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C.M.A.No.4094 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4094 of 2019

Rani

... Appellant

..Vs..

1.C. Boopalan

2.Sriram General Insurance Company Limited

No.66, Thirumalai Pillai Road,

T.Nagar, Chennai – 600 017.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 13.10.2017 made in MACTOP.No.515 of 2012 on the file of the Motor Accidents Claims Tribunal(II Additional District Judge, Poonamallee).

For Appellants

: Mr.A.G.F.Terry Chella Raja

For Respondents

: Mr. K.Poomalai for R2

Vakalat not filed

Exparte - R1

JUDGMENT

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 13.10.2017 passed by the Motor Accident Claims Tribunal/(II Additional District Judge, Poonamallee) in MACTOP.No.515 of 2012.



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WEB COPY 2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The case of the appellant is that on 16.12.2011 at 7.10 a.m., when the son of the claimant was travelling on the motor cycle bearing Regn.No.TN-22-AL-9920 from Vengaivasal main road, South to North direction, a lorry belonging to the first respondent bearing Regn.No.TN-34-B-5250, came in the rash and negligent manner from behind and hit the motor cycle and thereby the son of the appellant died on the spot. Claiming that the driver of the lorry has caused the accident, the claimant has claimed a compensation of Rs.10,00,000/- before the Motor Accidents Claims Tribunal.

4. The Tribunal, based on the oral and documentary evidences has observed that the driver of the lorry is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first



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respondent and ultimately quantified the total compensation at Rs.6,45,260/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.

5. Before the Tribunal, the Appellant/claimant has examined two witnesses as PW1 and PW2 and filed six documents which were marked as Ex.P1 to Ex.P6. On the side of the second respondent/Insurance Company, neither witness was examined nor document marked.

6. The learned counsel for the Appellant/claimant has submitted that the award of the Tribunal are against law, weight of evidence and probabilities of the case. The Tribunal has completely ignored the valid plea raised by the appellant and on the other hand, taken into consideration the case of the respondent and awarded less compensation as against the claim of the appellant. The Tribunal failed to consider the age of the deceased is 20 years and fixed Rs.5000/- p.m., It ought not to deduct 1/3rd as the personal expenses of the deceased. There was no earning member other than



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the deceased since the father of the deceased also pre-deceased him. It ought to award reasonable compensation under the head of pain and sufferings because he could suffered some pain till his death due to the accident. It ought to award compensation under the head of mental agony, loss of estate, damage of cloth and articles, filial consortium , transport expenses and future prospects. It ought to award more compensation under the head of love and affection of the appellant and funeral expenses,. It ought to adopt the proper multiplier while calculating compensation. In any event, the award of the Tribunal is low. Hence, he prays for enhancement of the Award amount.

7. It is contended by the Insurance Company that the Tribunal has rightly granted reasonable compensation and thus awarded a total compensation of Rs.6,45,260/- and the same does not warrant any interference by this court.

8. A perusal of the records show that the Tribunal has not awarded any amount towards Future Prospects. As per the decision of the



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Constitution Bench of the Hon'ble *Supreme Court of India* in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, 40% should be added towards "Future prospects". The age of the deceased was 20 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is '18', as per the decision rendered in ***Sarla Varma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121***. The Tribunal has failed to consider that the deceased would be earning more if he would be alive. In the instant case, the deceased died as a bachelor. Therefore, 50% of income should be deducted towards personal expenses of the deceased. Since the year of the accident is 2011, this court fix the income of the deceased at Rs.8000/-. Thus, loss of dependency is calculated as $8000 + 40\% = 3200$; $8000 + 3200 = 11200$; $11200 - 1/2 = 5600$; Thus it works out as $5600 \times 12 \times 18 = 12,09,600/-$. Accordingly a sum of Rs.12,09,600/- is awarded towards " Loss of dependency ".

9. However, the compensation awarded by the Tribunal towards funeral expenses and love and affection are high in the considered view of



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this Court. As per the settled practice, the compensation towards funeral expenses is reduced from Rs.25,000/- to Rs.15,000/-. Similarly, the compensation towards love and affection is reduced from Rs.1,00,000/- to Rs.40,000/- by this Court. The Tribunal has erroneously failed to award any compensation towards loss of estate for which she is legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellant towards loss of estate.

10. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.6,45,260/- to Rs.12,79,600/- as detailed hereunder.

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Loss of Income	5,20,260/- (3335 x12 x13)	12,09,600/- (5600 x 12 x18)
Love and Affection	1,00,000/-	40,000/-
Loss of Estate	NIL	15,000/-
Funeral Expenses	25,000/-	15,000 /-
Total	6,45,260/-	12,79,600/-



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Conclusion:

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11. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The 2nd respondent / Insurance Company is directed to deposit the modified award amount i.e, **Rs.12,79,600/-** along with interest and costs, after deducting the amount already deposited, if any, to the credit of MACTOP.No.515 of 2012 within a period of six 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 along with accrued interest as per the order of this Court to the appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

12. Since the compensation amount now awarded is **Rs.12,79,600/-**, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the enhanced amount.

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Index: Yes/No
Internet: Yes/No

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A.A.NAKKIRAN, J.
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To

1. The (Motor Accidents Claims Tribunal),
II Additional District Judge, Poonamallee).

2. The Section Officer
V.R.Section,
High Court of Madras.

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