IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.995 of 2015

1.P.Anjali Devi
2.P.Ganesan (Minor)
3.P.Vinod (Minor)
4.K.Veerasamy Naicker
5.V.Kunjumani
6.P.Anita (Minor)
(Minor petitioners 2,3 and 6 are rep. by
mother and next friend 1st appellant) ... Appellants

Vs

1.B.A.Musheer Ahamed

2.Bajaj Alliance General Insurance Co. Ltd.,
Old No.276 & 277 New No.497 & 498
"Isana Kattima Buildings", 5th Floor,
Poonamallee High Road,
Opp. to Tamil Nadu Pollution Control Board
Arumbakkam, Chennai - 600 106. ... Respondents

PRAYER :

Civil Miscellaneous Appeal filed against the judgment and decree made in MCOP.No.569/2013 on the file of Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai dated 19.11.2014.

For Appellants : Ms.P.T.Salim Fathima

For Respondents : Mr.Mohan Babu for
M/s.M.B.Gopalan Associates (for R2)

J U D G M E N T
(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimants not satisfied with the quantum of compensation of Rs.16,96,000/- for the death of one V.Palaniappan, aged about 29 years, who was working as a Master in Tiffin Stall near M.L.A. Hostel allegedly earning about Rs.15,000/- per month, in the accident which occurred on 18.12.2012.

2.The case of the appellants is that when the deceased was sleeping in the M.L.A. Hostel road, the first respondent's bus bearing Registration No.TN-25-D-8583, which was parked ahead of him was taken in a reverse direction in a very high speed, rash and negligent manner and ran over the skull of the deceased, due to which he succumbed on the spot. Therefore, the claim petition. On contest, the Tribunal found that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's bus. The Tribunal awarded Rs.16,96,000/- as compensation. Against the said award only, the claimants are before this Court.

3.Heard Ms.P.T.Salim Fathima, learned counsel appearing for the appellant and Mr.Mohan Babu, learned counsel appearing for the second respondent.

4. The only question to be decided is with regard to the quantum of compensation. Since there is no appeal by the Insurance company questioning the liability, the question of going into the same does not arise.

5. Though the claimants/appellants claimed that the deceased was earning a sum of Rs.15,000/- per month, in the absence of any documentary proof with regard to the same, the Tribunal fixed the monthly income at Rs.6,000/- per month and added 50% towards future prospects as per decision reported in 2013 (2) TNMAC page 55 (SC (Rajesh and others V. Rajbir Singh and others). The Tribunal adopted multiplier, according to the age of the deceased, at 16 and awarded a sum of Rs.12,96,000/-, after deducting ¼ towards personal expenses, as the size of the family is 5.

6.It is seen that the accident occurred on 18.12.2012. The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Since, in the present case, the accident had occurred during the year 2012, even in the absence of the proof regarding his income, this Court fixes Rs.10,000/- as his monthly income.

7.As per the Constitution Bench judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects. Hence 50%

awarded by the Tribunal is reduced to 40% towards future prospects. Hence the total monthly income of the deceased is arrived at Rs.14,000/- (10000 + 40% of 10000).

8.The size of the family is five and therefore, ¼th has to be deducted towards personal expenses. After deducting ¼th towards personal expenses, the monthly income of the deceased comes to Rs.10,500/- (Rs.14,400/- (-) 1/4th of Rs.14,000/-).

9.The appropriate multiplier for the age of 29 years is "16". Therefore, the total loss of income arrived at, is as follows:

Total Loss of Income = Rs.10,500/- x 12 x 16
= Rs.20,16,000/-.

10.Loss of consortium:

Though the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium, as per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), a sum of Rs.40,000/- has to be awarded to the 1st appellant towards loss of consortium. Accordingly, the same is reduced to Rs.40,000/-.

11.Funeral Expenses:

As per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), Rs.15,000/- has to be awarded towards funeral expenses. Hence, the award of Rs.25,000/- towards funeral expenses is reduced to Rs.15,000/-.

12.Loss of estate:

The Tribunal has not awarded any amount towards loss of estate. As per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), Rs.15,000/- has to be awarded towards loss of estate. Accordingly, the same is awarded.

13.Love and affection:

The appellants 2, 3 and 6 have lost their father at a very young age and they are deprived of their father's love and affection, care and guidance, throughout their life. No amount of compensation could compensate the loss of father, that too at a tender age. The amount to be awarded towards loss of love and affection of the father is akin to loss of consortium granted to the wife. Though the Honourable Supreme Court did not give any amount towards loss of love and affection, in Pranay sethi case, the Honourable Supreme Court would not have meant that no amount could be given for loss of love and affection since it is akin to consortium. It is very unfortunate that the 6th appellant was still an unborn child at the time of the accident and the child had missed the opportunity of seeing her father and she could not see her father throughout her life. Considering the tender age of the 2nd, 3rd and 6th appellants, this Court awards Rs.50,000/- each to appellants 2, 3 and 6 towards loss of love and affection. If these children do not deserve any amount, then which child will deserve amount towards loss of love and affection? Similarly, 4th and 5th appellants/parents of the deceased, lost their son, who would have looked after them, in the evening of their life. Therefore, a sum of Rs.25,000/- each is awarded towards loss of love and affection to appellants 4 and 5.

14.Hence, the total compensation payable in this case is Rs.22,86,000/-, rounded off to Rs.22,90,000/-

Head	Amount (Rs.)
Total loss of income	20,16,000
Loss of consortium	40000
Funeral expenses	15000
Loss of estate	15000
Loss of love and affection	200000
Total	22,86,000

15.The amount awarded would carry interest at the rate of 7.5% per annum. The appellants shall pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

16. Out of the awarded amount, the 1st appellant, who is the wife of the deceased is entitled to Rs.8,00,000/-; minor appellants 2, 3 and 6 are entitled to get Rs.4,00,000/- each and appellants 4 and 5, who are the parents of the deceased are entitled to get Rs.1,45,000/- each.

17.The 2nd respondent is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the sum if any already deposited. On such deposit being made, the Tribunal shall transfer the respective shares of the major claimants, namely, appellants 1, 4 and 5, to their respective accounts through RTGS within a period of one week thereon. As far as minor appellants 2, 3 and 6 are concerned, their shares shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st appellant/mother is permitted to withdraw interest accruing on such deposit once in three months.

18. Accordingly, the appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The II Judge,
(Motor Accident Claims Tribunal)
IInd Court of Small Causes,
Chennai 104.

+1cc to Mr.M.Swami Kannu, Advocate, S.R.No.29447
+1cc to M/s.M.B.Gopalan Associates, Advocate, S.R.No.29699

C.M.A.No.995 of 2015

GMR(CO)
CS/06/09/18