

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2018

C O R A M

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

C.M.A.No.780 of 2018

1.Anbazhagan
2.Mangalamary

... Appellants/Petitioners

vs.

1.Senthil Kumar

2.Puducherry Road Transport
Corporation Ltd.,
Rep. by its
Managing Director,
Pondicherry.

3.The Branch Manager,
Oriental Insurance Company Ltd.,
Cuddalore.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 14.08.2017 passed in M.A.C.T.O.P.No.217 of 2015 on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal in so far as the quantum of compensation is concerned and consequently to enhance the compensation.

For appellant : Mr.T.Sai Krishnan

For respondents : Mr.S.Arun Kumar
For R3

JUDGMENT

Challenging the award dated 14.08.2017 passed in M.A.C.T.O.P.No.217 of 2015 on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal, the present appeal has been filed.

2.On 27.07.2015, at about 8.40 a.m, the deceased was riding her cycle at Karaikal Thirunallar Main Road from East to West direction, at that time, the first respondent driving the bus belonging to the second respondent bearing Registration No.PY 01 BV 6723 came in a rash and negligent manner on the same direction and dashed behind the deceased, resulting which, she sustained fatal injuries. Immediately, she was taken to the General Hospital and thereafter, to JIPMER, Pondicherry, wherein she was reported dead. Hence, the claimants, who are the father and mother/the legal representatives of the deceased Efsiba, filed a claim petition before the Tribunal claiming a compensation of Rs.48,00,000/-.

3.Counter filed by the third respondent/the Branch Manager, Oriental Insurance Company Limited, Cuddalore, stating that the accident had occurred due to negligence on the part of the deceased and the first respondent was not in possession of any valid driving licence at the time of accident. Hence, the third respondent is not liable to pay any compensation to the appellants/claimants.

4.The Tribunal, after considering the facts and circumstances of the case and the arguments advanced by the learned counsel on either side, awarded a sum of Rs.6,67,000/- as compensation. Aggrieved by the same, the appellants have filed the present appeal before this Court.

5.Heard Mr.T.Sai Krishnan, learned counsel for the appellants and Mr.S.Arun Kumar, learned counsel for the third respondent/Oriental Insurance Company and perused the materials available on record carefully.

6.The learned counsel for the appellants submitted that the appellants are not satisfied with the award amount on the ground that the amount of Rs.30,000/- fixed by the Tribunal towards annual income of the deceased is very meagre and the same has to be increased. The learned counsel further submitted that the interest fixed by the Tribunal at the rate of 7.5% per annum has to be increased to 12% per annum. Therefore, the award passed by the Tribunal is liable to be enhanced.

7.The learned counsel for the third respondent/Insurance Company submitted that at the time of accident, the first respondent/driver did not possess valid driving license. When the deceased crossed the road without caring the oncoming bus, the first respondent was terribly shocked and applied sudden brake, the vehicle hit the deceased. Consequently, the deceased sustained several abrasions over the body and died succumbed to the injuries. As the minor girl, aged about 12 years, crossed the road carelessly and negligently, the accident had happened on her own fault and so, the petitioners cannot claim any compensation.

8.In support of his arguments, he relied upon the judgment passed in C.M.A.No.1323 of 2017 dated 15.02.2018 and submitted that in similar circumstances, this Court had taken into consideration the annual income of the deceased as Rs.6,000/- per month and had adopted '15' multiplier, as the age of deceased was only 13 years at the time of the accident and added 50% towards future prospects to the notional income of the deceased. Since the deceased was a bachelor, deducted 50% of the annual income towards his personal expenses and calculated the total loss of dependency at the rate of Rs.4,500/- as monthly.

9.The learned counsel for the third respondent further submitted that the Division Bench of this Court in similar circumstances has relied on the decision of the Constitutional Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd., vs. Pranay Sethi and Others [2017 (2) ACJ 2700] and awarded 50% towards future prospects while calculating the notional income of the deceased. Since the present case is on the very same set of facts, the decision cited supra is squarely applicable to the facts of this case.

10.The learned counsel for the appellants further added that the Tribunal has rightly awarded Rs.1,00,000/- to each of the claimant under the head of love and affection, but has not awarded any amount under the head of conventional damages. In support of his submissions, he relied on decision of the Constitutional Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd., vs. Pranay Sethi and Others [2017 [2] TN MAC 609 (SC)], wherein paragraph No.54 reads as follows:

"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 guidance for 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."

11. However, the learned counsel for the third respondent submitted that since the Tribunal was awarded a sum of Rs.4,50,000/- towards loss of income and a sum of 2,00,000/- towards love and affection and has not awarded any amount towards conventional damages. Therefore, the award passed by the Tribunal is perfectly valid and the appeal is liable to be dismissed.

12. Considering the facts and circumstances of the case and in the light of the decisions cited supra, this Court feels that it is proper to fix Rs.6,000/- towards monthly income of the deceased and by adding 40% of the monthly income towards future prospects, the loss of income is calculated as under:

"(i) Rs.6,000/- + 40% future prospects
(Rs.2,400/-) = Rs.8,400/- ; 50% of

deduction towards the personal expenses of the deceased as she is unmarried. Rs.8,400 x 50/100 = Rs.4,200/- [Rs.8,400 - Rs.4,200]; and so 4,200 x 12 x 15 = Rs.7,56,000/-."

13.Hence, this Court is inclined to modify the award passed by the Tribunal and enhance the compensation of Rs.7,56,000/- under the head of Loss of income.

14.Apart from the above category, in the light of the decision of the Constitutional Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd., vs. Pranay Sethi and Others [2017 [2] TN MAC 609 (SC)], this Court is inclined to modify the award of compensation as below under the following heads:

(i)The amount of Rs,10,000/- awarded towards Funeral expenses is very meagre and the same needs to be enhanced. Hence, it is just and proper to award a sum of Rs.15,000/- under the head Funeral expenses.

(ii)This Court is inclined to award a sum of Rs.15,000/- towards loss of estate as no amount has been awarded under this head.

15.Regarding the enhancement of interest rate from 7.5% to 12% made by the learned counsel for the appellants, this Court is not inclined to entertain the same. Hence, the interest granted by the Tribunal at the rate of 7.5% is confirmed. The award amount granted by the Tribunal under the other heads are set aside except awarding the rate of interest.

16.Therefore, the award passed by the Tribunal is modified and enhanced to Rs.7,86,000 as detailed below:

Sl.No	Description	Amount
1.	Loss of Income	Rs.7,56,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
	Total compensation amount	Rs.7,86,000/-

17.Therefore, the award is enhanced to Rs.7,86,000/- with interest at the rate of 7.5% per annum. Hence, the third respondent Insurance Company is directed to deposit the entire award amount, less than the amount, if any already deposited, before the Tribunal within a period of six weeks from the date

of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw their respective shares as per the apportionment of the Tribunal.

In the result, the Civil Miscellaneous Appeal is partly allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cla
To

1.The District Judge,
Motor Accidents Claims Tribunal,
Karaikkal.

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

+1cc to M/S.T.Sai krishnan, Advocate Sr.55273

+1c to M/S.S.Arunkumar, Advocate Sr.55489

C.M.A.No.780 of 2018

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