IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1869 of 2019

1.Mukkani
2.Umamaheswari (Minor)
3.Premkumar(Minor)
4.Pradeepkumar (Minor)
Minors 2 to 4 represented by mother/1st appellant
5. Munusamy ... Appellants

..Vs..

1.V.Elumalai
2.Reliance General Insurance Company Limited.,
628, Anna Salai
Teynampet,
Chennai – 600 018. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.08.2012 made in MACTOP.No.80 of 2010 on the file of the Motor Accident Claims Tribunal (IV Judge, Small Causes Court, Chennai).

For Appellants : Ms.A.Subadra

For Respondents : Mr.E.Rajadurai for R2
for Mr.M.B.Gopalan Associates

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 25.08.2012 passed by the IV Judge, Small Causes Court, Chennai / Motor Accident Claims Tribunal, in MACTOP No. 80 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:

Heads	***Award Amount (Rs.)***
Loss of Dependency (Rs.5000 + 30% x ¼ x12 x16 multiplier)	9,36,000/-
Loss of Consortium	10,000/-
Funeral expenses	10,000/-
Love & Affection	50,000/-
Loss of Estate	NIL
Total	**10,06,000/-**

4. The learned counsel appearing for the appellants submitted that the deceased was a kothanar and was earning a sum of Rs.15,000/- per month, however, the Tribunal has erred in fixing the monthly income of the deceased as Rs.5000/- and 30% was added towards " Future Prospects". Further, he submitted that though the age of the deceased was 37 years at the time of accident, the Tribunal has not awarded any amounts towards "Loss of Estate". She also submitted that the compensation awarded under the other heads also very meagre and hence, prayed for enhancement of compensation.

5. The learned counsel appearing for the second respondent/ Insurance Company submitted that after considering the oral and documentary evidence on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

6. As seen from the impugned award, the Tribunal has awarded only 30% towards loss of future prospectus which is very meagre since the age of

the deceased is only 37 years at the time of accident. 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". Accordingly, this Court grants 40% towards loss of future prospectus to the appellants/claimants.

7. It is contended by the claimants that the deceased was working as Kothanar and was earning a sum of Rs.15,000/- per month. However, no proof of income was filed to prove the income of the deceased. Therefore, considering the year of the accident and the age of the deceased, the Tribunal has erroneously fixed the monthly income of the deceased as Rs.5,000/- and hence the same needs revisit. The Tribunal has erroneously applied the multiplier '16' since the deceased was aged 37 years at the time of accident as per Ex.P2 namely, copy of the postmortem certificate. Therefore, proper multiplier to be adopted in the instant case is '15' , as per 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 was died as a family man. Therefore the Tribunal has rightly deducted, $1/4^{th}$ of income towards personal expenses of the deceased. Thus, loss of dependency is calculated as 6000 + 40% x ¼ x 15 x 12 = 11,34,000/-. Accordingly a sum of Rs.11,34,000/- is awarded towards " Loss of dependency ". Apart from this amount, the claimants 2 to 5 are entitled to Rs.40,000/- each towards " Loss of love and affection " and the deceased died at the age of 37 years and hence this court grants a sum of Rs.15,000/- towards "Loss of estate". Similarly the award granted under the head of Funeral expenses at Rs.10,000/- seems to be on lower side and hence this court grants a sum of Rs.15000/- under the head of funeral expenses.

8. In addition to the pecuniary loss sustained by the appellants, the Tribunal has granted the compensation of Rs.10,000/- towards loss of consortium to the wife of the deceased, Rs.50,000/-(Rs.10000/- each) towards love and affection of the appellants and Rs.10000/- towards funeral expenses. However, the compensation awarded by the Tribunal towards loss of consortium, funeral expenses and love and affection are low in the

considered view of this Court. As per the settled practice, the compensation of Rs.10,000/- is enhanced to Rs.40,000/- towards loss of consortium; from Rs.10000/- is enhanced to Rs.15,000/- towards funeral expenses, 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.

9. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.10,06,000/- to Rs.13,64,000/- as detailed hereunder.

Heads	***Amount awarded by the Tribunal***	***Award Amount (Rs.)***
Loss of Dependency	9,36,000/- (5000 + 30% x ¼ x 12 x 16)	11,34,000/- (6000 x + 40% x ¼ x15 x12)
Loss of Consortium	10,000/-	40,000/-
Loss of Love & affection to claimants 2 to 5	50,000/-	1,60,000/-
Loss of Estate	NIL	15,000/-
Funeral Expenses	10,000/-	15,000 /-
Total	**10,06,000/-**	**13,64,000/-**

10. 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 second respondent/Insurance Company is directed to deposit the enhanced award amount of **Rs.13,64,000/-** along with interest and costs, after deducting the amount already deposited, if any, to the credit of MACTOP.No.80 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment, thereafter, recover the same from the owner of the vehicle, in accordance with law. 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 1 and 5/claimants 1 and 5 through RTGS within a period of two weeks thereafter. No costs.

11. On such deposit being made, the appellants 1 and 5 are permitted to withdraw their respective shares. Insofar as the minor petitioners 2 to 4 are concerned, their share of award amount shall be deposited in any one of the Nationalised Banks till they attain majority and the first appellant/mother

of the minor appellants 2 to 4 is permitted to withdraw the interest accrued once in six months.

03.04.2023

Index:Yes/No
Internet:Yes/No

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To

1. The IV Judge,
   The Motor Accident Claims Tribunal
   (Small Causes Court, Chennai).

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

A.A.NAKKIRAN., J.
gv

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