IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.786 of 2022

1.Radha
2.Devi
3.B.Saravanan
4.B.Ragavendran ... Appellants

Versus

1.V.Sathish Kumar

2.Reliance General Insurance Co.Ltd.,
Plot No.2054, Anna Nagar,
Chennai – 600 040. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 01.08.2013 passed in M.A.C.T.O.P.No.514 of 2012, by the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellants : Ms.Sunithi Abirami
for Ms.M.Malar

For R2 : Ms.C.Bhuvanasundari

JUDGMENT

This appeal has been filed by the appellants/claimants challenging the compensation awarded by the Tribunal in M.A.C.T.O.P.No.514 of 2012 dated 01.08.2013.

2.The claim petition was filed stating that on 01.01.2012, at about 19.45 hrs, while the deceased was travelling as a pillion rider in a motorcycle bearing Reg No.TN-10-R-9778, at Anna Salai, near Everest Lorry Weigh Bridge, Nandhanam, Chennai, another motorcycle bearing Reg No.TN-22-BJ-5926 was ridden by its rider in a rash and negligent manner, hit against the deceased; that due to the said accident, the deceased sustained grievous injuries and succumbed to the injuries and thus, the appellants are entitled for compensation.

3.Both the respondents remained *ex-parte* before the Tribunal.

4.Before the Tribunal, the appellants examined one witness and marked Ex.P.1 to Ex.P.9 on their side.

5.The Tribunal after considering the oral and documentary evidence had held that the accident occurred due to the rash and negligent riding by the rider of the offending vehicle and being the insurer of the offending vehicle, directed the 2nd respondent to pay a sum of Rs.17,35,000/- as compensation to the appellants.

6.Aggrieved over the award passed by the Tribunal, the appellants filed the present appeal seeking for enhancement of compensation.

7.The learned counsel for the appellants submitted that though the deceased was working as Superintendent in Public Works Department and his salary slip was marked as Ex.P8, the Tribunal had erroneously fixed the income of the deceased at Rs.20,000/- per month, without any basis; that the compensation awarded by the Tribunal under the head loss of love and affection is meagre and that prayed for enhancement of compensation.

8.The learned counsel for the appellants submitted that the 1st respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with notice to the 1st respondent and had also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

9.The learned counsel for the 2nd respondent per contra submitted that the Tribunal had rightly fixed the monthly income at Rs.20,000/- after taking into consideration the remaining period of service, pension and other benefits after retirement. Therefore, learned counsel submitted that there is no reason to interfere with the award of the Tribunal and hence prayed for dismissal of the appeal.

10.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

11.On perusal of the records, it is seen that the appellants have established the avocation and income of the deceased. The deceased was working as Superintendent in Public Works Department in the State of Tamil Nadu and earning a sum of R.34,021/- and in order to substantiate the same, the appellants have marked Ex.P7-Identity card of the deceased & Ex.P8- salaryslip and Ex.P9-Pan Card. However, strangely, the Tribunal had fixed the monthly income at Rs.20,000/- by stating that hardly one year service left behind for the deceased and the dependants of the deceased are entitled for pension and other benefits. This Court is of the view that the said approach of the Tribunal is erroneous. The Tribunal ought to have awarded compensation on the basis of the judgment in the case of ***Sarla Verma & others vs. Delhi Transport Corporation & another*** reported in ***2009 (2) TNMAC 1 SC*** and on the basis of decision of this Court in the case of ***ICICI Lombard General Insurance Company Limited, Chennai vs. Y.Vidyalakshmi & Others*** reported in ***CDJ 2022 MHC 5231***, wherein in paragraph No. 17(i), it has been held as follows:

> "17(i). The deceased was aged 51 years at the time of accident and was working as Deputy General Manager-ERP at Chemplast Sanmar Limited, Corporate Office at Door No.9, Cathedral Road, Chennai – 600 086, which is a permanent job. The Tribunal did not grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the claimants are entitled to 15% enhancement towards future prospects. The contention of the learned counsel appearing for the 2 nd respondentInsurance Company that the Tribunal ought

to have applied split multiplier of 7+4 instead of 7+9 and claimants are not entitled to compensation by calculating 50% of monthly income for remaining 4 years is not acceptable, in view of the judgment of the Hon'ble Apex Court reported in (2022) 5 SCC 107, cited supra. The Hon'ble Apex Court in the said judgment held that multiplier applicable is based on the age of the deceased. In view of the judgment of the Hon'ble Apex Court referred to above, the split multiplier applied by the Tribunal is set aside.

12.In view of the above judgment, the findings of the Tribunal with regard to computing pecuniary loss is liable to be set aside and the same is set aside. The appellants are entitled for compensation in the following manner:

12(a) As per Ex.P8-salary slip, the income of the deceased is taken Rs.34,021/-. By adding 15% towards future prospect, the annual income of the deceased would be as follows:

Rs.39,124 (Rs.34,021 + 15%) x 12 = Rs.4,69,488/-.

12(b) The accident had occurred on 01.01.2012. During the assessment year 2012-2013, upto Rs.2,00,000/-, there was nil tax. As per the Income Tax Slab for Assessment Year 2012 – 2013, the income tax to be deducted for the deceased is :

Upto Rs.2,00,000	Nil
From Rs.2,00,000/- to Rs.5,00,000 (10%)	Rs.46,949/-
Annual Income after deducting Income Tax is (Rs.4,69,488/- - Rs.4,6949)	Rs.4,22,539/-

Thus, by applying multiplier 9 and after deducting $1/4^{th}$ towards personal expenses, the compensation towards loss of dependency or income would be Rs.28,52,138/- (Rs.4,22,539 X 9 X ¾).

13.The amount awarded by the Tribunal under the head loss of love and affection is meagre and the same is enhanced to Rs.1,20,000/- (Rs.40,000/- each to the appellants 2 to 4). The Tribunal has not awarded any amount towards loss of amenities and hence, a sum of Rs.15,000/- awarded towards loss of amenities. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which is on the higher side and hence, the same is reduced to Rs.15,000/-. Similarly, a sum of Rs.50,000/- awarded by the Tribunal towards loss of consortium to the 1^{st} appellant is on the higher side and the same is reduced to Rs.40,000/-. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss/ Loss of dependency	16,20,000	28,52,138	Enhanced
2.	Loss of Consortium	50,000	40,000	Reduced
3.	Funeral Expenses	25,000	15,000	Reduced
4.	Love and Affection	40,000	1,20,000	Enhanced
5.	Loss of Amenities	-	15,000	Granted
	Total	17,35,000	30,42,138	Enhanced by Rs.13,07,138/-

14.With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,35,000/- is hereby enhanced to Rs.30,42,138/-, together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw their respective shares from the award amount now determined by this Court, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount already withdrawn, if any. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

25.08.2023

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

To:

1.The Motor Vehicle Accident Tribunal,
III Judge, Small Causes Court, Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

SUNDER MOHAN, J.

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