IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3713 of 2008

1. Andal
2. Chellammal
3. Vediappan
4. Raja
5. Nirmala
6. Chinnapappa
7. Minor Thiruvengadam
8. Minor Chinthamani
9. Chinnappa Gounder
10. Neelavathi ... Appellants/ Claimant

Vs.

The Managing Director,
The Tamilnadu State Transport Corporation Limited,
Salamedu,
Villupuram. ... Respondent/ Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation passed in M.C.O.P.No.128 of 2007 dated 31.01.2008 on the file of the Motor Vehicle Accidents Claims Tribunal, District Court, Thiruvannamalai.

For Appellants : Mr.Terry Chellaraja

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

The appellants who are the claimants in M.C.O.P.No.128 of 2007 on the file of the Motor Vehicle Accidents Claims Tribunal, District Court, Thiruvannamalai sought compensation of Rs.10,00,000/- for the death of one Kasi, who is the husband of claimants 1 and 2 and father of the claimants 3 to 8 and son of claimants 9 and 10.

2. The brief facts of the case of the claimants are as follows. On 06.01.2007, the deceased Kasi was riding his two wheeler TVS 50 on Thiruvannamalai-Tindivanam Road. At about 8.15 a.m., when he was nearing Somasipadi Koilmedu, a speeding bus bearing registration No. TN 32 N 2500, belonging to the respondent hit him, as a result of which, the deceased was thrown out of his vehicle and sustained injuries all over his body. Immediately, he was rushed to the Government Hospital, Thiruvannamalai. However, he succumbed to injuries on the way to the hospital. According to the claimants, the driver of the respondent was responsible for the accident and that the respondent is liable to pay the compensation of Rs.10,00,000/- to them.

3. The respondent filed a counter affidavit denying all the allegations of the claimants.

4. After considering the entire evidence on record, the learned District Judge, Motor Vehicle Accidents Claims Tribunal, Thiruvannamalai awarded a compensation of Rs.1,88,000/- together with interest at the rate of 7.5% p.a. The award under 3 heads passed by the trial court is extracted below.

Sl.No	***Heads***	***Amounts in Rs.***
1	Loss of income	1,82,000
2	Love and affection	5,000
3	Funeral expenses	1,000
	Total	***1,88,000***

5. Aggrieved over the quantum of compensation, the appellants/ claimants have filed the present appeal for enhancement of the Award amount.

6. Mr. Terry Chellaraj, learned counsel appearing for the appellants would contend that the trial court has failed to take into account the future prospects of the deceased Kasi and also wrongly fixed the notional income of the deceased Kasi as Rs.1,750/- per month. He would further contend that a sum of Rs.40,000/- should have been awarded to both the wives towards loss of consortium and a sum of Rs.40,000/- should have been awarded to each of the claimants under the Head of Loss of Love and affection. Reliance was also placed on the decision rendered by ***the Honourable Supreme Court of India*** **in Magma General Insurance Company Limited V. Nanu Ram Alias Chuhru Ram and other in Civil Appeal No.9581 of 2018,** wherein it has been held thus.

A Constitution Bench of this court in Pranay Sethi dealt with the various heads under which compensationis to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, " consortium'' is a compendious term which encompasses " spousal consortium ", " parental consortium " and " filial consortium ".

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of " company, society, co-operation, affection, and aid of the other in every conjugal relation".

Parental consortium is granted to the child upon the premature death of a parent, for loss of " parental aid, protection, affection, society, discipline, guidance and training".

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companiionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companiionship of the deceased child.

The Motor vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental consortium is awarded to children, who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under " Loss of Consortium" as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of " Filial Consortium".

7. As per the decision rendered by ***the Constitution Bench of the***

Honourable Supreme Court of India in National Insurance company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, a sum of Rs.15,000/- should be awarded towards Funeral Expenses and a sum of Rs.15,000/- should be awarded towards Loss of Estate. Apart from that, if a person is self employed, 25% should be added to the income of the deceased for future prospects. A perusal of the records shows that the claimants did not adduce any evidence to show that the deceased was earning a sum of Rs.8,000/- as alleged by them. Therefore, notional income of the deceased is fixed at Rs.4,500/-. After adding 25% of the income for future prospects, the monthly income of the deceased is arrived at Rs.5,625/-. Since there are six dependents, 1/5th amount should be deducted for his personal expenses (i.e. 5625-1125 = 4500) and hence the income of the deceased Kasi is fixed at Rs.4,500/- The age of the deceased was 45 years and hence proper multiplier is 14. Thus, the loss of income is fixed at Rs.7,56,000/-. Since no amount was awarded by the Constitution Bench of the Honourable Supreme Court in ***Pranay Sethi'***s case (cited supra) towards loss of love and affection, I am not inclined to award any amounts under that head. In the light of the above discussion, the claimants are entitled to the following amounts.

Sl.No	Heads	Amounts in Rs.
1	Loss of Income (i) Income 4500 (ii) Future Prospects 25% 1125 ------- 5625 (iii) Deduction towards personal expenditure (1/5) 1125 ------- 4500 ------- Loss of income (4500x12x14)= 7,56,000	7,56,000
2	Loss of consortium for the first claimant	40,000
3	Funeral Expenses	15,000
4	Loss of Estate	15,000
	Total	***8,26,000***

Accordingly, a total sum of Rs.8,26,600/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit is awarded.

8. In the result,

(i) The appeal is allowed and a sum of Rs.8,26,000/- (Rupees eight lakhs twenty six thousand only) is awarded to the appellants/ claimants as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit. The respondent is directed to deposit the enhanced compensation amount along with interest to the credit of M.C.O.P.No.128 of 2007 on the file of the learned District Judge, Motor Vehicle Accidents Claims Tribunal, Thiruvannamalai, within a period of two months from the date of receipt of a copy of this order.

(ii) On such deposit being made by the respondent, the petitioners are entitled to withdraw their respective shares as apportioned by the trial court.

(iii) No order as to costs.

14.11.2018

mst

Index:Yes/No
Internet:Yes/No
Speaking/non Speaking order

To

1. The District Judge,
Motor Vehicle Accidents Claims Tribunal,
Thiruvannamalai

2. The Managing Director,
The Tamilnadu State Transport Corporation Limited,
Salamedu,
Villupuram.

R.HEMALATHA, J.
mst

CMA.No.3713 of 2008

14.11.2018