

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.09.2018

Delivered on : 29.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.964 of 2015

1.N.Vijayalakshmi

2.P.Ramamma

3.P.Ramaiah

.. Appellants/Petitioner

Vs

1.R.V.N.Kannan

2.Royal Sundaram Alliance Ins. Co. Ltd.,

Subramaniya Building, 2nd Floor,

No.1, Club House Road,

Anna Salai, Chennai - 02.

.. Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed against the Judgment and Decree dated 31.10.2014 and made in MCOP.No.1537 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.A.A.Venkatesan

For Respondents : Mr.M.Krishnamoorthy (for R2)
No Appearance (for R1)

JUDGMENT

The Appellants are the claimants and filed this Civil Miscellaneous Appeal challenging the order and decree in M.C.O.P.No.1537 of 2012, dated 31.10.2014 on the file of the learned Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2.The brief facts of the case is that the appellants are the wife and parents of the deceased P.Nageshwara Rao. On 05.01.2012 at about 09:05 Hrs., while the deceased P.Nageshwara Rao was

carefully riding a motor cycle bearing Registration No.TN-01-AZ-3967 along the Pattravakkam Main Road, from East to West direction, at that time a Lorry Bearing Registration No.TN-64-B-0689 was coming from the same direction driven by its driver in a very rash and negligent manner and dashed against the deceased motor cycle and caused fatal injuries. The said vehicle was insured with the 2nd Respondent. Hence, the claimants sought for Rs.25,00,000/- as compensation for the death of P.Nageshvara Rao in M.C.O.P.No.1537 of 2012.

3.The 2nd respondent Insurance Company appeared through their Counsel and filed Counter Statement by denying the allegations made in the claim petition and the claimants are put to strict proof of each and everyone of the same.

4.The Appellant have examined herself as PW1 and marked the documents as exhibits P1 to P13. PW2 examined as eyewitness, In addition to that, the claimants examined the HR Manager of Metro POLISIS as PW3 and marked the Salary Certificate as exhibit P11 and P12 Series, to prove their claim.

5.The learned counsel for the Appellant argued that the Tribunal failed to consider the Salary Certificate marked through concerned officer of the company. Rather the Tribunal mistakenly has only taken salary of the deceased was at Rs.4,881/- instead of gross salary of the deceased which is Rs.7,058/- for calculating compensation is not justified. In addition the tribunal failed to add future prospects to the income of the deceased as per principles laid down in the judgement of the Hon'ble Supreme Court in Sarala Varma Case. On this ground the claimants filed this appeal and seeking for enhancement of compensation. Further the Appellant Counsel argued that the Tribunal taken only Rs.4,881/- as monthly salary of the deceased, despite the fact there is a salary certificate produced, which reflects Rs.11,444/- per month, as the appellant's salary that obtained through concerned officer of the concern department, is not justified.

6.On the other hand, the 2nd Respondent insurance company Counsel strongly contended that the Tribunal correctly and rightly perused the oral and documentary evidence and passed reasonable compensation, which needs no interference by this Court and sought for the dismissal of this appeal.

7.I heard Mr.A.A.Venkatesan, learned counsel for the

appellants and Mr.M.Krishnamoorthy, learned counsel for the 2nd respondent and carefully perused the oral and documentary evidence available on records. No representation on behalf of the 1st respondent.

8.The age of the deceased, at the time of accident is 28 and he was working as a Staff Lab Technician in a Lister Lab, Chennai and he was earning Rs.15,000/- per month as per claim petition. The HR Manager of Metro Polisis Lab was examined as PW3 and Salary Certificate was marked as P11 and P12 Series. It reflected the deceased was receiving salary for a sum of Rs.7,058/- apart from the allowances. On inclusion of allowance, the deceased was receiving a sum of Rs.11,444/-. The respondent Insurance Company Counsel strongly contended that the allowances received by the deceased could not be taken into consideration as Salary. It is important to note that the Tribunal had admitted the fact that Rs.7,058/- is the basic salary without allowance as per the deposition of PW3. However the deceased was receiving Rs.11,444/-per month. The Tribunal did not consider even the basic salary, in the light of 2012 (1) TNMAC 496 (DB) Poongavanam Vs. D.Johnson wherein the High court of Judicature at Madras in a Division Bench held that salary of the deceased may be considered as a whole except the allowances that are for personal use needs to deducted like medical allowances, food allowances etc., whereas in this appeal the deceased was receiving as per the Exhibit P11 and Exhibits P12 series , Rs.3061/- as basic pay, Rs.1670/- as House Rent Allowance, Rs.835/- as Special Allowance, Rs.5728/- as petrol allowance and finally Rs.150/- as mobile allowance which sums up to Rs.11,444/-. If, following the principles laid down in the above discussed Judgment all the personal allowances will be deducted leaving only the basic pay of Rs.3061/-, taking only the basic fare as salary of the deceased per month would not be reasonable.

9.As per series of judgment wherein this Court has held that for an employed and self- employed there can be salary assumed as a notional income, one such precedent was held by the Hon'ble Apex Court in the case of Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627. In the instant case it is not reasonable on the action of the Tribunal in taking only Rs.4,881/-as the salary per month of the deceased that is on very lower side. Further this court is of the opinion that despite there being a salary certificate describing the deceased salary from Exhibit P 12 series and Exhibit P11, this court cannot taken into the whole of the said salary amount into consideration. As the salary contains more of personal allowances rather than salary itself. Going by the principle laid down in the above said case this court finds

Rs.6,500/- also on lower side as the deceased was employed with permanent job receiving salary every month. Thus, this court finds that it will be naive on part of the court to say that the wages or total emoluments/ income of a person who is employed on a fixed salary with provisions of promotion and other perks on its way, that are evident from the deposition of the PW3 the H.R. Manager of the deceased working company, will remain the same throughout his life. Therefore this court, considering the deposition made by the said PW3, takes Rs.7,058/- as the salary per month of the deceased as it holds the truth of the income of the deceased.

10.The learned counsel for the Appellant relied on the judgement of the Hon'ble Apex Court reported in the case of National Insurance Company Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) and contended that for a person having a permanent job, who died in the accident at the below age of 40 years 50% of income of the deceased needed to be added as future prospects of the income, but the tribunal failed to consider the future prospects to add to the income of the deceased while calculating the compensation.

11.Though the claimants claimed a sum of Rs.11,444/- as Salary but the fixed salary of the deceased for calculating compensation is Rs.7,058/- which is reasonable because, in Syed Sadiq case, the Hon'ble Supreme Court have fixed Notional income is Rs.6,500/- per month without any document. In this case, salary certificate was marked through concerned officer and proved the income of the deceased. Therefore, this Court, determined the monthly income of the deceased as Rs.7,058/- as per the above discussion and added 50% towards future prospects as the age of the deceased is 28 as per the judgement of the constitution bench of the Hon'ble Apex Court in Pranay Sethi case. After adding the 50% future prospects, the income of the deceased comes to Rs.10,587/- (Rs.7,058/- + 50% of Rs.7,058/-). Out of the monthly income, 1/3rd amount has to be deducted towards personal expenses of the deceased. After deducting 1/3rd of the monthly income comes to Rs.7,058/-. The tribunal taken 17 multiplier is correct and is confirmed. The calculation of the Loss of dependency as stated below:-

Rs.7,058/-	X	12	X	17	=
Rs.14,39,832/-					

12.Following the Hon'ble Apex Court decision in Pranay Sethi Case towards Loss of Estate, Loss of Consortium and Funeral Expenses this Court is inclined to modify the compensation and

the details of break-up is given below:-

Sl.No	Heads	Amount granted by the Tribunal	Amount granted by this Court
1.	For Loss of Earning	Rs.6,63,816/-	Rs.14,39,832/-
2.	Transport Hospital	Rs.5,000/-	NIL
3.	Loss of Consortium	Rs.50,000/-	Rs.40,000/-
4.	Expectation of Life	Rs.25,000/- each	NIL
5.	Loss of Estate	NIL	Rs.15,000/-
6.	Funeral Expenses	Rs.25,000/-	Rs.15,000/-
7.	Loss of Love and Affection	Rs.10,000/- (to Petitioners 1 to 3)	NIL
	Total	Rs.8,28,816/-	Rs.15,09,832/-

13.In view of the above discussion, the award of the Tribunal is modified on the above terms and the award granted by the tribunal is enhanced from Rs.8,28,816/- to Rs.15,09,832/-.

14.In the result, this Civil Miscellaneous Appeal is allowed and the award amount is enhanced from Rs.8,28,816/- to Rs.15,09,832/-. Out of the award amount, the 1stAppellant is entitled to withdraw Rs.10,09,832/- and 2nd and 3rd Appellants are each entitled to withdraw Rs.2,50,000/-. The 2nd respondent / Insurance Company is directed to deposit the enhanced award amount with interest at the rate of 7.5% p.a. from the date of petition to till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Appellants / Claimants are permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

vs

To

1.The Motor Accident Claims Tribunal,
Chief Judge, Small Causes Court,
Chennai.

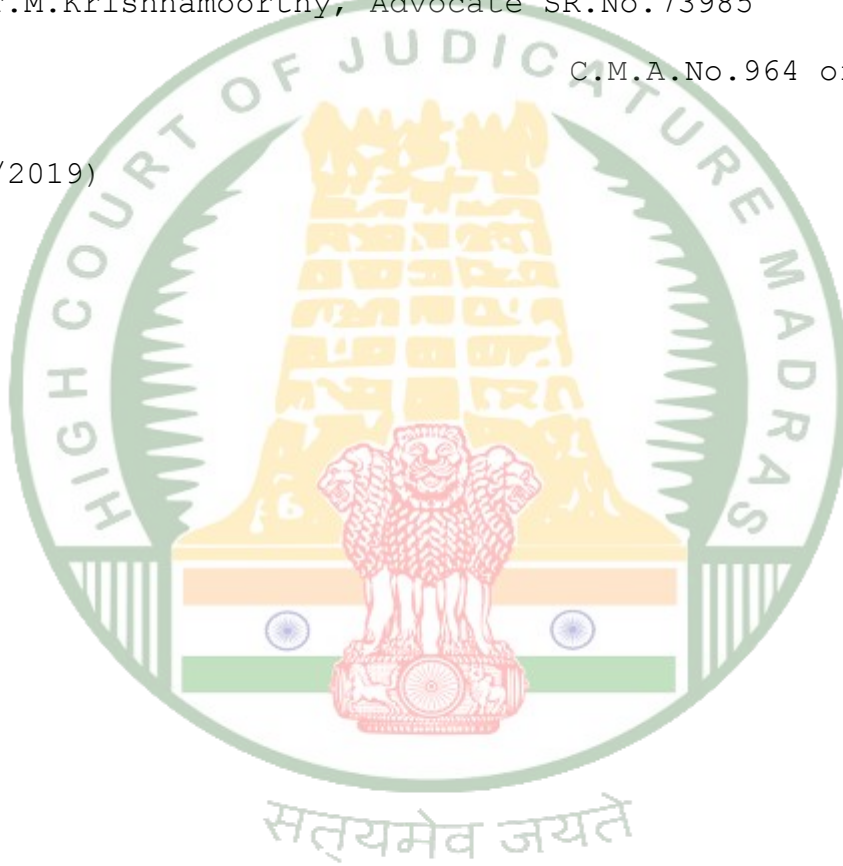
2.The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.A.A.Venkatesan, Advocate SR.No.73688

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.73985

C.M.A.No.964 of 2015

VGII(CO)
GMY(04/07/2019)



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