IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.2042 of 2016
and C.M.P. No.14904 of 2016

M/s.Shriram General Insurance Company Limited,
Represented by its Divisional Manager,
having his office at Jayasree Towers,
First Floor, C/142, 6th Cross Street,
Thilai Nagar, City and Munsifi,
Trichy - 18. ... Appellant

-vs-

1.Kavitha
2.Nivedhitha (Minor)
D/o.Senthilkumar,
Rep.by her next friend and Mother
Kavitha,
No.5A, Sathara Street,
Munisifi, Mannargudi Town.

3.Thangamani ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 5.12.2012 made in M.C.O.P.No.217 of 2010 on the file of the Motor Accident Claims Tribunal (Sub Judge) at Mannargudi.

For Appellant : Mr.Paul Singh
for Mr.B.Murugavel

J U D G M E N T

[Judgment of the Court was made by S.MANIKUMAR, J.]

Challenge in this appeal is to the judgment and decree, dated 05.12.2012 made in M.C.O.P.No.217 of 2010, on the file of the Motor Accident Claims Tribunal (Sub Judge), Mannargudi, by which, the Tribunal, fixing negligence on the driver of the lorry, bearing Registration No.TN-28-E-8406 insured with the appellant, awarded compensation of Rs.14,99,200/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of deposit.

2.Short facts leading to the appeal are as follows:

On 25.07.2010, about 4.45 p.m., when Mr.Senthilkumar, was riding his motor cycle, bearing Registration No.TN-50-Y-7585 and proceeding near Sarukkai Street, on Poovanur Main Road, a goods carriage Lorry bearing Registration No.TN-28-E-8406, which came in the opposite direction, driven by its driver, with high speed and in a rash and negligent manner, dashed against the motor cycle and as a result, the motorcyclist fell down and sustained grievous injuries and died on the spot.

2.1.The first respondent herein, wife of the deceased, along with her minor daughter, filed a claim petition in M.C.O.P.No.217 of 2010, claiming compensation of Rs.10,00,000/-. They submitted that at the time of accident, the deceased Senthilkumar, was aged about 32 years. As Gold Smith and Appraiser in Lakshmi Vilas Bank, Mannargudi, he earned Rs.15,000/- per month. According to her, but for the accident, he would have lived upto full span of his life, and supported the family.

3.To support avocation and earning, the respondents / claimants have marked Ex.P.8 - Income Tax Form; Ex.P.10 - Employment Certificate; Ex.P.11 - Bank Accounts for the months of June 2010 and July 2010; Ex.P.12 - Bank Accounts from April 2010 to June 2010.

4.P.W.3 - Varadharajan, working as Assistant Manager in Lakshmi Vilas Bank, Mannargudi, has adduced supporting evidence that at the time of accident, the deceased Senthilkumar, was working as a Jewel Appraiser in the said Bank. Ex.P.10 - Employment Certificate has also been marked. He has further deposed that whenever gold is valued more than one lakh, a sum of Rs.300 would be paid as commission and that the said amount would be kept in the bank deposit. Ex.P.11, Ex.P-12, have been marked for the purpose stated supra. Though, P.W.3 - Varadharajan has deposed that on an average, the deceased earned Rs.30,000/- per month, upon perusal of Ex.P.11, the actual commission earned, the Tribunal had fixed as Rs.11,395/- per month.

5.On the basis the entry in Ex.P.2 - Post-mortem Certificate, the Tribunal determined the age of the deceased as 32 years, which could be supported by a decision of this Court in The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515]. After deducting 1/3rd towards the personal and living expenses, the Tribunal has fixed Rs.7,600/- as the monthly income for computing loss of contribution to the family. Following the decision of Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), the Tribunal applied 15 multiplier for computing the loss of contribution to the family, which works out to Rs.14,59,200/- [7600 x 12 x 15]. That apart, the Tribunal has awarded Rs.3,000/- towards funeral expenses, which is less. The Tribunal has awarded Rs.25,000/- towards loss of consortium, which is also less. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

> “In legal parlance, 'Consortium' is the right of the 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 Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts 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 atleast Rupees one lakh for Loss of Consortium.”

In the case on hand, the Claims Tribunal has awarded Rs.25,000/- only, towards loss of consortium.

6.Further, the Tribunal has awarded compensation of Rs.10,000/- under the head loss of love and affection to the minor, aged about 6 years, which is also less. Legal representatives of the deceased, in particular, minor child has lost the love and affection of the deceased. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards the loss of love and affection.

7.The next question to be considered is that, when the claim petition was made for just Rs.10,00,000/-, the Tribunal, was right in awarding compensation of Rs.14,99,200/- with interest at the rate of 7.5% per annum, of this aspect, we deem it fit to consider few decisions on just and reasonable compensation has to be awarded to the injured or the legal representatives of the deceased, as the case may be. Few decisions on this aspect are as follows:

(i) In R.D.Hattangadi v. M/s.Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755, wherein, the Apex Court held as follows:

> "In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

(ii) In yet another decision in Divisonal Controller, KSRTC v. Mahadeva Shetty and another reported in (2003) 7 SCC 197, in Paragraph 12, the Supreme Court held that,

> "Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded."

At Paragraph 15 of the said judgment, the Supreme Court has held that,

> "Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the

pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just."

8.In the light of the above judgements, though compensation claimed is less, it is well settled that the Tribunal / Courts, do have the power to award just and reasonable compensation to the victims of the accident with further direction to them to pay appropriate court fee, which in this case on hand, has been done. There is no illegality in the impugned order warranting interference. Compensation awarded under many heads is less.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed. We direct the appellant-Insurance Company to deposit the entire award amount of Rs.14,99,200/- with interest @ 7.5% and costs, less the statutory deposit, to the credit of M.C.O.P.No.217 of 2010 on the file of the Motor Accident Claims Tribunal (Sub Judge) at Mannargudi, within six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent / claimant is permitted to withdraw the share apportioned to her with appropriate interest, by making necessary application before the Tribunal. The share of the minor shall be deposited in any one of the Nationalised Bank proximate to the residence of the first respondent / mother, in a fixed deposit renewable periodically until minor attains majority. On such deposit, the interest accrued is permitted to be withdrawn once in three months by the mother / first respondent.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Subrodinate Judge,Motor Accident Claims Tribunal
Mannargudi.

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