

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.1063 of 2018
and
C.M.P.No.8743 of 2018

The Managing Director,
Tamil Nadu State Transport
Corporation (Kum) Limited,
Railway Station New Road,
Kumbakonam 612 001.Appellant/Respondent

Vs

1.C.Revathy

2.Minor C.Deepak Harish

3.Minor C.Kabilesh

Minors represented by their
mother and next friend C.Revathy

4.A.Mahadevan Respondents/Petitioner

PRAYER : Civil Miscellaneous Appeal filed against the award
and decree dated 19.09.2017 made in M.C.O.P.No.900 of 2011 on
the file of the Motor Accident Claims Tribunal, Chief Judge,
Small Causes Court, Chennai.

For Appellant : Mr.J.Lokesh
for D.Venkatachalam

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Transport Corporation against the award of Rs.18,13,000/- for the death of one Chelladurai, aged about 25 years, who worked as a collection man in a private concern, alleged to be earning about Rs.10,000/- per month in the accident, which occurred on 26.11.2009, when the deceased, who was riding his motorcycle, was hit down by the bus belonging to the appellant/Transport Corporation. Therefore, the claim petition.

2.On contest the Tribunal found that the accident had occurred because of the rash and negligent driving of the bus driver and awarded a sum of Rs.18,13,000/-. The said award is being challenged before this Court.

3.Heard Mr.J.Lokesh, learned counsel for Mr.D.Venkatachalam, learned counsel for the appellant, who would submit that the quantum alone is being challenged. He pointed out, relying upon the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), that Rs.1,00,000/- awarded towards loss of consortium is on the higher side. Moreover, 50% has been added towards future prospects when as per the above said Constitution Bench's Judgment, 40% has to be awarded. Therefore, he seeks to reduce the compensation.

4.The negligence aspect is not questioned by the Transport Corporation and the only question is with regard to the quantum.

5.The date of accident is on 26.11.2009. The case of the claimants is that the deceased was earning about Rs.10,000/- per month. However, the Tribunal took only Rs.6,000/- as monthly income. The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 whereas, in this case, the accident had occurred during the fag end of 2009. Therefore, monthly income fixed by the Tribunal at Rs.6,000/- is on the lower side and the same is enhanced to Rs.8,000/-.

6.The learned counsel for the appellant pointed out that as per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects, if the deceased was employed privately. Therefore, instead of 50%, as taken by the Tribunal, the same is reduced to 40%. Along with future prospects at 40%, the monthly income would be Rs.11,200/- (Rs.8,000/- + 40% of Rs.8,000/-).

7.The Tribunal deducted $\frac{1}{4}$ th towards personal expenses. A perusal of the award would show that there are four family members and therefore, the Tribunal rightly deducted $\frac{1}{4}$ th towards personal expenses. The loss of monthly contribution of the deceased to his family, after deducting $\frac{1}{4}$ th would be Rs.8,400/- (Rs.11,200/- (-) $\frac{1}{4}$ th of Rs.11,200/-).

8.The age of the deceased was 25 years and the appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is 18

and the loss of income would be at Rs.18,14,400/- (Rs.8,400/- X 12 X 18).

9.Loss of consortium:

The learned counsel for the appellant contended that as per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), Rs.40,000/- has to be awarded towards loss of consortium to the 1st respondent, whereas the Tribunal awarded a sum of Rs.1,00,000/- and the same has to be reduced. Accordingly, loss of consortium is reduced to Rs.40,000/-.

10.Loss of love and affection:

A sum of Rs.1,00,000/- was awarded by the Tribunal to each of the minor children, 2nd and 3rd respondents. Though it is contended by the learned counsel for the appellant that no amount could be awarded as per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), this Court awards a sum of Rs.75,000/- each to the 2nd and 3rd respondents. The Hon'ble Supreme Court would not have meant that no amount could be awarded towards loss of love and affection. The amount awarded towards loss of love and affection to the children and the parents is akin to the amount awarded towards loss of consortium. Similarly, the sum of Rs.25,000/- awarded by the Tribunal towards loss of love and affection to the 4th respondent is confirmed.

11.Funeral expenses:

A sum of Rs.25,000/- was awarded by the Tribunal towards funeral expenses. As per the Constitution Bench's judgment in Pranay Sethi's case, the same is reduced to Rs.15,000/-

12.Loss of estate:

No amount was awarded by the Tribunal towards loss of estate. As per the Constitution Bench's judgment in Pranay Sethi's case, a sum of Rs.15,000/- is awarded towards loss of estate.

13.Transportation charges:

A sum of Rs.5,000/- was rightly awarded by the Tribunal towards transportation charges. The same is confirmed.

14.Hence, the total compensation payable in this case is Rs.20,64,400/- rounded off to Rs.20,50,000/-

Head	Amount (Rs.)
Total loss of income	1814400
Loss of consortium	40000
Loss of love and affection	175000

Head	Amount (Rs.)
Loss of estate	15000
Funeral expenses	15000
Transportation	5000
	2064400

15.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Though the Transport Corporation has filed the appeal, the facts and circumstances enables this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.18,13,000/- is enhanced to Rs.20,50,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

16.Out of the award amount, the 1st respondent/wife is entitled to get Rs.10,50,000/-; the 2nd and 3rd respondents/minor children are entitled to get Rs.4,00,000/- each and the 4th respondent/father is entitled to get Rs.2,00,000/-.

17.The claimants are directed to pay the additional court fee, if any, within a period of one week from the date of receipt of a copy of this order.

18.The appellant/Transport Corporation is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, on or before 03.08.2018, failing which, the Chairman-cum-Managing Director and Chief Financial Officer-cum-Chief Accounts Officer shall appear before this Court on 06.08.2018.

19.On such deposit being made, The Tribunal is directed to transfer the respective shares of the respondents 1 and 4 to their bank accounts through RTGS. As far as 2nd and 3rd respondents/minors' share are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

20.With the above directions, this Appeal is dismissed and the award amount is enhanced from Rs.18,13,000/- to Rs.20,50,000/-. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sai
To

The Chief Judge,
(Motor Accident Claims Tribunal)
Court of Small Causes, Chennai 104.

Copy to: 1. The Chairman Cum Managing Director
and Chief Financial Officer, - Cum Chief
Accounts Officer, Kumbakanam.

2. C. Revathy, Minor C. Deepak Harish,
Minor C. Kabilesh, Minor (rep. by their mother and next friend
Revathy) All are residing at No.10,
Pallavan Salai, Sathiyavanimuth, Nagar, Chennai.

3. A.Mahadaver, F/o. Lata Chelladurai, No.10 Pallavar Salai,
Sathiyavanimuthu Nagar, Chennai

4. The Section Officer, Judicial Section, High Court, Madras.
(Post the matter on 6.8.2018)

+ 1 cc to Mr.Venkatachalam, Advocate Sr.34794

C.M.A.No.1063 of 2018

MG(CO)
EU(28/06/2018)

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