IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN
C.M.A.No.258 of 2018

1. Arunadevi
2. Rani
3. Ramamoorthy ..Appellants/Claimants 1 to 3

Vs.

1. Dhivyasanjeevi
2. IFFCO-Tokio General Insurance Company Limited,
No.28, (Old NO.195), North Usman Road, T.Nagar,
Chennai, Tamil Nadu-600 017.
...Respondents/Respondents 1 & 2

Civil Miscellaneous Appeal has been filed U/Section 173 of Motor Vehicle Acts 1988, against the judgment and decree dated 17.07.2017 made in M.C.O.P.No.154/2015 on the file of Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

For appellants : Mr.M.A.P.Thangavel
For Respondents : Mr.J.Micheal Visuvasam for R2

J U D G M E N T

The Civil Miscellaneous Appeal has been filed against the judgment and decree dated 17.07.2017 made in M.C.O.P.No.154/2015 on the file of Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

2 For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

3 The case of the petitioners/claimants before the Tribunal as per their claim petition is that on 23.11.2014 at about 2.00 a.m., while the deceased Ramathilagam was driving his car bearing Reg.No.TN 28 AQ 3420 near the Military Canteen at Paramathi-Namakkal Main Road, a lorry bearing Reg.No.TN 78 8088 came in the opposite direction at high speed, dashed against the car driven by the deceased, resulting in fatal injuries to the deceased, who died on the spot itself. In the accident, five persons who travelled in the car are died on the spot. The accident occurred only due to rash and negligent driving of the first respondent lorry driver. At the time of accident, the deceased was aged 24 years and by working as car driver and also

by running tour travels business was earning Rs.80,000/- per month. The petitioners/claimants, who are wife and parents of the deceased were depending on his income. Thus the petitioners/claimants seeks a sum of Rs.80,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

4 Before the Tribunal the respondents viz. the owner and Insurer failed to appear and remained exparte. The petitioner examined P.W.1 & P.W.2 and produced documents Ex.P1 to P14 to prove their claim before the Tribunal. As the respondents remained exparte, there is no evidence on their side. The Tribunal on the basis of available evidence, found negligence on the part of the first respondent lorry driver alone caused the accident and awarded a sum of Rs.23,85,000/- as compensation to the petitioners/claimants.

5 Being not satisfied with the quantum of award, the petitioners/ claimants have come forward with the present appeal, seeking to enhance the same.

6 The learned counsel for the petitioners/claimants contends that the Tribunal wrongly fixed the monthly income of the deceased at Rs.10,000/-, even though the evidence clearly proved the fact that the deceased was earning Rs.80,000/- per month. The Tribunal ought to have given 40% of the monthly income towards future prospects. The compensation awarded by the Tribunal under various heads is very low. Hhence the petitioners/claimants seek to enhance the quantum of award by allowing the appeal.

7 On the other hand, the learned counsel for the second respondent/Insurance Company contends that the Tribunal has erred in fixing the liability on the respondents. Further there was no appearance on behalf of the respondents before the Tribunal and the evidence let in by the petitioners/claimants was not contradicted, resulting in the Tribunal awarding higher amount as compensation. Hence the learned counsel for the second respondent/Insurance Company sought for dismissal of the appeal, since the award granted by the Tribunal itself is on the higher side.

8 Heard the learned counsel for the petitioners/claimants and the learned counsel for the second respondent/Insurance Company and perused the materials placed before the Court.

9 The petitioners/claimants clearly stated that the accident occurred only due to negligence of the first respondent lorry driver. The third petitioner/claimant, who deposed as P.W.1 stated that the police registered case against the lorry

driver only and after investigation charge sheet was also laid against him. P.W.1 produced the copy of FIR as well as the charge sheet as Ex.P1 and Ex.P6. The eye witness to the occurrence, who deposed as P.W.2 stated that he was driving the car following the one, which was driven by the deceased and saw the lorry coming at high speed in the opposite direction and in front of him, the said lorry dashed on the car, in which the deceased was proceeding.

10 On the side of the respondents, there is no evidence to contradict the statement given by the eye witness/P.W.2. As such on the basis of oral evidence of P.W.2 and the fact that the police registered the case against the first respondent lorry driver only, it is apparent that the negligence on the part of the first respondent lorry driver alone caused the accident.

11 The petitioners/claimants have stated that the deceased was aged 24 years at the time of accident. Driving License of the deceased is produced as Ex.P7, wherein his date of birth is mentioned as 10.10.1990. As the accident took place on 23.01.2014, it is clear that the deceased was aged 25 years at the time of accident. The learned counsel for the petitioners/claimants contends that the deceased Ramathilagam not only worked as driver, but also carried on tour travels agent business on his own. From the said business, he was warning Rs.80,000/- per month. The petitioners/claimants produced the bank passbook copies as Ex.P10 and AADAR card of the deceased as Ex.P11. They also produced copy of statement of bank account of the deceased Ramathilagam as Ex.P14.

12 The Tribunal after perusing the available materials founds that Ex.P10 bank account stood in the name of parents of the deceased and Ex.P12 copy of RC Book of the vehicle TN 28 AH 0201 stands in the name of one Thangamani, who is neither the deceased nor parents of the deceased. Thus the Tribunal observed that there was nothing on record to show that the deceased was running travels agent business and also there is no evidence to prove that the deceased was earning Rs.80,000/- per month. In such circumstances, the Tribunal fixed the monthly income of the deceased at Rs.10,000/-. This Court is of the view that, even though there is no material to prove the actual income of the deceased, considering the nature of his avocation, it would be appropriate to fix the monthly income at Rs.12,000/-.

13 As the deceased was aged 25 years, it would be appropriate to add 40% of the monthly income towards future prospects. The correct multiplier to be adopted is 18. Further considering the number of dependants, 1/3rd of the income has to be deducted towards personal expenses of the deceased. Thus the loss of dependency is calculated as follows:

Rs.12000 x 40% (future prospects) = Rs.4800

Rs.12000+4800-1/3 (towards personal expenses)x12x18 = Rs.24,19,200/-

14 Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium, funeral expenses and transport expenses this Court is inclined to modify the compensation as under:-

Loss of consortium	=	Rs.40,000.00
Funeral Expenses	=	Rs.15,000.00
Loss of Estate	=	Rs.15,000.00

15 The learned counsel for the petitioners/claimants contended that the second and third petitioners/claimants being parents of the deceased, are entitled for a sum of Rs.1,00,000/- for loss of love and affection. On the other hand the learned counsel for the second respondent/Insurance Company contended that no amount should be provided for loss of love and affection following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS.

16 Disputing the same, learned counsel for the petitioners/claimants reling upon the ruling reported in 2017 SCC Online Ker 23174 (Valsamma and Annosh Raj vs. V.A.Baiju and others), contended that there is no impediment or bar to provide the compensation towards loss of love and affection. In the said rulings it is held as follows:

> "9. Learned counsel for the appellant/claimants contended that the sum of Rs.10,000/- awarded towards compensation for loss of love and affection is highly inadequate. The awards under the head of compensation for loss of love and affection is opposed by the learned standing appearing for the insurance company, contending that in pranay Sethi's case (supra) the hon'ble apex court had held that there is no such head existing. But, on a reading of paragraph 54 of the said judgment, it is evident that what was prohibited is awarding of separate compensation under the head of 'care to minor' and not under the head of loss of love and affection. Compensation under the head of loss of love and affection is akin to the loss of consortium. Consortium is a compensation paid to the spouse taking into consideration of the loss of companionship, care, help, comfort, guidance, society, solace, affection

and sexual relationship with his or her mate; as held by the hon'ble supreme court in Santosh Devi v.National Insurance Company Ltd. [(2012) 6 SCC 421)]. In the case of children or siblings or parents, there will be loss of the above said emotions and feelings, except the sexual relationship. Therefore, loss of love and affection is almost akin to the loss of consortium, subject to variations in its severity or degree of bondage. Since the hon'ble apex court had upheld the award of compensation for loss of consortium in Pranay Sethi's case (supra), at no stretch of interpretation or imagination it can be held that, the hon'ble Judges of the supreme court had intended to hold that no head under loss of love and affection exists. Therefore, we are not inclined to accept the contention of the insurance company in this regard. In the case at hand, taking note of the fact that the claimants include the mother and younger brother of the deceased, we are inclined to award a sum of Rs.50,000/- under the head of compensation for loss of love and affection, which will entitle the claimants for an enhancement of Rs.40,000/-.

17 Further, the learned counsel for petitioners/claimants relied upon the decisions of Division Bench of this Court reported in CDJ 2018 MHC 2014, CDJ 2018 MHC 1907 and CDJ 2018 MHC 1941, wherein, amount towards loss of love and affection is provided for.

18 In such circumstances, this Court is inclined to award a sum of Rs.40,000/- towards loss of love and affection for the second and third petitioners/claimants.

19 Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of Dependency	21,60,000.00	24,19,200.00
2.	Loss of consortium	1,00,000.00	40,000.00
3.	Love and affection for 2nd & 3rd petitioners	1,00,000.00	40,000.00
4.	Funeral Expenses	25,000.00	15,000.00

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
5.	Loss of estate	-	15,000.00
	Total	23,85,000.00	25,29,200.00

20 In view of the above modification, the civil miscellaneous appeal is allowed. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.25,29,200/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first petitioner/claimant is entitled to get 70% and second & third petitioners/claimants are entitled to 15% each and are permitted to withdraw their respective share amount with proportionate interest and costs, by filing necessary application before the Tribunal. The petitioners/claimants are directed to pay the deficit Court fee, if any, for the enhanced award amount within a period of 10 days from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1. The Motor Accidents Claims Tribunal,
   Additional District Court, Namakkal.

2. IFFCO-Tokio General Insurance Company Limited,
   No.28, (Old NO.195), North Usman Road, T.Nagar,
   Chennai, Tamil Nadu-600 017.

3. The Section Officer,
   V.R.Section, High Court, Madras.

+1cc to M/s.Ma.P.Thangavel, Advocate SR.No.22732
+1cc to Mr.J.Micheal Visuvasam, Advocate Sr.No.20822

RJI(CO)
sm:20.4.2018