IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 18.11.2016

Judgment Pronounced on : 21.12.2016

CORAM :THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.494 of 2009
and M.P.No.1 of 2009

1.Ponnammal
2.N.Murugesan
3.N.Baskaran ... Appellants/Claimants

Vs.

1.R.Anand
2.M.M.K.Raja
3.The Branch Manager,
The New India Insurance Co. Ltd.,
17, Fort Main Road,
Shevapet, Salem - 2. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 as against judgment and decree dated 18.09.2008 made in MCOP.No.554 of 2007 on the file of the Motor Accident Claims Tribunal/First Additional District Court, Erode.

For Appellants : Mr.N.S.Suganthan
for Mr.N.Manokaran

For Respondents : No Appearance

JUDGMENT

The claimants are the legal heirs of one Nachimuthu @ Nachimuthu Gounder, who died in a road accident that took place on 03.06.2007. He, at the relevant time was riding his TVS-50 bearing Registration No.TN-33-A-5466, when a Toyota Qualis LMV bearing Registration No.TN-30B-7681, belonging to the second respondent and driven by the first respondent, dashed against him and owing to multiple injuries that he suffered, he presumably died on the way to the hospital. On various heads, the claimants made a consolidated claim of Rs.4,00,000/-, whereas the Tribunal has passed an award for Rs.92,000/-.

2. Learned counsel for the appellants submitted that the deceased Nachimuthu @ Nachimuthu Gounder possessed agricultural lands, was engaged in coconut business and also in milk vending business. Adding further he would submit that the Tribunal has fixed the income of the deceased notionally at Rs.2,000/- per month, which is unrealistic if the different avocations in which the deceased was engaged in is taken into consideration. He also added that the Tribunal was unduly parsimonious in granting compensation on the head of loss of love and affection for the children, loss of consortium to the widow and compensation awarded on all these heads need interference and accordingly the compensation awarded deserves a just and fair enhancement.

3.The respondents have been served with notice, but have not participated in the proceedings, hence, this matter is heard ex parte.

4. The summary of the compensation claimed under various heads and the one awarded by the Tribunal is tabulated below :

Heads of Compensation	Amount claimed (Rs.)	Amount awarded (Rs.)
Loss of income and dependency	3,70,000/- (loss of future earnings, close relationship, mental agony etc.)	80,000/-
Mental stress and shock		2,000/-
Love and affection		5,000/-
Funeral expenses	10,000/-	5,000/-
Transportation expenses	6,000/-	Nil
Damage to cloths and articles	2,000	Nil
Other expenses (TVS-50 fully damaged)	12,000	Nil
Total :	4,00,000/-	92,000/-

5. On the head of future dependency, the Tribunal has denied compensation to Nachimuthu Gounder's children, (petitioners 2 & 3) and has awarded compensation only to his widow, the first respondent. In arriving at the quantum on this head, the

Tribunal has notionally fixed the income at Rs.2,000/- per month, its finding that he possessed agricultural lands necessary to generate income notwithstanding. The justification for fixing the notional income of the deceased at Rs.2,000/- per was founded by the Tribunal on the premise that since the deceased was aged 64 years he might not have earned more, which appears plainly arbitrary. While awarding compensation on the heads "pain and sufferings", "love and affection", which too were inadequately determined, the tribunal has excluded the children without any basis.

6. Fixing compensation may not be reduced to a number game though an element of subjectivity cannot be ruled out. However, in Smt. Sarala Varma & Others Vs Delhi Transport Corporation & Another [2009(2)TNMAC 1(SC)], the Hon'ble Supreme Court has evolved a strategy to achieve parity in determining compensation but that operates essentially in the (a) choice of multiplier to be employed; (b) in the percentage of income allowable for own use of the victim of the accident; and (c) in the need to factor in the future prospects for increase in income of the victim of the fatal road accidents among salaried and organized sector for achieving a realist value of the loss of dependency. This was subsequently developed in Santosh Devi Vs National Insurance Co., Ltd., [2012(2) TNMAC 1 (SC) where the Supreme Court declared its fairness in extending the future prospects for increase in income to those victims of fatal accidents who are self employed and in unorganized sector. The next level of standardization was achieved by the Supreme Court in Rajesh & Others Vs Rajbir Singh & Others [2013(2) TNMAC 55(SC)] where it held that 15% increase in income is permissible for those in the age group of above 60 years in the self employed category. Any compensation, if it has to be considered rational and as reflecting a connect to the reality cannot afford to ignore the principles laid down by the Supreme Court.

7. If so viewed, I find that the compensation amount as awarded by the Tribunal needs interference. On the head of loss of dependency, I consider that the notional income of Rs.2,000/- per month, which the Tribunal believed is all that Nachimuthu Gounder could have earned for the solitary reason that he was a senior citizen may not be appropriate. Given the general life expectancy of a senior citizen his support to the family may be for a lesser duration but that does not imply that his monthly income too should be notionally discounted at a lower sum. The accident has taken place in 2007 when one who is an agriculturist and engaged in other related occupation such as milk vending could be expected to ordinarily earn Rs.3,000/- per month, which this Court now fixes as Nachimuthu Gounder's monthly income. Applying Rajesh & Others Vs Rajbir Singh & Others dictum this must be increased by 15% to include his

future prospects in income as Nachimuthu was more than 60 years when he died. Accordingly, his monthly income would be Rs.3,450/- p.m and hence Rs.41,400/- per annum. Reducing this by 1/3 towards his provision for personal expenses, the multiplicand would be Rs.27,600/-. The suitable multiplier as per Sarala Varma ratio is 5. It is plain arithmetic that the loss of dependency is a product of these two factors and it is thus determined at Rs.1,38,000/-

8. On the head of general, non-pecuniary damages too the Supreme Court in unequivocal terms has indicated in Rajesh Vs Rajbir Singh referred to above that in determining the unliquidated damages in this category the inflationary trends of the times should be granted its space. It stands to reason since compensation law for tortious liability should be established on a balancing plane of pragmatism if it has to produce just and fair result. I, therefore, do not find any reason as to why children of Nachimuthu Gounder should be denied compensation on this head. To presume that adult children will not suffer loss of love and affection when death is forced on one's parent or siblings is far fetched and demonstrates a disconnect to human experience. If life of law breathes on human experience, then the same should not be sacrificed irrationally. How will a reasonable man that law has created with a grant of imperishable existence react when calamity is forced on him is what the Court should relate itself to when it is required to determine compensation on various heads of general damages. I therefore award a sum of Rs.20,000/- each for the two children of Nachimuthu Gounder on each of these two heads of loss of love and affection and shock and stress. In other words, they would be entitled to Rs.80,000/- (20,000x 2 x2) on each on these two heads. The first appellant, the widow of the deceased, however would be entitled to a higher sum on both these heads at Rs.30,000/- each. Compensation for loss of consortium of the first appellant, which the Tribunal appeared to have ignored is also quantified at Rs.50,000/-. Death too is no longer cheaper as funeral expenses, given the cost of performing obsequies, have become expensive and hence even here the impugned award requires an interference. Accordingly, it is increased from Rs.5,000/- to 20,000/-The final figure arrived on various heads will appear as below:

Heads	Amount (Rs.)
Loss of income and dependency	1,38,000/-
Mental stress and shock (2 children & widow)	70,000/-

Heads	Amount (Rs.)
Love and affection (2 children & widow)	70,000/-
Funeral expenses	20,000/-
Loss of consortium	50,000/-
Total	3,48,000/-

9.The appeal is partially allowed and the award amount is enhanced to Rs.3,48,000/-, without costs. The third respondent/Insurance Company is directed to deposit the entire award amount, less if any already deposited, with interest at 7.5% p.a within four weeks from the date of receipt of a copy of this order, and on such deposit, the claimant is entitled to withdraw the same forthwith. Consequently, connected miscellaneous petition is closed. Appellants are directed to pay Court fee as enhanced potion of award.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1.The I Additional District Judge,
The Motor Accident Claims Tribunal,
Erode.

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

+1cc to Mr.N.Manokaran, Advocate Sr.74740

C.M.A.No.494 of 2009

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srg 10/02/2017