IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.395 of 2025

1. Sagadeva Reddy
2. Lakshmi Devi ...Appellants

vs.

1. V.Indira Ganesh Homes,
A.995, New No.14/43 Old No.23/24,
Millers Road, Kilpauk,
Chennai 600 010.

2. Oriental Insurance Company Limted,
34d Party Cell, Old No.115, New No.216,
Prakasam Road, Broadway,
Chennai 600 108. ... Respondents

Prayer: The Civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award amount passed in MACOP No.196 of 2014, dated 11.10.2018 on the file of the II Additional District Judge, Motor Accident Claims Tribunal, Poonamallee.

For Petitioner : Ms.N.Lavanya
for M/s M.Malar

For Respondents : Mr.R.T.I.Chandar for first respondent
Mr.M.Krishnamoorthy for second respondent

ORDER

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have come before this court by filing the present appeal.

2. The first respondent remained exparte before the Tribunal and hence, notice to the first respondent is dispensed with.

3. It is the case of the claimants/appellants that their son Somasekar Reddy was riding his motor cycle bearing registration No. TN 22 CC 6133 on 03.02.2014 proceeding from West to East on Mudichur-Manimangalam road and while he was nearing S.M.Agency at Kamatchi Nagar, a Ashok Leyland lorry bearing registration No. TN 69 AU 2574, belonging to the first respondent and insured with the second respondent came in the opposite direction and dashed against

the two wheeler of the victim. As a result of accident, the victim died on the spot and hence, the claimants filed a claim petition before the Tribunal, seeking compensation of Rs.40,00,000/-. The said claim petition was resisted by the second respondent insurance company mainly on the ground that the accident had occurred due to the rash and negligent driving of the victim. The claimant's income and age was also denied in the counter. Based on the evidence available on records, the Tribunal awarded a sum of Rs.36,62,720/-. Not satisfied with the quantum of compensation, the claimants have come before this court.

4. Both the learned counsel for the appellants and the second respondent have not advanced any arguments on the questions of negligence as well as liability. Therefore, the facts necessary for deciding the above questions are not discussed in this appeal.

5. The learned counsel for the appellants/claimants would submit that the deceased was aged about 24 years at the time of accident, however the Tribunal applied multiplier 17 instead of 18. She would further submit that as per the law laid down in the decision of the

Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157***, the claimants are entitled to 50% enhancement towards future prospects, whereas, the Tribunal granted only 40%. She also submitted that the Tribunal committed an error in deducting Rs.3,00,000/- from the total compensation on ground that the said amount was paid to the claimants under group insurance scheme by the employer.

6. The learned counsel for the second respondent/insurance company would submit that the income of the deceased was fixed by the Tribunal at Rs.27,260/- based on the Ex.P6, Ex.P10 and Ex.P11. He further submitted that while fixing the income of the deceased, based on the salary certificate, the Tribunal committed an error in not deducting any amount payable to the deceased towards personal allowances. He also submitted that the while calculating the compensation, the Tribunal committed an error in not deducting the amount towards income tax payable by the deceased.

7. The Ex.P5, driving license of the deceased would establish that the deceased was born on 20.07.1990. The accident had occurred on 03.02.2014. Therefore, it is clear that on the date of accident, the deceased was only 24 years old and in such circumstances, the Tribunal should have applied multiplier 18, as per the law laid by the Apex court in **Sarla Verma case**. Further, as per the ratio laid down in **Pranay Sethi** case, for a person in permanent employment, the Tribunal should have given 50% enhancement towards future prospects, but granted only 40% enhancement.

8. A reading of the Ex.P10 appointment order would indicate that the deceased was appointed as Scientific Sales Executive and he shall be a member of the company's provident and gratuity funds. It further indicates that he will retire from service on attaining superannuation at the age of 60 years. Therefore, it is clear that the deceased was appointed as a permanent employee and hence, there is no difficulty in coming to the conclusion that the deceased was a permanent employee and as a consequence, the claimants are entitled to 50% enhancement towards future prospects.

9. A perusal of Ex.P11, salary certificate for the month of November and December 2013 would indicate that the deceased was paid a sum of Rs.27,260/-. The said amount includes conveyance allowance of Rs.800/- and educational allowance of Rs.500/- and the above said allowances are personal in nature. Therefore, a sum of Rs.1,300/- cannot be taken into consideration, while calculating compensation towards loss of dependency. Accordingly, if a sum of Rs.1,300/- towards those allowances is deducted, a sum of Rs.25,960/- can be taken into consideration for the purpose of fixing the monthly income of the deceased. Hence, this court proceeds to fix a sum of Rs.25,960/- as monthly income of the deceased. The deceased died as a bachelor and hence, half of the amount should be deducted towards personal expenses while calculating the compensation towards loss of dependency. As such, a sum of Rs.42,05,520/- (25,960 x 1.5 x 12 x 18 x 1/2) is awarded towards loss of dependency.

10. It is vehemently contended by the learned counsel for the

second respondent/insurance company that the amount payable by the deceased towards income tax shall be deducted. In the case on hand, as per Ex.P11, Gross monthly salary of the deceased was only a sum of Rs.27,260/-. Therefore, his total annual income was only a sum of Rs.3,27,120/-. As per the Income Tax Act, for the annual income upto Rs.2,50,000/-, there is no tax liability and income tax should be paid over and above Rs.2,50,000/-. As far as the amount over and above Rs.2,50,000/- is concerned, the assessee is entitled to invest his income and get exemption under the provisions of 80CC, 80CCC and 80D etc. of Income Tax Act up to a sum of Rs.1,50,000/- to Rs.2,00,000/-. In such circumstances, this court is not inclined to deduct any amount towards income tax payable by the deceased, since the annual income of the deceased was only a sum of Rs.3,27,120/-.

11. The learned counsel for the appellant would submit that an amount of Rs.3,00,000/- was deducted by the Tribunal on the ground that the said amount was paid to the claimants under Group Insurance Scheme, which is not applicable in law. It is seen from the evidence of RW1 that a sum of Rs.3,00,000/- has been paid to the dependents of the

deceased under the Group Insurance Scheme by the employer. But, for the accidental death, the dependents are not entitled to claim amount under Group Insurance Scheme. Therefore, the Tribunal has rightly deducted the said amount from the total compensation amount payable to the deceased and hence, the above finding is confirmed.

12. As far as the loss of consortium is concerned, the Tribunal awarded only a sum of Rs.40,000/-. But, as per the ratio laid down in ***Pranay Sethi case,*** the claimants 1 and 2 are entitled to Rs.40,000/- each towards loss of parental consortium and accordingly, a sum of Rs.80,000/- is awarded for the said head.

13. As far as the compensation of Rs.15,000/- each awarded by the Tribunal towards loss of estate and funeral expenses are concerned, the same are confirmed, as they are in accordance with the law laid by the Apex Court in ***Pranay Sethi case.***

14. Accordingly, the compensation awarded by the Tribunal is

revised as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	38,92,720	42,05,520	enhanced
2.	Loss of consortium	40,000	80,000	enhanced
3.	Loss of Estate	15,000	15,000	confirmed
4.	Funeral expenses	15,000	15,000	confirmed
	Total	39,62,720	43,15,520	enhanced
	Deduction : Group Insurance	3,00,000	3,00,000	confirmed
		36,62,720	**40,15,520**	enhanced by 3,52,800

15. With the above modifications, this **Civil Miscellaneous Appeal is allowed** and the compensation awarded by the Tribunal at Rs.**36,62,720**/- is hereby enhanced to Rs.**40,15,520/-** together with interest at 7.5% per annum **[**excluding the delay period of 1882 days (1727 days in re-presenting the appeal papers, as per order in CMP No.18408 of 2024, dated 30.08.2024 and 161 days delay in filing appeal, as per order in CMP No.20195 of 2024, dated 05.02.2025)**]** from the date of petition till the date of deposit. The claimants are directed to pay applicable court fee for the above mentioned enhanced

compensation.

16. The second respondent is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal.

There shall be no order as to costs.

26.02.2025

Index:Yes/No
Internet:Yes/No
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To

1. The II Additional District Judge,
   Motor Accident Claims Tribunal, Poonamallee.

2. The Section Officer, V.R.Section, Madras High Court,
   Chennai-104.

S.SOUNTHAR, J.

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