IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM :

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

C.M.A.No.2735 of 2017

1.Shobana
2.Minor S.Swetha
3.R.Panchali
4.N.Ramalingam
5.Minor S.Abhishek

(Minor petitioners 2 and 5 are rep. by mother and next friend Shobana)
... Appellants/Petitioners

Vs

1.M.Ramesh

2.United India insurance Co. Ltd., ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree made in MCOP.No.4344/2007 on the file of Motor Accidents Claims Tribunal at Chennai, Chief Judge, Small Causes Court, dated 3rd day of November 2016.

For Appellants : Mr.T.G.Balachandran
For Respondents : Mr.D.Baskaran (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 against the award of Rs.10,000/- for the death of one R.Selvakumar, aged about 26 years, who was an auto driver allegedly earning about Rs.6,000/- per month, in the accident which occurred on 16.06.2007, when he was travelling in the auto, which was driven rashly and negligently and got capsized, leading to the said Selvakumar sustaining injuries and thereafter, he succumbed to the said injuries.

2.The case of the appellants is that the deceased was travelling in an auto rickshaw along with his friends on 16.06.2007. The said auto, which was driven rashly and negligently, had collided with a van coming in the opposite direction and because of the accident, he sustained injuries all over the body. The accident occurred at 03.30 pm. Since the injuries were superficial, he was taken to his residence and there he succumbed to the injuries at 7.30 pm. Therefore, the claim petition. On contest, the Tribunal found that the victim did not die due to the injuries caused in the accident and that it was due to pericarditis, which has been mentioned as the reason for death in the post mortem certificate. The Tribunal awarded only Rs.5,000/- each towards transport charges and attendant charges, totalling to a sum of Rs.10,000/-. Against the said award only, the claimants are before this Court.

3.Heard Mr.T.G.Balachandran, learned counsel appearing for the appellant and Mr.D.Baskaran, learned counsel appearing for the second respondent.

4.Mr.T.G.Balachandran, learned counsel appearing for the appellant would submit that the accident occurred by 03.30 pm and the victim died at 07.30 pm. However, the Tribunal relying upon the reason for death given in the postmortem report, wrongly awarded only a sum of Rs.10,000/-. He would further submit that due to the shock, the deceased died and the proximity of time is so close and therefore, due to shock and other injuries, the victim died. Therefore, he seeks to enhance the compensation by taking Rs.6,000/- as monthly income of the deceased as he was an auto driver and adding of 40% towards future prospects and deduction of 1/4th towards personal expenses as the family consists of five members and taking multiplier "18".

5.On the other hand, Mr.D.Baskaran, learned counsel appearing for the 2nd respondent would vehemently argue that after the accident, the deceased was not taken to hospital. Since the victim suffered only scratch injuries, he went to his residence and thereafter, he died. If really the injuries were so grievous, the victim himself would have got admitted in the hospital. Even the postmortem report would reveal that it is not due to the injuries and it is only due to pericarditis. Therefore, the Tribunal rightly negatived the claim of the appellants.

6.The nature of the accident is not questioned. Since the Tribunal found that the driver of the auto, in which the victim was travelling was negligent, the accident had occurred and therefore, if any amount has to be paid, it is only by the insurer of the auto. Moreover, there is no appeal questioning the liability by the insurance company and therefore, the said finding given by the Tribunal is confirmed.

7.It is true that Ex.P.4, Postmortem certificate would reveal that the deceased died due to pericarditis. Postmortem certificate cannot be analysed in isolation. It is not the case of the respondent Insurance Company that the victim was suffering from pericarditis disease and it is only mentioned that due to pericarditis, the victim died. Whether it is a pre-existing disease or it was caused due to the accident has not been explained. However, the Cardiologist, who was examined as C.W.2. categorically stated that if the secretion of pericardium liquid gets increased, it would affect the heart. He specifically adduced that if 400ml of pericardium liquid is secreted at a time, then death would be immediate. Taking into consideration that the accident occurred about few hours ago, there are definitely chances of the victim undergoing trauma and shock and thereby, it would have caused secretion of more pericardium. The proximity of time viz., time of accident and the death is so close and therefore, there is every likelihood of the victim dying due to trauma resulting in secretion of pericardium liquid and thereby affecting the heart. To create 400 ml of pericardium liquid, it would take years together, whereas it is found in the body of the deceased. If 400 ml of pericardium liquid is found in the body of the deceased, that itself would denote that in exceptional cases, it could have been caused, on account of trauma and shock consequent to the accident.

8.Even as per medical literature, pericarditis is inflammation of the pericardium. The pericarditis is not a fatal disease and it is a treatable one as it is believed to be caused due to viral infection, bacterial infection, such as tuberculosis, uremic pericarditis. Even in the literature, the causes for pericarditis have been mentioned as follows:

> "Viral infection, tuberculosis, uremic pericarditis, following a heart attack, cancer, autoimmune disorders, chest trauma"

As the last one mentioned is chest trauma, since the victim sustained injuries all over the body due to the accident, death could have been caused due to chest trauma. It is also stated in medical literature that pericardial effusion or large effusions that accumulate rapidly can compress the heart in a condition known as cardiac tamponade causing breathlessness and potentially fatal low blood pressure. Therefore, it is very clear that the accumulation of pericardium liquid, as per the postmortem certificate, is due to shock and trauma on account of the accident. Even otherwise, in the absence of any other injury, bodily injury, very many victims of the road traffic accidents are dying due to the trauma, sudden shock, which cannot be explained. Due to shock, many complications like cardiac arrest, asphyxia etc., occur. In view of the occurrence of the accident by 03.30 pm and the victim having died within few hours, no other reason could be attributed by this Court and it is as proved, only due to shock and trauma, which caused the pericardial effusion, leading to death of the victim in this case. Therefore, the finding of the Tribunal that the victim did not die due to the injuries sustained by him in the accident is erroneous and is set aside and this Court holds that the victim died because of the shock and trauma and consequently resulting in accumulation of pericardium liquid more than 400 ml, which was found at the time of postmortem as proved by Ex.P.4, postmortem certificate.

9.The claim of the appellant is that the victim was an auto driver earning Rs.6,000/- per month. The accident occurred on 16.06.2007. 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 2007, even in the absence of the proof regarding his income, this Court fixes Rs.6,000/- as his monthly income.

10.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, if the deceased was self employed. In this case, he was an auto driver, aged about 26 years and therefore, 40% has to be added towards future prospects and the total monthly income of the deceased is arrived at Rs.8,400/- (6000 + 40% of 6000).

11.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.6,300/- (Rs.8,400/- (-) 1/4th of Rs.8,400/-).

12.The approximate multiplier for the age of 26 years is "17". Therefore, the total loss of income arrived at, is as follows:

Total Loss of Income =Rs.6,300/- x 12 x 17
= Rs.12,85,200/-.

13.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, it is awarded.

14.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 and accordingly, it is awarded.

15.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.

16.Love and affection:

The appellants 2 and 5 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, 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 5th appellant was still an unborn child at the time of the accident and the child had missed the opportunity of seeing his father and he could not see his father throughout his life. Considering the tender age of the 2nd and 5th appellants, this Court awards Rs.1,00,000/- each to appellants 2 and 5 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, 3rd and 4th 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 3 and 4.

17.Pain and suffering:

The victim did not die immediately and he died after a few hours and therefore, he would have undergone pain and suffering, and therefore, a sum of Rs.15,000/- is awarded towards “pain and suffering”.

18.Hence, the total compensation payable in this case is Rs.16,20,200/-. Rounded off to Rs.16,20,000/-

Head	Amount (Rs.)
Total loss of income	1285200
Loss of consortium	40000
Funeral expenses	15000
Loss of estate	15000
Loss of love and affection	250000
Pain and suffering	15000
	1620200

19.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.

20. Out of the awarded amount, the 1st appellant, who is the wife of the deceased is entitled to Rs.6,20,000/-; minor appellants 2 and 5 are entitled to get Rs.4,00,000/- each and appellants 3 and 4, who are the parents of the deceased are entitled to get Rs.1,00,000/- each.

21.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 a sum of Rs.10,000/-, which was already deposited as per the order of the Tribunal. On such deposit being made, the Tribunal shall transfer the respective shares of the major claimants, namely, appellants 1, 3 and 4,to their respective accounts through RTGS within a period of one week thereon. As far as minor appellants 2 and 5 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.

22. Accordingly, the appeal is allowed, enhancing award of the Tribunal from Rs.10,000/- to Rs.16,20,000/- along with interest. No costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

sai

To

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

2. The Section officer
   VR Section, High Court, Madras.

+1 CC to Mr.D. Bhaskaran, Advocate sr 26729.
+1 CC to Mr.T.G. Balachandran, Advocate sr 26208.

C.M.A.No.2735 of 2017

EV(CO)
SP(21/05/2018)