteen documents which were marked as Ex.P1 to Ex.P15. On the side of the second respondent, two witnesses were examined as RW1 and RW2 and filed nine documents which were marked as Ex.R1 to Ex.R9.

6. Heard the learned counsel for the appellants and learned counsel

for the second respondent and perused the materials available on record.

7. The learned counsel appearing for the Appellants/Claimants submitted that the decree and Judgement of the Tribunal are against law, facts, evidence and probabilities of the case. The Tribunal ought to have taken Rs.7300/- per month as per Ex.P5, but it has failed to appreciate the said document and fixed only Rs.4500/- per month towards notional income. In view of the Apex Court Full bench decision in the case of Rajesh and others Vs. Rajbir Singh and others reported in 2013 ACJ 1403, the award granted under the head of loss of consortium-Rs.20000/-, loss of love and affection-Rs.20000/-; funeral expenses-Rs.10000/- which are on the lower side. It has not granted any amount towards transportation and damages to clothes. He further submitted that it has failed to consider the age, income and occupation of the deceased. The Tribunal, without appreciating the evidences properly, has awarded the total compensation of Rs.9,68,000/- and the said quantum is unreasonable. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the second respondent

submitted that the compensation claimed by the appellants is highly excessive and baseless. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the appellants/claimants and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. The Tribunal has relied upon Ex.P1/FIR, Ex.P2/copy of Accident Register; Ex.P3/Copy of post mortem certificate of the deceased Manjula; Ex.P4/Death Certificate, Ex.P5/Salary certificate; the Tribunal has taken the age of the deceased as 30 years. Considering the age and earning capacity of the deceased, the Tribunal fixed the monthly income of the deceased at Rs.4500/- per month, adding 50% of the income towards future prospects, deducting 1/3 of the income towards personal expenses of the deceased, adopting the multiplier of 17 (4500 + 50%=2250, 4500 + 2250 = 6750-2250 = 4500; 4500 x12 x17 =9,18,000/-),and has arrived at a sum of Rs.9,18,000/- towards loss of pecuniary benefits.

10. On perusal of records, it is seen that the Tribunal has not properly

considered the evidences properly and the documents marked. Considering the age of the deceased and economic situation prevailing at the present time and also the facts and circumstances of the case, this Court is of the considered view that Rs.6500/- is to be taken as monthly income of the deceased. Since the age of the deceased was 30 years at the time of accident, there is need to change the multiplier as 17. Further, considering and age and earning capacity, 40% should be added towards future prospectus and 1/3 has to be deducted towards personal expenses for calculating pecuniary loss of income. If Rs.6500/- is taken as the monthly income of the deceased, after adding 40% towards future prospectus of the deceased and 1/3 of the amount is deducted towards personal expenses and the multiplier of 17 is adopted, the loss of income works out to Rs.12,37,668/-**,** (6500 x 40 % = 2600), (6500 + 2600= 9100 x 1/3 =3033; 9100 – 3033 = 6067 x 12 x17 = Rs.12,37,668/-). Accordingly, the amount awarded by the Tribunal towards 'pecuniary loss of income' stands enhanced to Rs.12,37,668/-. Similarly, as per the Pranay Sethi case, it would be appropriate to enhance the award under the head of loss of love and affection to the appellants 1 and 2 to Rs.40,000/- each which would come to Rs.80,000/-, and also Rs.15,000/- towards funeral expenses. On perusal of records, it is seen that no amount is awarded under the head of loss of estate for which they are entitled to. Hence, this court is inclined to grant a sum of Rs.15,000/- towards loss of estate. This court is not inclined to grant award under the head of loss of consortium.

11.The details of the enhanced compensation are as under:

Heads	***Award Amount (Rs.)***
Pecuniary loss of Income	12,37,668/-
Funeral Expenses	15,000/-
Loss of love & Affection to the appellants 1 & 2 (Rs.40000/- each)	80,000/-
Loss of estate	15,000/-
Total	**13,47,668/-**

Rounded off to **Rs.13,47,670/-**

12. Thus, the appellants/claimants are entitled to the enhanced compensation of Rs.13,47,670/-. It is made clear that for the enhanced amount of Rs.3,79,670/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. The second respondent is directed to deposit the award amount within a period of six weeks from the date of copy of this

judgement and recover the same from the first respondent.

13.The Civil Miscellaneous Appeal is partly allowed. No costs.

A.A.NAKKIRAN.,J.
gv

14. The second respondent/Insurance Company is directed to deposit the enhanced compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal, in the same ratio as awarded by it, is directed to transfer the award amount along with accrued interest to the bank account of the first appellant through RTGS within a period of two weeks thereafter. The share of the minor second appellant is directed to be deposited in any one of the nationalised banks till she attained majority. No costs.

15. Since the compensation amount now awarded is Rs.13,47,670/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount.

Index : Yes/No
Internet : Yes/No

28.03.2023
(1/3)

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To

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

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

C.M.A.No.2447 of 2013