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CMA.No.1280 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.1280 of 2018

1.G.Suguna
2.Minor S. Avinash
3.Minor S. Kabilash
(Minors 2 and 3 rep. by their mother Suguna)
4. K. Shantha

...Appellants

Vs

1.Thirumurugan Hardwares,
No.6, Pillaiyar Koil Street,
Gummudipoondi.

2.T.Munusamy
3. The Sri Ram General Insurance Co.,Ltd.,
2nd Floor, Thirumalai Pillai Road,
T.Nagar, Chennai -17.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in MCOP.No.192 of 2014 dated 24.10.2017 on the file of Motor Accident Claims Tribunal (II Additional District Judge) Poonamallee.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Dhakshnamoorthy for R3
R1 & R2 - Set ex parte



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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 24.10.2017 passed by the Motor Accident Claims Tribunal/(II Additional District Judge) Poonamallee, in MCOP.No.192 of 2014.

2. On 20.01.2014 at 1.30 p.m., when the deceased was riding motor cycle bearing Regn.No.TN-22-AD-3508 on Thiruneermalai Road near Samy Cool Bar, a lorry bearing Regn.No.TN-18-F-2526 driven in a rash and negligent manner, dashed against the motorcycle and thereby caused fatal injuries to the rider. Claiming that the deceased was a Conductor in TNSTC Bus and earning about Rs.14,815/- per month at the time of accident and the driver of the lorry is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.15,00,000/-.

3. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.



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

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Income Monthly Income(14815-3703) Rs.11110/- x 12 x 15	19,99,800/-
Funeral Expenses	25,000/-
Loss of Consortium to the 1 st appellant	Nil
Loss of love & affection to appellants 1 to 3	3,00,000/-
Loss of Love and Affection of the 4 th appellant .	50,000/-
Total	23,74,800/-

5. Before the Tribunal, the Appellants/claimants examined three witnesses as PW1 to PW3 and filed 15 documents which were marked as Ex.P1 to Ex.P15. On the side of the third Respondent/Insurance Company, neither any document was filed nor any witness was examined.



6. Heard the learned counsel for the appellants and the learned counsel for the third respondent/Insurance Company and perused the materials available on record.

7. The learned counsel appearing for the Appellants/Claimants submitted that without appreciating the evidences of PW1 to PW3 properly, the Tribunal has awarded the compensation and the said quantum is unreasonable. The Tribunal has not awarded any compensation towards loss of future prospects, loss of consortium to the first appellant and loss of estate. It has erred in awarding Rs.25000/- towards funeral expenses and the same is very meagre. He further submitted that 30% of future prospects to be added when the age of the deceased is between 40 to 50 years as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi & others* reported in *2017 (2) TN MAC 609 (SC)*. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the third respondent/Insurance Company submitted that the multiplier adopted by the



Tribunal at '15' is not correct. It should be '14' as per Sarala Varma case since the deceased was 42 years as per Ex.P7/Driving License. He further submitted that claim of interest shall be restricted to the amount actually spent and not on the total award amount since it includes 'non-pecuniary and loss of future earnings'. The Tribunal after analysing the evidence 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 applied the 15 multiplier instead of 14 multiplier. Since the deceased was aged 42 years at the time of accident as per Ex.P7, namely, driving license, this Court is inclined to adopt 14 multiplier. Since the appellants/claimants are wife, two minor children and mother of the deceased, 1/4th has been deducted towards the personal expenses of the deceased. The Tribunal has assessed the notional monthly income of the deceased as Rs.14815/- p.m., as per Ex.P5/Pay slip. After giving due consideration to the year of the accident and the avocation of the deceased as conductor in TNSTC Bus, the said assessment is a correct assessment.



10. Considering the facts and circumstances of the case and upon perusing the materials available on record, the Tribunal has granted the compensation of Rs.19,99,800/- towards loss of income. This court is inclined to add 30% of future prospects since the age of the deceased was 42 years at the time of accident. The Tribunal has granted Rs.25,000/- towards funeral expenses; Rs.3,00,000/- towards loss of love and affection to appellants 1 to 3 and Rs.50,000/- towards love and affection of the 4th appellant. However, the compensation awarded by the Tribunal under the said heads are to be modified in the considered view of this Court. Further, the Tribunal has erroneously failed to award any compensation towards loss of consortium to the first appellant and loss of estate for which they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.40,000/- and Rs.15,000/- are awarded as compensation to the appellants towards loss of consortium to the first appellant and loss of estate respectively.

11. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.23,74,800/- to Rs.26,16,634/- as detailed hereunder.



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of income $14815 \times \frac{3}{4} = 11,110$ $(11,110 \times 12 \times 15)$	19,99,800/-	$14815 \times 30\% = 4444$ $14815 + 4444$ $= 19,259$ $19259 \times 12 \times 14 \times \frac{3}{4}$ 24,26,634/-
Funeral Expenses	25,000/-	15,000/-
Loss of Consortium to the 1 st appellant	Nil	40,000/-
Loss of love & Affection to the appellants 1 to 3	3,00,000/-	80,000/-
Loss of Love and Affection to the 4 th appellant	50,000/-	40,000 /-
Loss of Estate	Nil	15,000/-
Total	23,74,800/-	26,16,634/-

12. In the result,

(i) This appeal is **allowed** and the third Respondent Insurance Company is directed to deposit the modified award amount i.e, **Rs.26,16,634/-** along with interest at the rate of 7.5% per annum, after



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deducting the amount already deposited, if any, to the credit of MCOP.No.192 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by the Tribunal to the bank accounts of the Appellants 1 and 4 along with accrued interest through RTGS within a period of two weeks thereafter.

(iii) Insofar as the minor Appellant Nos.2 & 3 are concerned, the Tribunal is directed to deposit their shares of award amount bearing fixed deposit in any one of the Nationalised Banks till they attain majority and the first Appellant/mother of the minors are permitted to withdraw the interest accrued once in six months for the welfare of the minors. No costs.

23.01.2023

Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accident Claims Tribunal/
(II Additional District Judge) Poonamallee.

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



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A.A.NAKKIRAN., J.

gv

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