IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.995 of 2018

1. S. Sumathi
2.N.Suresh Babu ... Appellants

..Vs..

1.G.Hari Babu
2. The National Insurance Co. Ltd.
751, Anna Salai
Chennai – 2. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 17.11.2016 made in MACTOP.No.1086 of 2013 on the file of the Motor Accidents Claims Tribunal/III Additional District Judge, Special Sub Court, Thiruvannamalai.(amended as per order in CMP.No.6126/2018 in CMA.SR.No.446/2018 dated 23.03.2018).

For Appellants : Mr.Terry Chellaraja

For Respondents : Mr. S. Vadivel for R2
Exparte – R1

JUDGMENT

This appeal has been filed by the appellants/claimants seeking enhancement of compensation under the impugned award dated 17.11.2016 passed by the Motor Accident Claims Tribunal/III Additional District Judge, Special Sub Court, Thiruvannamalai, in MACTOP.No.1086 of 2013

2. The Appellants/claimants 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 appellants is that on 02.11.2013 at 7.00 p.m., when the deceased was travelling as a pillion rider on the motor cycle (Bajaj Pulsar) bearing Regn.No.TN-20-BP-4344 from East to West direction on CTH Road, Thiruninravur near State Bank, the rider of the motor cycle rode in a rash and negligent manner whereby the motor cycle skidded and the deceased fell down and sustained fatal injuries. Claiming that the rider of the motor cycle has caused the accident, the claimants have claimed a compensation of Rs.20,50,000/- (amended as per CMP.No.10060 of 2018) before the Motor Accidents Claims Tribunal.

4. The Tribunal, based on the oral and documentary evidences has

observed that the rider of the motor cycle is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.7,35,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimants / appellants are before this Court.

5. Before the Tribunal, the Appellants/claimants have examined two witnesses as PW1 and PW2 and filed nine documents which were marked as Ex.P1 to Ex.P9. On the side of the second respondent/Insurance Company, one witness was examined as RW1 and two documents were marked as Ex.R1 and Ex.R2.

6. The learned counsel for the Appellants/claimants 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 defenses raised by the appellants and on the other hand, taken into consideration of the respondents as it is awarded less compensation as

against the claim of the appellants. The Tribunal ought to fix more as notional income by considering the Minimum Wages Act. It has failed to consider the age and income of the deceased and at the time of accident, the deceased was aged about 16 years. It failed to consider that the deceased was the only son to the family and he would be earning more if he would be alive. It ought to award compensation under the head of future prospectus and also loss of expectation of life, loss of estate, transport, damages to clothes and articles, It ought to adopt the proper multiplier while calculating compensation. It ought to award more compensation under the head of funeral expenses. 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 deceased was a 11th standard student aged about 16 years. Therefore, considering the year of the accident and the age of the deceased, the Tribunal has rightly fixed the loss of dependency at 5,10,000/- (Rs.30,000 x 17) and thus awarded a total compensation of Rs.7,35,000/- 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 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 16 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**. In the instant case, the deceased died as a bachelor. Therefore, 50% of income should be deducted towards personal expenses of the deceased. Thus, loss of dependency is calculated as 6500 + 40% = 2600/-, Rs.6500 + 2600 = 9100; 9100 – ½ = 4550; 4550 x 12 x18 = 9,82,800/-. Accordingly a sum of Rs.9,82,800/-. is awarded towards " Loss of dependency ". Apart from this amount, the first and second claimants, as parents, are also entitled to Rs.80,000/- (Rs.40000/- each) towards " Loss of love and affection " since they have lost their only son.

9. However, the compensation awarded by the Tribunal towards funeral expenses is high in the considered view of this Court. As per the settled practice, the compensation towards funeral expenses is reduced from Rs.25,000/- to Rs.15,000/- by this Court. The Tribunal has erroneously failed to award any compensation towards loss of estate for which they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellants towards loss of estate. However, it is made clear that this court is not inclined to grant award under the same head of loss of love and affection, pain and sufferings and mental agony as assessed by the Tribunal.

10. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.7,35,000/- to Rs.10,92,800/- as detailed hereunder.

Heads	*Amount awarded by the Tribunal*	*Award Amount (Rs.)*
Loss of Dependency	5,10,000/- (30000 x 17)	9,82,800/- (6500 + 40% - 50% x 12 x18)
Loss of love and Affection, pain & sufferings and mental agony	2,00,000/-	80,000/-
Loss of Estate	NIL	15,000/-
Funeral Expenses	25,000/-	15,000 /-
Total	**7,35,000/-**	**10,92,800/-**

Conclusion:

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.10,92,800/-** along with interest and costs, after deducting the amount already deposited, if any, to the credit of MACTOP.No.1086 of 2013 within a period of four 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 appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

12. Since the compensation amount now awarded is **Rs.10,92,800/-**, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced amount.

28.04.2023

Index:Yes/No
Internet:Yes/No

gv

To

1. The (Motor Accidents Claims Tribunal),
   III Additional District Judge,
   Special Sub Court, Thiruvannamalai..

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

A.A.NAKKIRAN, J.
gv

C.M.A.No.995 of 2018

28.04.2023