IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1809 of 2015
and
M.P.No.1 of 2015

Sri Ram General Insurance Co. Ltd.,
No.66, Tirumalai Pillai Road,
T.Nagar, Chennai-17. .. Appellant

Vs.

1.S.Nasrin Banu
2.S.P.Sadiq Ali
3.V.Annathurai .. Respondents

Prayer:-
Civil Miscellaneous Appeal is filed under section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 05.02.2015 made in M.C.O.P.No.1486 of 2012 on the file of learned Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.S.Dhakshinamoorthy

For Respondents : Mr.A.A.Venkatesan

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JUDGMENT

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 05.02.2015 made in M.C.O.P. No.1486 of 2012 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

2. The appellant is the insurance company and they are challenging the quantum of compensation awarded by the Tribunal. The respondents 1 and 2 are the parents of the deceased and the third respondent is the owner of the vehicle which caused the accident.

3. The facts in a nutshell are as under: Respondents 1 and 2 are the parents of the deceased, i.e., S.Sara Rizwana, aged 5

years. studying U.K.G. in Seventh Day Adventist Higher Secondary School, Purasaiwalkkam, On 22.01.2012 at about 22.25 hours, when the deceased was travelling as a pillion rider on a motor cycle bearing Reg.No.TN-01-AA-9684 from Senatop Road junction and turned carefully towards North, at the Anna Salai Police signal point, a Lorry bearing Reg.No.TN-20-AR-1015 came from the same direction in a very rash and negligent manner and dashed against the motor cycle and thereby injured the second respondent (claimant), who is the father of the deceased, and pillion rider and threw them out, as a consequence, they fell down on the road and the pillion rider sustained fatal injuries and died on the way to hospital and the rider of the motor cycle sustained grievous injuries. The claimants sought Rs.8,50,000/- as compensation for the death of S.Sara Rizwana in M.C.O.P.1486 of 2012.

4. The appellant Insurance Company appeared through its counsel and filed counter statement before the Tribunal denying the allegations made in the claim petition.

5. The counsel appearing for both respondents 1 and 2 to substantiate their claim marked exhibits Ex.P1 to Ex.P11. No contra evidence was placed on the side of the appellant - Insurance Company and no witness has been examined. The second claimant, who is the father of the deceased was examined as PW1. According to him, his daughter died on the way to hospital and he filed his evidence through affidavit. Ex.P4 is the postmortem certificate, Ex.P5 is the death report, Ex.P6 is the death certificate.

6. The learned Tribunal, judgment and decree dated 05.02.2015 made in M.C.O.P. No.1486 of 2012, allowed the petition by awarding compensation of Rs.6,55,000/- with interest at 7.5% per annum from the date of petition till the date of deposit. The claimants, who are parents of the deceased, were held to be entitled to get equal share in the award amount.

7. Assailing the said judgment and decree only in relation to the quantum awarded, the present appeal is filed.

8. The learned counsel appearing for the appellant Insurance Company argued that since the deceased was a child aged 5 years, the amount awarded is highly excessive. The appellant contended that the Tribunal went wrong in awarding excessive compensation of Rs.6,55,000/- and strongly contended that the award amount granted by the Tribunal under conventional damages by relying the judgment of the Hon'ble Supreme Court reported in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and others, (2017) 16 SCC 680.

9. The learned counsel for respondents 1 and 2, who are claimants, relied on the judgment of Hon'ble Supreme Court in Kishan Gopal and another versus Lala and others 2013 AIR SC (Civil) 2465, wherein in relation to death of a 10 year old child who was assisting his father in agricultural occupation, the Hon'ble Supreme Court by taking into account that had the deceased child been alive, he would have contributed substantially to his family by working hard, took notional income in the said case at Rs.30,000/- applied multiplier of 15, and by awarding Rs.50,000/- under conventional heads awarded Rs.5,00,000/- along with interest @ 9% per annum with effect from the date of filing of the application till date of payment. He added that, in the case on hand, the deceased was a minor girl aged 5 years at the time of accident and her annual income is fixed as Rs.30,000/-. Applying multiplier of her age, the compensation for the loss of pecuniary benefits due to the death of minor girl child as Rs.4,50,000/- was rightly fixed by the Tribunal and the same does not warrant any interference.

10. The learned counsel for the respondent claimants further submitted that the Tribunal has rightly analyzed the evidence and passed award a sum of Rs.6,55,000/-, granting reasonable amounts under various conventional heads and the same does not require any interference.

11. I heard Mr.S.Dhakshinamoorthy, learned counsel for the appellant and Mr.A.A.Venkatesan, learned counsel for the respondents and perused the materials available on record.

12. In the case on hand, the Tribunal following the decision in Kishan Gopal, supra, taking note of the fact that the deceased was a non earning member of their family, fixed her annual income at Rs.30,000/- and applying multiplier of 15 for her age, the Tribunal fixed the compensation for loss of pecuniary benefits due to the death of the girl child at Rs.4,50,000/-. In my considered opinion, the amount awarded under this head, i.e., loss of dependency, does not warrant any interference.

13. In National Insurance Co. Ltd. v. Pranay Sethi, reported in 2017 (2) TN MAC 609 (SC), the Hon'ble Supreme Court set out the various amounts to be awarded as compensation under the conventional heads in case of death. The relevant portion of the decision reads thus:

> "Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The principle of revisiting the said heads is an

acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years."

14. Following the decision of the Hon'ble Supreme Court in Pranay Sethi (supra), compensation of Rs.15,000/- is awarded towards loss of estate as against Rs.50,000/- awarded by the Tribunal. Similarly, a sum of Rs.15,000/- is awarded towards funeral expenses as against Rs.50,000/- awarded by the Tribunal.

15. In my considered opinion, the amount awarded towards loss of love and affection should be fixed at Rs.40,000/- as against Rs.50,000/- awarded by the Tribunal.

16. With regard to loss of expectation of life, a Division Bench of this Court in National Insurance Company Ltd. v. R.Vimala, vide judgment dated 8.9.2015 made in C.M.A.No.713 to 715 of 2015, held as under:

> "At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Oriental Insurance Company Limited V. Syed Ibrahim and others, (2007) 11 Supreme Court Cases 512 at page 515, wherein in paragraph 7, it is held as follows:
>
> > "7.There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendour of stars, beyond the reach of monetary tape measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are the claimants, relevant factor would be age of parents."

d)Also, in the aforesaid decision, at page 516, in paragraph 8, it is held as follows:

> "8. 11.... In case of the death of an infant, there may have been no actual pecuniary benefit derived by the parents during the child's life-time. But this will not necessarily bar the parents' claim and prospective loss will find a valid claim provided the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of Taff Vale Rly. V. Jenkins (1913) AC 1, and Lord Atkinson said thus:
>
> "..... all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them." (See Lata Wadhwa and Ors. v. State of Bihar and Ors. (2001 (8) SCC 197).

e)Moreover, in the aforesaid decision, at page 516, in paragraph 10, it is observed as follows:

> "10.In cases of young children of tender age, in view of uncertainties abound, neither income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter

advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither is the income of the deceased child capable of assessment on estimated basis nor is the financial loss suffered by the parents capable of mathematical computation."

f) No wonder, the award of monetary compensation certainly cannot compensate a valuable, precious loss of human life and as a matter of fact, the damages/compensation awarded to the family of deceased cannot renew a physical frame that was battered and shattered.

g) While awarding Compensation, a Court of Law/Tribunal is to keep in mind an important fact that the same cannot be a 'Source of Profit nor a Bonanza'. Undoubtedly, the measure of compensation/damages cannot be arrived at by an exact arithmetical calculations. The compensation awarded by a Court/Tribunal should not be miserly or meagre or a pittance as the case may be. Little guess work, this way or that way is quite possible and permissible. However, the determination of compensation in a particular case is to be rational and not based on whims and fancies, arbitrariness, capriciousness etc."

17. In the light of the above decision, the amount granted under the head "Loss of Expectation of Life" is not justifiable and accordingly, the same is deleted.

18. Thus, the amount awarded by the Tribunal is modified and fixed as under:

Loss of Dependency	:	Rs.4,50,000/-
Love and Affection	:	Rs. 40,000/-
Funeral Expenses	:	Rs. 15,000/-
Loss of Estate	:	Rs. 15,000/-
Total	:	Rs.5,20,000/-

19. In the result, this civil miscellaneous appeal is partly allowed and is modified from Rs.6,55,000/- to Rs.5,20,000/-. Out of the award amount, the first and the second Respondents are entitled to get equal share in the award amount. The Appellant / insurance company is directed to deposit the modified award amount with 7.5% interest from the date of petition to till the date of deposit within a period of 8 weeks from the date of

receipt of a copy of this order. On such deposit the Respondents 1 & 2 / Claimants permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The Judge,
   The Motor Accidents Claims Tribunal
   V Court of Small Causes, Chennai.

2. The Section Officer,
   V.R.Section, High Court,
   Madras-104. (2 Copies)

+1cc to Mr.S.Dhakshinamoorthy, Advocate, S.R.No.75135
+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.75061

C.M.A.No.1809 of 2015 and
M.P.No.1 of 2015

RSV(CO)
CS/01/03/2019