

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2018

CORAM :

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

C.M.A.No.695 of 2018
and
C.M.P.No.6025 of 2018

M/s.The National Insurance Company Limited,
Divisional Office,
No.50, Janpet,
New Delhi - 110 001. ... Appellant/3rd Respondent

Vs

1.Madhu
2.Minor Kausalya
3.Minor Meena
4.Minor Dhanapal
5.Pazhaniammal
6.Sadaiyyan ... Respondents 1 to 6/
Petitioners 1 to 6
7.Balaji ... 7th Respondent/1st Respondent
8.Sathish Prabhu ... 8th Respondent/2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree passed in M.A.C.T.O.P.No.346 of 2009 dated 30.06.2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sangagiri.

For Appellant : Mr.N.B.Surekha
For Respondents : Mr.D.C.Kulanthaivel (for R1 to R6)

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 insurance company against the award of Rs.21,40,000/- awarded for the death of one Mr.Duraisamy, aged about 35 years, power loom weaver allegedly earning about Rs.9,000/- per month, in the accident which occurred on 09.05.2009.

2.The deceased Mr.Duraisamy was walking on the road on Edapadi to Salem main road, near Kettukadai Mani Tea Stall on Edapadi Taluk and the Hero Honda driven rashly and negligently

by one Mr.Balaji, hit the victim, resulting in the deceased sustaining injuries. He sustained grievous head injury, fracture in right leg, holes in backside head in three places, lacerated wound in right and left elbow, lacerated wound in back side foot, fracture in left ankle, multiple grievous in head and other multiple injuries. He was taken to Government Hospital at Edappadi for taking first aid. Thereafter, he was referred to Government Mohan Kumaramangalam Medical College Hospital at Salem. He took treatment as an in-patient from 09.05.2009 to 10.05.2009. Thereafter, he was treated at Nallampatti Nattu Vaithiya hospital, Perambalur District. Subsequently, he was admitted for better treatment in Nalam hospital, Salem as an in-patient from 08.06.2009 to 12.06.2009. Thereafter, again the deceased was admitted in Government Mohan Kumaramangalam Medical College Hospital at Salem and he died on 13.06.2009. Therefore, the claim petition. The said claim petition was resisted by insurance company. On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the two wheeler and awarded a sum of Rs.21,40,000/- and pay and recovery was also ordered as there was no valid licence possessed by the rider of the two wheeler. The said award is being challenged before this Court.

3.Mrs.N.B.Surekha, learned counsel appearing for the appellant would submit that the accident occurred because of the negligence of the deceased as he was walking on the middle of the road. The said contention has to be rejected, since there was no such plea in the counter statement. Moreover, there was no evidence adduced on behalf of the appellant. The Tribunal based on PW2 eyewitness's evidence, Ex.P.1 - F.I.R., Ex.P.3 - M.V.I. Report, Ex.P.5 - Final report, rightly found that the accident occurred because of the rash and negligent driving of the two wheeler. Therefore, the finding reached by the Tribunal cannot be set aside. The learned counsel appearing for the appellant would further submit that the date of accident is 09.05.2009, whereas the deceased died on 13.06.2009. Therefore, the death would not have been caused due to the accident. First of all, there is no such plea in the counter statement, secondly, there is no evidence in that regard. Even the postmortem report, which is relied upon shows that the victim died due to septicaemic shock and bony injuries sustained. Septicaemic shock is a serious medical condition that occurs when sepsis, which is an organ injury or damage in response to infection, leading to dangerously low blood pressure and abnormalities in cellular metabolism. The deceased sustained only bony injury in the accident and the reasons in the postmortem report for the death is due to septicaemic shock due to bony injuries sustained by the victim and therefore, the appellant cannot take advantage of the death of the deceased at a later point of time. Moreover, immediately after the

accident, till death, the victim had been taking treatment in various hospitals as proved by the medical documents.

4.It was contended by the learned counsel for the respondent that the deceased was working as a power loom weaver, earning about Rs.9,000/- per month and the respondent examined the owner of the power loom as PW3 and Ex.P.23 was marked to show that the deceased was earning about a sum of Rs.9,000/- per month. Since except PW3's oral evidence, no other document was marked, the Tribunal determined the monthly income at Rs.7,000/-. Weaving is an expert's work and it is very difficult to get a weaver for job not less than Rs.10,000/-. The amount fixed by the Tribunal (i.e.,) Rs.7,000/- is very low. In view of that, this Court determines the monthly income at Rs.8,000/-. It is very difficult to get a servant maid for sum of Rs.8,000/- and therefore, this Court is justified in taking the monthly income at Rs.8,000/-.

5.As per the ration card, Ex.P.8, the age of the deceased was 38 years, whereas the postmortem certificate says it was 35 years. Usually, the details given for ration card and aadhar card are not correct and it has been given approximately. As the Doctor decided the age of the deceased at 35 years and no other credible document is available, postmortem certificate alone has to be accepted and therefore, this Court determines the age of the deceased at 35 years instead of 38 years as decided by the Tribunal.

6.As per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the appropriate multiplier for the age group of 35 years is "16".

7.The Tribunal added 50% towards future prospects. As per the Constitution Bench judgment 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" for persons, who are below 40 years, if the said person is self employed or getting fixed salary. Therefore, this Court reduces the future prospects from 50% to 40% and arrives at the monthly income of the deceased at Rs.11,200/- (8000 + 40% of 8000).

8.The size of the family is six and therefore, as per the judgment of the Honourable Supreme Court in Amrit Bhanu Shali and others Vs. National Insurance Co. ltd., and others reported in 2012 ACJ 2002, $\frac{1}{4}$ th has to be deducted. Following the above judgment, the Tribunal has rightly deducted $\frac{1}{4}$ th towards personal expenses and the same is confirmed. After deducting $\frac{1}{4}$ th towards personal expenses, the monthly contribution of the deceased to his family comes to Rs.8,400/- (Rs.11,200/- - $\frac{1}{4}$ th of

Rs.11,200/-). Therefore, the total loss of income arrived at, applying multiplier '16' is as follows:

Total Loss of Income = Rs.8,400/- x 12 x 16
= Rs.16,12,800/-.

9.Loss of consortium:

As per the Constitution Bench's judgment 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 widow towards consortium, whereas the Tribunal as per the settled position of law at the time of passing of award, though rightly awarded a sum of Rs.1,00,000/-, it has to be reduced to Rs.40,000/- and accordingly, it is reduced.

10.Loss of love and affection:

A sum of Rs.5,50,000/- has been awarded to other claimants towards loss of love and affection. Ms.N.B.Surekha, learned counsel appearing for the appellant would very vehemently argue that no amount could be added towards loss of love and affection, in view of the constitution bench's judgment of the Honourable Supreme Court reported in 2017 (2) TN MAC 609 (SC). The constitution bench of the Honourable Supreme Court actually stated about the general benefits to be awarded. Nowhere in the judgment, it has been stated that towards loss of love and affection, the children and the parents are not entitled to any amount. In fact, loss of love and affection is akin to loss of consortium to the wife. Therefore, the Honourable Judges of the Honourable Supreme Court would not have meant that there could be no amount awarded towards loss of love and affection to the children and the parents. It is a fact that by losing a father, the children lose his love and affection, care and guidance. In this case, very unfortunately the children are aged about 6years, 9years and 10years. There are two daughters also. The presence of the father till they get married would have been wonderful to the family, especially to the children. Even when both the parents are alive, nowadays, they are finding it very difficult to groom the child. In the absence of father's love, affection, care and guidance, definitely the children would suffer. That apart, there will be a social stigma as they are sometimes called as fatherless and the children would also undergo mental agony and suffering, in the absence of father, especially, when other children are blessed with love and affection of the father. Therefore, the Honourable Supreme Court would not have meant that no amount could be awarded towards loss of love and affection. Therefore, this Court considering the age of the children viz., 6years, 9years and 10years, awards a sum of Rs.50,000/- to each of them towards loss of love and affection. Similarly, the aged parents, who have to be looked after by their son, in the evening of their life, have lost the love and affection of their son and

therefore, a sum of Rs.25,000/- each is awarded to them towards loss of love and affection.

11.Funeral Expenses:

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

12.Loss of estate:

No amount was awarded towards loss of estate by the Tribunal. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate.

13.Pain and suffering:

Rs.30,000/- was awarded by the Tribunal towards pain and suffering as the deceased suffered injuries on 09.05.2009 and succumbed to injuries on 13.06.2009, inspite of taking treatment in various hospitals. The same is confirmed.

14.Medical expenses:

Rs.15,000/- was awarded by the Tribunal towards medical expenses. The same is confirmed.

15.Transport charges:

No amount was awarded by the Tribunal towards transport charges. Therefore, a sum of Rs.10,000/- is awarded by this Court towards transport charges.

16.Loss of property:

The Tribunal has awarded a sum of Rs.2,000/- towards loss of property and the same is deleted as a sum of Rs.15,000/- has already been awarded towards loss of estate.

17.Hence, the total compensation payable in this case is Rs.19,12,800/-, rounded off to Rs.19,15,000/-

Head	Amount (Rs.)
Total loss of income	1612800
Loss of consortium	40000
Loss of love and affection	200000
Funeral expenses	15000
Loss of estate	15000
Pain and suffering	30000
Medical expenses	15000
Transport charges	10000
	1912800

18.The rate of interest at 7.5% per annum awarded by the Tribunal is confirmed. Out of the awarded amount, the 1st respondent, who is the wife of the deceased is entitled to Rs.8,15,000/-; minor respondents 2 to 4 are entitled to get Rs.3,00,000/- each and the respondents 5 and 6, who are the parents of the deceased are entitled to get Rs.1,00,000/- each.

19.The appellant is directed to deposit the entire amount along with interest and costs, as per the order of this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the respective shares of major claimants, namely, respondents 1, 5 and 6, to their respective bank accounts, within a period of one week thereon. As far as minor respondents 2 to 4 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 respondent/mother is permitted to withdraw interest accruing on such deposit once in three months.

20. Accordingly, the appeal is partly allowed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sai
To
The Sub Judge,
Sub Court (Motor Accidents Claims Tribunal)
Sangagiri.

Copy To
The Section Officer,
VR Section, High Court,
Madras-(2 copies)

+1cc to Mr.N.B.Surekha, Advocate, S.R.No.25524
+1cc to Mr.D.C.Kulanthaivel, Advocate, S.R.No.25674

C.M.A.No.695 of 2018

mr(co)
cs/12/06/18