

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2017

Pronounced on: 28 .04.2018

Coram

The HONOURABLE Dr.JUSTICE S.VIMALA
AND

The HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CMA. No.1904 of 2015

and

MP.No. 1 of 2015

The New India Assurance Co.Ltd.,
Motor Claims 3rd party Cell,
No.45, Moore Street, Chennai,
Insured at Bagalur Mansion, II nd floor.
Dodapet, Kolar- 563 101.

...2nd Respondent/Appellant/2nd Respondent

- Vs -

1.S.Meenakshi W/o.A.Sanjeevi

2.S.Pari

3.S.SumathiRespondents 1 to 3/ Petitioners

4.R.P.AnandRespondent 4/ 1st Respondent

(Respondents 2 & 3 declared as major and their next friend
guardinan Mother Tmt.S.Meenakshi (R1) discharged from the
guardinanship vide court order dated 02/09/2015 made in MP 1/15
in CMA.No. 1904/15)

Prayer: Appeal filed under Section 173 of Motor Vehicles Act,
1988, against the judgment and decree made in MACTOP.No.35 of
2011 on the file of the Motor Accidents Claims Tribunal
(Subordinate Judge) at Tiruttani dated 06.01.2015.

For Appellant :Mr.M.Krishnamoorthy

For Respondent Nos.1 to 3 :Mr.N.Ramesh

For Respondent No.4 : Ex parte

J U D G M E N T

(Judgment was delivered by MR.JUSTICE P.RAJAMANICKAM)

This appeal has been filed by the Insurance Company, challenging the award passed by the Motor Accident Claims Tribunal (Sub Court, Tiruttani) in MACTOP.No.35 of 2011, dated 06.01.2015.

2.The first respondent herein as wife, the second respondent as son and the third respondent as daughter of the deceased Sanjeevi have filed MACTOP.No.35 of 2011, under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.40 lakhs. The tribunal has awarded a sum of Rs.38,10,000/- as compensation. Aggrieved by the same, the second respondent/Insurance Company has filed the present appeal.

3.The deceased Sanjeevi was working as Police Head Constable. On 10.10.2004, when the deceased Sanjeevi was engaged in vehicle checking along with other Constables and Sub-Inspector of Police of K.K. Chathiram Police Station, on the National Highway NH-205, at Arumpakkam Road, near Arcotkuppam, at about 01.00 am, the fourth respondent's Eicher Mini Lorry bearing registration No.KA 07-9518 was driven by its driver in a rash and negligent manner from Tiruttani to Thiruvallur direction and hit against the deceased. Due to the said accident, the deceased was thrown away and sustained head injuries and immediately, he was admitted in the Government Hospital at Chennai and he succumbed to injuries on 14.10.2004. According to the claimants, at the time of the accident, the deceased Sanjeevi was aged about 42 years and he was working as Police Head Constable and drawing monthly salary of Rs.7,500/-. Their further case is that at the time of accident, the vehicle, which was responsible for the accident was insured with the appellant/Insurance Company and hence the Insurance Company and the owner of the vehicle are jointly or severally liable to pay a compensation of Rs.40 lakhs to the claimants.

4.The fourth respondent herein who is being the owner of the mini lorry bearing registration No.KA 07- 9518 remained ex-parte before the Tribunal. Hence, the appellant has filed an application under Section 174 of the Motor Vehicles Act, 1988, seeking permission to take all the defences which could be taken by the first respondent and the said application was allowed by the Tribunal.

5.The appellant Insurance Company has filed a counter statement denying the factum of the accident. It also denied the age and income of the deceased.

6. During enquiry, before the Tribunal, on the side of the claimants three witnesses were examined as P.W.s 1 to 3 and Ex. P.1 to Ex.P.11 were marked as exhibits. On the side of the respondents, witnesses were not examined and exhibits also not marked.

7. The Tribunal, after considering the materials placed before it, awarded a compensation of Rs.38,10,000/- under the following heads.

1. Dependency	Rs.36,00,000/-
2. Loss of Love & affection	Rs. 1,50,000/-
3. Loss of Consortium	Rs. 50,000/-
4. Funeral Expenses	Rs. 10,000/-

Total	Rs .38,10,000/-

8. Challenging the aforesaid award, the second respondent/Insurance Company has filed the present appeal.

9. Heard both sides.

10. The learned counsel for the appellant has contended that the Tribunal erred in fixing the monthly income of the deceased at Rs.30,000/- whereas, he was actually drawing salary of Rs.7,400/- only. He further contended that at the time of accident, the deceased was aged about 42 years and as such multiplier of '14' only will apply, but the Tribunal has wrongly applied multiplier as '15' and hence, he requested to modify the award which was passed by the Tribunal.

11. Learned counsel appearing for the respondents/claimants contended that had the deceased been alive, he would retired by 2021 and during that period, he would have risen to the rank of Special Sub Inspector of Police by December, 2014, whereby his monthly salary would have been around Rs.38,500/-. It is further submitted that at the time of retirement, the deceased would have earned a sum of Rs.45,500/-. The deposition of P.W.3 in this regard has been highlighted to drive home this point. Learned counsel further pointed out that the date of birth of the deceased being 1.5.1963 and the date of death being 10.10.2004, the deceased was only 41 years on the date of his death and, therefore, the multiplier of 15, adopted by the Tribunal is just and proper and calls for no interference.

12. The deceased was earning a sum of Rs.7,405/- per month as is evident from Ex.P-7, salary certificate. Taking into consideration the deposition of P.W.3 regarding the promotional

prospects of the deceased, the Tribunal fixed the monthly income of the deceased at Rs.30,000/-, inclusive of future prospects.

13. Pay revision is applicable to all, while promotional prospect is personal to the petitioner. Claim not only includes payment of present wage, but future loss also.

14. Though it is the contention of the learned counsel for the appellant that wage rise due to pay revisions subsequent to the date of the death should not be taken into consideration for the purpose of calculating the loss of monthly dependency, including future prospects, however, it is to be pointed out that a harmonious construction should be given to the ratio laid down by the Supreme Court. It is to be noted that wage revision is not a matter of right for the Government servant. However, any notified wage revision process underway, would definitely benefit the Government servant. In the case on hand, a wage revision was in the offing very shortly, as the previous wage revision had been given in the year 1995-1996 and the next pay revision was notified and the process of fixing the pay was nearing completion. In such view of the matter, it would not be right on the part of this Court to deprive the claimants of the benefit of the wage revision that the deceased would have got had he survived the period, but for the fateful accident. Therefore, future pay revisions cannot be taken into consideration for the purpose of fixing the monthly income, but definitely the pay revision that is in the offing could definitely be taken into consideration for fixing the monthly salary.

15. Further, it is to be pointed out that the service in which the deceased was serving, being a disciplined service, the employees were entitled for assured promotional prospect. That being the case, as contended by the learned counsel for the claimants, the deceased would have gone on to become Special Sub Inspector and, thereby, would have definitely earned higher income.

16. Though the Tribunal has fixed the monthly income at Rs.30,000/-, however, this Court feels that the accident having happened in the year 2004, the fixation at Rs.30,000/- is on the higher side. This Court, keeping in mind the pay revision that the deceased would have received shortly coupled with the assured promotional prospects in the service of the deceased, considers that an amount of Rs.25,000/- could very safely be fixed as the pay that the deceased would have received, which would take within its fold future prospects as well. In such view of the matter, this Court fixes the monthly income of the deceased at Rs.25,000/- and deducting one-third towards the personal expenses of the deceased, quantifies the loss of income to the family at Rs.16,667/- (Rs.25,000 - Rs.8,333).

17. The age of the deceased being 41 years, as per the ratio laid down in Sarla Verma's case (supra), the correct multiplier to be adopted is 14. Accordingly, adopting the multiplier of 14, the loss of dependency is quantified at Rs.28,00,056/= (Rs.16667 X 12 X 14), rounded off to Rs.28,00,000/=.

18. In respect of awarding compensation under conventional heads, a Constitutional Bench of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi and Others, 2017 (2) TNMAC 609 (SC) in paragraph No.54 has held as follows:

"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seems 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 be 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. We are disposed to hold so because that will bring in consistency in respect of those heads."

19. As per the aforesaid decision of the Constitutional Bench of the Hon'ble Supreme Court, the head relating to loss of care and minor children does not exist. Further, the conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/- Rs.40,000/- and Rs.15,000/- respectively.

20. Accordingly, the award passed by the Tribunal is modified as under :-

Loss of Dependency	-	Rs.28,00,000/-
Loss of Estate	-	Rs. 15,000/-
Loss of Consortium	-	Rs. 40,000/-
Funeral Expenses	-	Rs. 15,000/-

Total	-	Rs.28,70,000/-

21. In the result, the appeal is allowed in part modifying the compensation payable to the claimants at Rs.28,70,000/-. No costs. Consequently, connected miscellaneous petition is closed.

22. The appellant/insurance company is directed to deposit the modified compensation amount as awarded by this Court above along with interest at 7.5% p.a. from the date of petition till the date of deposit, less the amount, if any, already deposited to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On the said amount, the 1st claimant is entitled to a sum of Rs.14,70,000/- and the 2nd and 3rd claimant are entitled to a sum of Rs.7,00,000/- each. On such deposit being made, the Tribunal is directed to transfer the amount, as per the apportionment made above, directly to the bank account of the respective claimants, through RTGS within a period of four weeks thereafter.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

das/vs

TO

1.The Subordinate Judge,
Motor Accidents Claims,
Tiruttani.

2.The Record Keeper,
VR Section, High Court,
Madras.

+lcc to Mr.M.Krishnamoorthy, Advocate SR.No.32353

CMA. No.1904 of 2015
and
MP.No. 1 of 2015

SSD(CO)
GN(17/07/2018)



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