



C.M.A.No.3669 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3669 of 2014

and

M.P No.1 of 2015

1. M.Parimala
2. M.Dinesh
3. M.Rubini
4. M.Manju (Minor)
5. P.Chokkammal

... Appellants

..Vs..

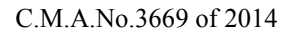
- 1.B.Gopalakrishnan
- 2.The New India Assurance Co. Ltd.,
No.45, Moore Street, Chennai-1

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in MCOP No.4929 of 2010, dated 08.01.2014 on the file of the Motor Accident Claims Tribunal / V Judge, Small Causes Court, Chennai.

For Appellants : Mr. A.Shanmugaraj

For Respondents : Mr.R.Sivakumar for R2



This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 08.01.2014 passed by the Motor Accident Claims Tribunal/ V Judge, Small Causes Court, Chennai, O.P No.4929 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>
Pecuniary Loss 6000 (-) 1/4 = (4500 x 12 x 13)	7,02,000/-
Loss of consortium to wife	75,000/-
Funeral Expenses	15,000/-
Love and Affection	60,000/-
Total	8,52,000/-



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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 monthly income fixed by the Tribunal is very low. Further, the compensation awarded under the heads of consortium and funeral expenses is very meagre. The Tribunal has failed to award any amount towards 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.

6. The accident occurred on 04.03.2010 at 8.05 a.m, at Velachery Main Road, Vijaya Nagar, Chennai-42, near IDBI Bank. The Traffic



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Investigation Department, J-3, Guindy Police Station, registered a case in Crime No.79/Si/10. While the deceased Moorthy was proceeding in his motor cycle bearing Registration No.TN 09 AV 0044, the driver of the car bearing Registration No.TN 09 BA 8193 came in a rash and negligent manner and hit against the deceased. Due to the accident, he sustained fatal injuries all over the body and died. Thereafter, the claim petition was filed by the wife, children and mother of the deceased, the claimants/appellants 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 25% towards loss of future prospects to the Appellants.



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8. In the claim petition, it was stated that the deceased was working as

Electrical and Plumbing Contractor. The deceased being a skilled worker, the monthly income fixed by the Tribunal at Rs.4,500/- is very low. The accident occurred in the year 2010. The cost of living has been increased enormously and salary of even unskilled workers has been increased substantially. Hence, this Court is of the considered view that it would be appropriate to fix a sum of Rs.7,000/- as his notional income. Thus, the pecuniary loss is modified as follows:

$$7,000/- + 25\% \text{ future prospects} = 8750/-$$

$$\text{less } 1/4\text{th deduction} = 6,563/- \times 12 \times 13 = \text{Rs.10,23,828/-}$$

9. The learned counsel for the appellants contended that the compensation granted under the conventional heads namely loss of consortium and funeral expenses 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 erroneously awarded the compensation under the heads of consortium and funeral expenses, the



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award of compensation is to be modified. 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. The compensation awarded under the head viz., love and affection seems to be reasonable and the same is confirmed. 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>
Pecuniary Loss	6,000/- (-) 1/4th deduction = 4500 x 12 x 13 7,02,000/-	7,000 + 25% (-) 1/4 x 12 x 13 = Rs.10,23,828/-
Loss of Consortium to wife	75,000/-	40,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of love and affection to appellants 2 to 5	60,000/-	60,000/-
Loss of Estate	Nil	15,000/-
Total	8,52,000/-	11,53,828/-
Total	8,52,000/-	11,53,828/- rounded off to 11,53,830/-



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Accordingly, the appellants/claimants are entitled to a compensation of Rs.11,53,830 (Rupees eleven lakhs fifty three thousand and eight hundred and thirty only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and out of the total amount of compensation, the 1st appellant shall receive a sum of Rs.5,00,000/-, the appellants 2 to 4 shall receive a sum of Rs.1,50,000/- each and the 5th appellant shall receive a sum of Rs.2,03,830/-.

10. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 8,52,000/- to Rs.11,53,830/- 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.11,53,830 /- 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.4929 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment.



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(iii) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by this Court to the bank account of the appellants 1 to 3 and 5 along with accrued interest through RTGS within a period of two weeks thereafter.

(iv) Insofar as the minor 4th Appellant is concerned, the Tribunal is directed to deposit the share of her award amount bearing fixed deposit in any one of the Nationalised Bank till she attains majority and the first Appellant/mother of the minor is permitted to withdraw the interest accrued once in six months for the welfare of the minor.

(v) 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. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No
Speaking/Non-speaking Order

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To

1. The V Judge, Small Causes Court
(Motor Accidents Claims Tribunal),
Chennai.
2. The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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