IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :05.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.2772 of 2021

1.Sheela Kumari
2.Vadakkethayil Govindan Ramdas ... Appellants

Vs.

1.S.Vijay Anand

2. Cholamandalam MS General Insurance Company Limited
Hari Nivas Towers, 2nd floor,
No.163A, Thambu Chetty Street,
Chennai-600 001. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to allow this appeal and be pleased to enhance the amount awarded in MCOP No.1411/2017 dated 05/02/2020 on the file of MACT (Small Causes Court, Special Sub Judge No.2, Chennai

For Appellants : Mr.K.Varadha Kamaraj
for M/s.S.Ravikumar
For Respondent : M/s.R.Sreevidhya for R2
R1-Unclaimed (not ready notice)

JUDGMENT

Not satisfied with the quantum of compensation fixed by the Motor Accident Claims Tribunal, the claimants have come before this court by way of this appeal.

2. It is not in dispute that the daughter of the claimants died in a road accident that had occurred on 04.11.2016. It is the case of the claimants that the deceased was sitting on a sit out of the apartment in Maduravoyal bypass road and the vehicle belonged to the first respondent insured with the second respondent, came in a rash and negligent manner and dashed against the deceased. As a result of the accident, he sustained head injuries and died on the way to the hospital. Therefore, the claim petition was filed seeking compensation of Rs.2 crore.

3. The first and second respondents filed a counter affidavit and opposed the claim petition. It was the specific case of the second respondent/ insurance company that the accident had not occurred as described in the claim petition. The 2^{nd} respondent denied the age,

income of the deceased as averred in the claim petition and sought for dismissal of the claim.

4. Before the Tribunal, the second claimant was examined as PW1 and an official attached to the employer of the deceased was examined as PW2. An eyewitness was examined as PW3. On behalf of the claimants, 17 documents were marked as Exhibit P1 to Exhibit P17. On behalf of the respondents, the officer of the RTO office was examined as RW1 and two documents were marked as Exhibit R1 and Exhibit R2.

5. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the first respondent vehicle. The Tribunal quantified the compensation payable to the claimants at Rs.81,36,108/-. Not satisfied with the quantum of compensation, the claimants have come before this court.

6. The learned counsel for the appellants/ claimants would submit that the claimants produced pay slips and marked the same as

Exhibit P16 and the same has not been considered. The income of the deceased was fixed only at Rs. 62,444/-. Therefore, the same requires enhancement. The learned counsel further submitted that the Tribunal committed error in deducting certain allowances which shall be considered as income of the deceased. In this regard, he relied on the judgment of the Hon'ble Apex Court in the case of ***Vijay Kumar Rastogi Vs Uttar Pradesh State Roadways Transport Corporation,*** reported in ***2018 (1) TNMAC 367.***

7. The learned counsel for the Second Respondent/ Insurance Company submitted that certain allowances mentioned in the payslips are personal to the deceased employee and therefore, the Tribunal was justified in deducting those allowances and fixing monthly income at Rs. 62,444/-.

8. In view of the submission made by the learned counsel for the appellants and the second respondent, the only question to be decided in this appeal is whether the Tribunal was justified in fixing Rs. 62,444/- as the income of the deceased.

9. In order to prove the income of the deceased, the official of the employer of the deceased was examined as PW2 and through him, the payslips of the deceased were marked as Exhibit P16 series. A perusal of the same would indicate that the gross salary of the deceased was Rs.69,489/- during the month of April 2016. For the month of May 2016, she was paid gross salary of Rs. 63,989/-. For the months of June and July 2016, she was paid gross salary of Rs. 66,739/- The deceased was paid a sum of Rs.66,739/- for the months of June, July, August and September 2016. For the month of October 2016, she was paid gross salary of Rs. 81,772/-.

10. In the pay slip for the month of October 2016, a sum of Rs.15,033/- was included under the head annual incentive plan. The amount mentioned as annual incentive plan will not be available for each and every month and the same is paid once in a year. Therefore, the same cannot be taken into consideration. A perusal of the pay slips for the months May 2016 to September 2016 would indicate that she was paid a basic salary of Rs.35,792/- and House Rent Allowance of Rs.17,896/-. The amount of Rs.1,600/- paid towards transportation

allowances and Rs.2,200/- paid towards meal allowances are personal in nature and the benefit of the same will not enure to the dependents. Therefore, the Tribunal is not justified in not taking into consideration the allowances paid to the deceased under the heads transport allowance and meal allowance. The nature of the amount paid to the deceased under the head special allowance is not known and the same is also fluctuating from month to month. However, the same was also taken into consideration.

11. The special allowance paid to the deceased for the month of April 2016 was Rs. 12,001/-. However, for the month of May 2016 to September 2016, the special allowance was paid at Rs.9,251/-. If the average pay of the deceased for the months of May 2016 to September 2016 is taken into consideration, the same would come to Rs.62,939/-. After deducting the transport allowance and meal allowance, the Tribunal fixed only Rs. 62,444/- as monthly income of the deceased. Therefore, the monthly income has to be marginally increased to Rs.62,939/- The annual income of the deceased would be Rs.7,55,268/- (62,939x12). From the annual income of the deceased, the income tax

payable by deceased shall be deducted as per law laid down by Hon'ble Apex Court in ***Vijay Kumar Rastogi*** case cited supra. The income tax payable on the said amount is Rs.76,053/-(From Rs. 2,50,000 to Rs. 5,00,000/- at the rate of 10%, from Rs,5,00,000/- to Rs.7,55,268 /- at the rate of 20%). Therefore, the total tax payable is Rs.76,053/-.

12**.** The annual income of the deceased after deduction of income tax is Rs.6,79,215/- He is entitled to 40% enhancement towards future prospects. Therefore, the annual income of the deceased is fixed at Rs.9,50,901/- after inclusion of future prospects. The deceased died as a bachelor. Therefore, 50% of the amount has to be deducted. Therefore, the annual contribution is fixed at Rs.4,75,450.50 paise. The applicable multiplier is 17. Therefore, the loss of dependency is fixed at Rs.80,82,658.50/-.

13. The amount awarded under various other heads like loss of parental consortium, loss of estate, funeral expenses are in accordance with the law laid down in ***Pranay Sethi*** case and hence, they are confirmed. The total amount payable to the claimants is Rs. 81,92,658.50 rounded off to Rs. 81,92,660/-.

14. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	80,26,108/-	80,82,658.50/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Parental Consortium	80,000/-	80,000/-	Confirmed
	Total	**81,36,108/-**	**81,92,658.50/- rounded off to 81,92,660**	**Enhanced by Rs.56,492/-**

15. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.81,36,108/- is hereby enhanced to Rs.81,92,660/-. The

appellants are entitled to interest at the rate of 7.5% per annum (excluding the delay period, if any)from the date of filing of the claim petition till the date of realization. The second respondent /Insurance company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this Judgment. The appellants/claimants are permitted to withdraw the same along with interests and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. No costs.

05.03.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Accident Claims Tribunal,
Small Causes Court, Special Sub Judge No.2, Chennai

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

S.SOUNTHAR, J.

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