IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1326 of 2018

1.Marthamma
2.Minor Anil Kumar
3.Minor Naveenbabu
(Minor appellants 2 & 3 represented
by their mother Marthamma)
4.Santhakumari ... Appellants

..Vs..

1.Shivashankar

2.Future Generali India Insurance Company Limited
Having its Office at
Plot No.55, (Old Plot No.27)
1, 2 and 3 Floor,
Vijaya Raghava Road,
T.Nagar, Chennai -600 017. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 23.11.2017 made in MACTOP.No.39 of 2013 on the file of the Motor Accidents Claims Tribunal (IV Additional District Judge) Ponneri.

For Appellants : Mr.F.Terry Chellaraja
For Respondents : Mr.E.Rajadurai for R2
for M/s.M.B.Gopalan Associates
R1 - Exparte

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 23.11.2017 passed by the (IV Additional District Judge) Ponneri/Motor Accident Claims Tribunal, Chennai, in MACTOP.No.39 of 2013.

2. This is a claimants' appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal in respect of negligence as well as the liability of the respondents to pay compensation.

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

Heads	***Award Amount (Rs.)***
Loss of Dependency (Rs.3750 x 12 x 15)	6,75,000/-
Loss of love and affection	20,000/-
Funeral expenses	10,000/-
Loss of consortium	10,000/-
Total	**7,15,000/-**

4. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent/Insurance Company and also perused the materials on record.

5. The learned counsel appearing for the appellants submitted that the deceased was working as a Sanitary Worker and was earning a sum of Rs.5,000/- per month. He further submitted that the Tribunal has not properly considered and decided the monthly income of the deceased as per the depositions and the documents marked, while awarding compensation. Further, he submitted that no amount was added towards " Future Prospects" and it ought to add more than 40% as future prospects since at the time of accident, the deceased was aged about 38 years. He further submitted that the multiplier adopted by the Tribunal is not proper. The Tribunal ought not to deduct the personal expenses of the deceased as 1/4th of his income since there is no other earning male member in the family and the appellants 2 and 3 are minors at the time of accident and they are dependents upon the income of the deceased. The Tribunal has awarded

only Rs.20,000/- under the head of love and affection to the appellants and the same is very meager. The award granted under the head of funeral expenses, loss of consortium and loss of dependency are also on the lesser side and the same needs enhancement. The Tribunal failed to award under the head of mental agony, loss of estate, damage to clothes and articles, transport, pain and sufferings, loss of expectation of life. He further submitted that the Tribunal has wrongly adopted the multiplier '15'. Stating so, the learned counsel prayed for enhancement of compensation.

6. The learned counsel for the respondents has submitted that the Tribunal has rightly considered the materials and evidences available on record and has awarded the just, fair and reasonable compensation and the same does not require any interference at the hands of this Court. Hence, he prays for dismissal of the appeal.

7. In the instant case, the deceased died at the age of 38 years. The main contention of the learned counsel for the appellants is that no amount was awarded by the Tribunal under the head of 'future prospectus'. The

deceased has two minor children at the time of accident and calculated the loss of dependency at Rs.6,75,000/- which is erroneous in law.

8. The Tribunal has rightly applied the 15 multiplier since the deceased was aged 38 years at the time of accident as per Ex.P5 and Ex.P6, namely, copy of the death report and copy of the postmortem certificate respectively. Since the appellants are wife, sons and mother of the deceased, 1/3rd will have to be deducted towards the personal expenses of the deceased. The Tribunal has assessed the monthly income of the deceased as Rs.5000/-. Insofar as the compensation towards future prospects is concerned, as seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospectus. Hence, this Court is inclined to award adequate compensation under the said head.

9. It is seen that the deceased was the entire caretaker of the family having four dependents. Taking note of the above submissions of the learned counsel for the appellants / claimants, economic situation prevailing at that time and also the facts and circumstances of the case, this Court is of the

considered view that the monthly income of the deceased is taken as Rs.5000/- as fixed by the Tribunal and there is no need to change the multiplier adopted by the Tribunal. Further, the 1/4th deduction made by the Tribunal also does not require any interference. If Rs.5,000/- is taken as the monthly income of the deceased, after adding 40% towards future prospectus of the deceased and 1/4th of the amount is deducted and the multiplier of 15 is adopted, the loss of dependency works out to Rs.9,45,000/- (Rs.5000x40%=2000, 5000+2000=7000 x ¼= 1750, 7000-1750= 5250, **(5250x 12x 15 = 945000)**. Accordingly, the amount awarded by the Tribunal towards loss of dependency stands modified to Rs.9,45,000/-. Except the compensation awarded under the head of future prospectus, other heads remain unaltered.

10. Insofar as the quantum of compensation awarded by the Tribunal under the heads loss of consortium, loss of love and affection and funeral expenses awarded by the Tribunal are concerned, the same is a just compensation in the considered view of this Court.

11. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Loss of Dependency	(Rs.3750 x12 x15=6,75,000/-)	9,45,000/- (5250x12x15=9,45,000)
Loss of love and affection	20,000/-	20,000/-
Funeral Expenses	10,000/-	10,000/-
Loss of consortium	10,000/-	10,000/-
Total	**7,15,000/-**	**9,85,000/-**

12. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.7,15,000/- to Rs.9,85,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit. It is made clear that for the enhanced amount of Rs.9,85,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. Since the compensation amount now awarded is Rs.9,85,000/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount.

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(ii) The second respondent Insurance company is directed to deposit the modified award amount i.e, Rs.9,85,000/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MACTOP.No.39 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellants/claimants through RTGS within a period of two weeks thereafter. Thereafter, the appellants / claimants shall withdraw the same, on making proper application before the Tribunal. No costs.

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Index:Yes/No
Speaking or Non-Speaking Order:Yes/No
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