IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2033 of 2014

1.Vembu
2.Minor Sowrirajan
3.Minor Shanmugapriya
4.Minor Sathyapriya .. Appellants/Petitioners
(Minors 2 to 4 are represented by mother and natural guardian Vembu, w/o. Dhanapal)

vs.

1.Managing Director,
State Transport Corporation,
Kumbakonam

2.Pakkirisamy ... Respondents

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree dated 18.11.2010 in MCOP No.4 of 2009 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Chidambaram.

For Appellants : Mr.T.Gobinath for M/s.Royan Law Associates

For 1st respondent : Mr.D.Venkatachalam

JUDGMENT

This Appeal has been filed by the claimants against the Judgment and Decree dated 18.11.2010 in MCOP No.4 of 2009 passed by the Motor Accident Claims Tribunal/Subordinate Court, Chidambaram, awarding a sum of Rs.3,95,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation and costs against the claim of Rs.15,00,000/-.

2. On 23.9.2008 at about 10.30 p.m., while Dhanapal was driving the Auto bearing Reg.No.TN-02-C-0896 from Chidambaram to Vallampadugai, near Indian Overseas Bank, and overtaking a Mini Lorry, the appellant's Bus bearing Reg.No.TN-

49/N-1765 came in a rash and negligent manner and dashed against the auto and caused the accident. The said Dhanapal succumbed to the injuries sustained in the accident. Hence, the claimants made a claim for a sum of Rs.15,00,000/-.

3. On consideration of pleadings and evidence, by Award dated 18.11.2010, the Tribunal awarded a total sum of Rs.3,95,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation and costs against the claim of Rs.15,00,000/-. Aggrieved over the quantum of compensation, the present appeal has been filed by the claimants seeking enhancement of the compensation.

4. The learned counsel appearing for the claimants/appellants assailing the impugned award would submit that the Tribunal has committed error in deducting 1/3rd from the notional income fixed at Rs.6,000/- which is contrary to the ratio laid down by the Apex Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation Ltd., and another [(2009) 6 SCC 121] in which the Apex Court has held that if the number of the dependants is beyond 4 to 6, only 1/4th should be deducted for personal and living expenses of the decease. While so, admittedly, in the present case, the deceased was survived by his wife and 3 minor children. Therefore, when the claim was made by the four dependants, the Tribunal ought to have applied the ratio laid down by the Apex Court in Sarla Verma's case and deducted 1/4th instead of 1/3rd towards personal and living expenses of the deceased. This aspect has not been considered by the Tribunal. Therefore, a huge amount has been deducted towards the personal and living expenses of the deceased, which has caused grave injustice to the poor claimants who have already lost the only bread winner. Adding further, the learned counsel appearing for the appellants would submit that though the claimants have claimed in the claim petition that the deceased was earning a sum of Rs.15,000/- per month by plying auto rickshaw, disbelieving the pleadings of the claimants, the Tribunal wrongly fixed the monthly notional income as Rs.6,000/- per month. Therefore, the monthly notional income fixed by the Tribunal is also liable to be revised. Placing reliance on the judgment of the Apex Court in Rajesh and others vs. Rajbir Singh and others [(2013) 9 Supreme Court Cases 54] wherein following the ratio laid down in Santhosh Devi vs. National Insurance Co.Ltd., [(2012) 6 SCC 421], the Apex Court has fixed a sum of Rs.1,00,000/- towards loss of consortium, he would submit that a minimum sum of Rs.1,00,000/- towards loss of consortium should be fixed since the deceased died at the young age of 40 years leaving his young widow and minor children whereas the learned Tribunal has awarded a pittance for loss of consortium at Rs.5,000/- and in the same way, only a sum of Rs.5,000/- was awarded for funeral expenses, which are very low. Following the ratio of the aforesaid judgments, the Triubunal

ought to have awarded a sum of Rs.1,00,000/- towards loss of consortium and so also a sum of Rs.25,000/- towards funeral expenses he pleaded.

5. On the other hand, the learned counsel appearing for the Transport Corporation defending the award passed by the Tribunal would submit that insofar as the monthly notional income of the deceased fixed as Rs.6,000/- is concerned, no fault can be attributed against the Tribunal since the claimants have miserably failed to prove their case by producing sufficient documentary evidence that the deceased was earning a sum of Rs.15,000/- per month by plying auto rickshaw. Adding further he would submit that the compensation awarded under the convention heads is also as per the ratio of the decision of this Court. Eventually, the learned counsel appearing for the Transport Corporation would submit that the award passed by the Tribunal need not be interfered with and accordingly, prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the Transport Corporation and perused the materials available on record.

7. It is true that it is difficult for a self-employed person to produce relevant document to prove his monthly income but, therefore, as per the ratio laid down in Syed Sadiq etc., vs. Divisional Manager, United India Insurance Co.Ltd., reported in 2014 (1) TNMAC 459 (SC), the Tribunal has fixed the notional monthly income of the deceased as Rs.6,000/-, therefore, the monthly income of the deceased rightly fixed by the Tribunal as Rs.6,000/- is sustained. With regard to the aspect of deduction towards personal and living expenses of the deceased, as per the ruling of the Apex Court in Sarla Vermas'case (supra), in case of 4 to 6 dependants, 1/4th of the notional income of the deceased has got to be deducted while computing the loss of earning. The relevant portion of the judgment in Sarla Verma and others Vs. Delhi Transport Corporation Ltd., and another [(2009) 6 SCC 121] is usefully extracted hereunder.

> "30. .... Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

The above observation clearly shows that the deduction towards personal and living expenses of the deceased should be one-fourth (1/4th) where the number of dependent family members is 4 to 6. In the present case, the total number of dependent family members is 4. Therefore, it is a fit case where a deduction of 1/4th only should be applied. Therefore, out of Rs.6,000/-, if Rs.1,500/- towards 1/4th is deducted, the loss of notional monthly income would be Rs.4,500. If the correct multiplier 15 is applied, the total loss of earning would be Rs.8,10,000/- (4,500 x 12 X 15). While considering the concept of non-pecuniary damages such as loss of consortium, loss of love and affection for children, funeral expenses, in the case of Rajesh and others vs. Rajbir Singh and others [(2013) 9 Surpeme Court Cases 54], the Apex Court has held as follows:-

> "17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisted, as observed in Santhosh Devi v. National Insurance Co.Ltd., [(2012) 6 SCC 421]. We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.25000 to 10,000 in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case, it was held that compensation for loss of consortium should be in the rage of Rs.5,000 to Rs.10,000. In legal parlance "consortium" is the right of spouse to the company, care, help, comfort guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world

> more particularly in the United States of America, Australia etc.,. English Court have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Court have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.
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> 18. We my also take judicial note of the fact that the Tribunals have been quite frugal regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "funeral expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

The above observation clearly shows that it would be just and reasonable that the Courts award at least rupees one lakh for loss of consortium. Considering the fact that the deceased at the time of death was aged about only 40 years, by following the ratio laid down in the aforesaid judgment, this Court does not hesitate to fix a sum of Rs.70,000/- towards loss of consortium to the wife of the deceased. Similarly, for loss of love and affection of minor claimants 2 to 4 Rs.1,80,000/- (at the rate of Rs.60,000/- for each), towards transportation charges Rs.20,000/- and funeral expenses Rs.20,000/-. Thus, total award amount is fixed as Rs.11,00,000/- (Rs.8,10,000 + 70,000 + 1,80,000 + 20,000 + 20,000).

8. Accordingly, the Appeal stands allowed. No costs. Since it has been reported by the learned counsel appearing for the respondent Transport Corporation that the award amount has already been deposited, the enhanced award amount shall be deposited to the credit of MCOP No.4 of 2009 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Chidambaram, within a period of four weeks from the date of receipt of a copy of this order. The enhanced award amount will carry interest at the rate of 7.5% p.a., from the date of claim petition till the date of deposit. The award amount shall be apportioned in the ratio fixed by the Tribunal. The Tribunal is directed to deposit the share amount of the minor claimants in any one of the nationalised banks till they attain majority. On attaining majority, such claimants are entitled to withdraw entire amount by filing proper application before the Tribunal. The mother and guardian of the minor claimants, namely, Vembu, is entitled to withdraw interest on the deposit of the minor claimants once in three months directly from the bank where the share of the minor claimants are to be deposited.

9. Since this Court has enhanced the compensation, the claimants/appellants are directed to pay Court Fee for the enhanced award amount within one week from the date of receipt a copy of this Judgment.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/
Subordinate Court,
Chidambaram.

Copy to

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

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.65728
+1cc to M/S.Royan Law Associates, Advocate, S.R.No.65738

jsv(CO)
srg(10/02/2016)