IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 27.02.2023	Pronounced on 10.03.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.46 of 2022
and
C.M.P.No.3699 of 2023

1.K.Manikandan
S/o.Kaliyamurthy

2.M.Hasini (Minor)

3.M.Janushree (Minor)
Petitioners 2 & 3 are being minors
Rep. by their next friend/father the first Petitioner herein
(All are residing at No.82, Lenin Street,
Samipillai Thottam, Lawspet,
Puducherry 605 008.) ... Appellants

Vs.

1.Uthirakumar
S/o.Ammavasai
No.179, 31, South Colony
Nadukuppam, Villupuram District
Pin code – 604 303.

2.The Divisional Manager
M/s.National Insurance Co. Ltd.,
No.42-A, J.N.Street,
Puducherry 605 001. ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in Review Petition No.2 of 2020 in MACTOP.No.699 of 2017 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Pondicherry.

For Appellants : Mr.G.Jothiraman

For Respondents : Mr.P.Sankaranarayanan (for R2)

R1 – No appearance

JUDGMENT

The Appeal has been filed against the Judgment and Decree made in Review Petition No.2 of 2020 in MACTOP.No.699 of 2017 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Pondicherry.

2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MACTOP.No.699 of 2017 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Pondicherry. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.This Appeal has been filed against the order of dismissal on Review Petition No.2/2020 in MCOP.No.699 of 2017. Initially the claim Petitioners have filed MCOP.No.699 of 2017 seeking compensation for the death of the wife of the 1st claim Petitioner in a road transport accident occurred on 19.01.2017.

4.During the trial, before the trial Court PW1/husband of the deceased and PW2/occurrence witness were examined and Ex.P.1 to Ex.P.14 were marked on the side of the claim Petitioners and RW1/Senior Assistant in the Insurance Company was examined on the side of the Insurance company.

5.On consideration of both oral and documentary evidences, the Tribunal has come to the conclusion that the accident taken place due to the rash and negligent riding of the rider of the two wheeler, which is insured with the 2nd Respondent and accordingly held that both the owner of the vehicle and the insurer are jointly and severally liable to pay the compensation.

6.On the point of quantum of compensation, the Tribunal has taken into consideration Ex.P.11/Transfer Certificate and arrived the age of the deceased as 31 and accordingly, applied '16' as multiplier. Based upon Ex.P.12/copy of the memorandum issued by Senior Accounts Officer, Directorate of School Education, which proves that the deceased was worked as Sweeper in Sebastian School and Ex.P.13/Pay bill for the month of November 2016 issued by the Headmistress of St. Sebastian Govt. Aided Primary School, where it is mentioned as the deceased earned Rs.22,915/- for the month of November 2016. The Tribunal taken the monthly income as Rs.23,000/-, after adding 50% towards future prospects, fixed the monthly income as Rs.34,500/- and assessed the annual income at Rs.4,14,000/-. The Tribunal deducted Rs.30,000/- towards income tax and the professional tax, from the annual income and after deducting 1/3rd towards personal expenses and applying multiplier of 16, arrived loss of dependency at Rs.40,96,000/-. After adding Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses, arrived total compensation at Rs.41,60,000/-. The Tribunal has not awarded any amount towards loss of love and affection.

7.At this juncture, the claim Petitioners appeared to have filed Review

Petition in Civil Revision Petition No.02 of 2020 before the learned Principal District Judge, Puducherry under Section 169 (2) of the Motor Vehicles Act, 1988 r/w. Order XLVII and Rule I of CPC r/w.Section 151 of CPC against the order passed in MACTOP.No.699 of 2017 dated 15.11.2019, contending that multiplier '17' to be adopted instead of '16' and deduction made towards income tax and professional tax is bad in law.

8.In the Review Petition counter affidavit and written arguments have been filed before the trial Court and the Tribunal, after perusing Ex.P.11/transfer certificate, where the date of birth of the deceased was mentioned as 21.06.1986 assessed the age of the deceased as 30 years 7 months & one day and therefore, fixed the age as 31 years and adopted multiplier '16'. I do not find any error in choosing the multiplier as per the Judgment of the Hon'ble Apex Court in the case of ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another,*** reported in ***2009 (2) TNMAC 1 (SC).***

9.The next point urged by the learned counsel for the Appellant is in respect of deduction made towards income tax & professional tax. The monthly income of the deceased is Rs.23,000/-, 50% has to be added towards future prospects as per the Constitution Bench's judgment of the Hon'ble Apex Court in ***National Insurance Company Limited V. Pranay Sethi and others,*** reported in ***2017 (2) TN MAC 609 (SC)***, in the existing salary, thereafter it has to be calculated annually and in the total amount arrived at as a annual income, the tax deduction has to be ascertained, thereafter, if any necessary, tax has to be made. The calculation projected by the claim Petitioner that after working out the entire amount, future prospects has to be added does not appear legally sound. Accordingly, stands rejected.

10.The plea raised by the learned counsel for the Appellant is that the amount of award granted as compensation is not an income, there could be no doubt in it. However, while assessing the monthly income and converting it to annual income, if the said income comes to above the tax limit and falls under the tax slab, the same has to be deducted, as it had been drawn by the deceased as alive.

11.As per Ex.P.13, the Tribunal has taken the monthly income as

Rs.23,000/-, after adding 50% towards future prospects, fixed the monthly income as Rs.34,500/- and assessed the annual income at Rs.4,14,000/-. The same are hereby confirmed. In the aforesaid yearly income, standard deduction, which does not attract income tax during the year 2017 is Rs.2,50,000/- and if Rs.2,50,000/- is deducted, the taxable income would be at Rs.1,64,000/-. Out of the taxable income, upto Rs.2,50,000/-, 10% has to be deducted towards income tax and 10% of taxable income comes to Rs.16,400/- [10% of Rs.1,64,000/-]. After deducting income tax, the yearly income would be at Rs.3,97,600/- [Rs.4,14,000/- (-) Rs.16,400/-]. The Tribunal applied '16' as multiplier and deducted 1/3rd towards future prospects. The same are hereby confirmed and hence, the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

Rs.3,97,600/- x 16 x 2/3 = Rs.42,41,067/-

12.The Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses. The same are hereby confirmed.

S.No.	*Head*	*Amount (Rs.)*
1	Pecuniary loss	4241067
2	Loss of consortium	40000
4	Funeral expenses	15000
5	Loss of Estate	15000
	Total	4311067
	Rounded off	4311100

In total, the claim Petitioners are entitled to a sum of Rs.43,11,100/- (Rupees forty three lakh eleven thousand and hundred only).

13.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed and C.M.P.No.3699 of 2023 stands dismissed, enhancing the compensation from Rs.41,60,000/- to Rs.43,11,100/-, with 7.5 % interest per annum, to the extent indicated above. No Costs. Consequently, connected Miscellaneous Petition is closed.

(ii) the Insurance Company is directed to deposit the enhanced award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The 1st claim Petitioner/1st Appellant is permitted to withdraw her entire share with proportionate interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal. The claim Petitioners 2 & 3/Appellants 2 & 3 are minors. The share of the minors shall be kept in an interest bearing fixed deposit in any of the nationalised bank, till they attain majority. The 1st claim Petitioner/1st Appellant, who is the guardian of minors, is permitted to withdraw the interest from the deposit of the minors once in three months.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

10.03.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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RMT.TEEKAA RAMAN.J,

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To

The Principal District Judge,
Motor Accident Claims Tribunal,
Pondicherry.

Pre-delivery Judgment made in

C.M.A.No.46 of 2022
and
C.M.P.No.3699 of 2023

Dated: 10.03.2023