



C.M.A.No.2580 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2580 of 2014

1. Arul Rozario
2. Gracy Rozario

... Appellants

..Vs..

- 1.D.Rajakumari
- 2.United India Insurance Company Limited
48, Arcot Road
Saligramam, Chennai-33.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.734 of 2010, dated 16.07.2013 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Poonamallee.

For Appellant : Mr. K.Varadha Kamaraj

For Respondents : Mr.S.Arunkumar - R2
R1 - Exparte



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JUDGMENT

WEB COPY This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 16.07.2013 passed by the Motor Accident Claims Tribunal (Additional District Court-II), Ponnammallee, in M.C.O.P No.734 of 2010.

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

3. 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 revenue	7,28,052/-/- (7000 – 1/3 = 4667 x 12 x 13)
Loss of Love and affection	10,000/-
Transport Expenses	5,000/-
Funeral expenses	5,000/-
Total	7,48,052/-



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4. The learned counsel appearing for the appellants mainly contended that the entire quantum of compensation awarded by the Tribunal is very low. The Tribunal has failed to award compensation under the head of future prospectus without following various judgments laid down by the Hon'ble Apex Court. The Tribunal has erred in adopting the multiplier 13 instead of 18 multiplier. The monthly income fixed by the Tribunal is very low. The Tribunal has also failed to award any compensation under the other heads namely loss of expectation of life and loss of estate. Hence, he prays to enhance the award.

5. The learned counsel for the 2nd respondent insurance company disputed the said contention of the appellants/claimants by stating that based on the oral and documentary evidence adduced, the Tribunal has rightly awarded a reasonable compensation and therefore, there is no need to interfere with the said finding of the Tribunal. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.



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6. The accident occurred on 19.06.2010 at 15.30 hours, at Avadi New Military Road, opposite to Ramasami Sweets. The Poonamallee Traffic Police Station registered a case in Crime No.761 of 2010 under Sections 279, 337 and 304(A) IPC. The deceased Lidiya was travelling as pillion rider in a motorcycle bearing Registration No.TN 03 AL 1780. Due to the accident, she sustained fatal injuries all over the body and died in the hospital. Thereafter, the claim petition was filed by the father and mother of the deceased, the claimants/appellants herein herein. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

7. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospects which the Appellants/claimants are legally entitled to 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)***. Accordingly, this Court grants 40% towards loss of future prospects to the Appellants.



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8. As far as the multiplier is concerned, the Tribunal has erred in applying 13 multiplier instead of 18 multiplier. Since the deceased was aged 19 years at the time of accident as per Ex.P6 and P7 mark-sheets, it would be appropriate to adopt 18 multiplier as per the *Sarla Verma* case. In the claim petition, it was stated that the deceased was a third year Engineering student. The deceased being an Engineering student, the monthly income fixed by the Tribunal at Rs.7,000/- is very low. The accident is of the year 2010. Hence, this Court is inclined to fix Rs.9,000/- as monthly income which would be reasonable. The Tribunal has wrongly deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased. Since the deceased was a spinster $1/2$ will have to be deducted towards the personal expenses of the deceased instead of $1/3$. Accordingly, the loss of earning is modified from Rs.7,28,052/- to Rs.13,60,800/- as detailed below:

$$9000 + 40\% - 50\% \times 12 \times 18 = \text{Rs.13,60,800/-}$$

9. The compensation granted under the conventional heads are not in consonance with the principles laid down by the principal Apex Court of India in the case of *Pranay Sethi*. In view of the fact that the Tribunal has



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erroneously awarded the compensation under the heads of funeral expenses and love and affection, the award of compensation is to be modified.

Further, this Court is not inclined to award any compensation separately under the head of transport charges. The Tribunal has erroneously failed to award any compensation towards loss of estate which the appellants/claimants are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the claimants towards loss of estate. Thus, this Court is inclined to modify the compensation granted by the Tribunal as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of earning	7000-1/3 rd deduction= 4667 x 12 x 13= 7,28,052/-	9,000 + 40% future prospects x 12 x 18 (-) 50% personal expenses= Rs.13,60,800/-
Love and affection	10,000/-	80,000/-
Transport charges	5,000/-	Nil
Funeral Expenses	5,000/-	15,000/-
Loss of Estate	Nil	15,000/-
Total	7,48,052/-	14,70,800/-



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10. In the result,

(i) This appeal is allowed and the compensation awarded by the Tribunal is enhanced from 7,48,052/- to Rs.14,70,800/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The 2nd respondent Insurance Company is directed to deposit the modified award amount i.e, Rs.14,70,800 /- 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 MCOP.No.734 of 2010 within a period of six 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 respective shares of award amount as per the ratio apportioned by the Tribunal to the bank accounts of the appellants /claimants along with accrued interest through RTGS within a period of two weeks thereafter.



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WEB COPY (iv) The appellants/claimants are directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee. No costs.

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Index: Yes/No
Speaking/Non-speaking Order

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To

1. The II Additional District Judge,
(Motor Accidents Claims Tribunal),
Poonamallee.
2. The Section Officer
V.R. Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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