THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A. No. 957 of 2018

1. Sundaravali
2. Padma
3. Minor Mahalaksmi
   (Minor is rep. by his mother/
   Next friend first petitioner)
4. Dhanalaksmi

..Appellants/Petitioners

Vs.

1. Velmurugan
2. United India Insurance Co. Ltd.,
   Block - 19, Neyveli.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and award dated 05.10.2016 made in MCOP. No. 31 of 2014 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Neyveli.

For Appellants : Mr.P.Paramasivadoss

For Respondents : Mr. J.Chandran- For R2

JUDGMENT

(Judgement of this Court made by R.Pongiappan.J.)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, in MCOP. No. 31 of 2014 dated 05.10.2016, the claimants/appellants herein have filed this appeal to enhance the compensation awarded by the claims tribunal.

2. In the claims tribunal, the appellants herein have filed the claim petition under Section 166 of Motor Vehicles Act and Rule 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.25,00,000/- for the death of one Panneerselvam, who is the husband of the first claimant, father

of the second, third claimants and son of the fourth claimant. After elaborate enquiry, the Claims Tribunal determined a sum of Rs. 5,88,600/- as total compensation for the death of the said Panneerselvam.

3. The case of appellants 1 to 4 herein in the Claims Tribunal is that on 18.04.2014 at about 9.30 a.m, when the deceased was riding his two wheeler bearing registration number TN 31 AU 2902 in Chennai-Kumbakonam National High Way near Kumarakudi East Kaliamman Koil, the driver of the tractor bearing registration number TN31 BY 2305 with Trailor TCF 9151,TN31 R 9375 owned by the first respondent insured with the second respondent drove the same in a rash and negligent manner and hit against the two wheeler of the deceased. Due to the said accident, Panneerselvam died on the spot itself, for which a case had been registered by the Sub Inspector of Police,Chozhatharam Police Station in Crime No. 76 of 2014.

4. Today, we heard the arguments advanced by Mr.P.Paramasivadoss, learned counsel appearing for the appellants and Mr. J.Chandran, learned counsel appearing for the 2nd respondent.

5. The learned counsel appearing for the appellants submitted that this appeal has been filed by the claimants in order to enhance the quantum of compensation. He further added that the Presiding Officer, Claims Tribunal without considering the judgments of the Hon'ble Apex Court in the cases of Pranay Sethi and Sarla Verma, determined the monthly income of the deceased and without adding future prospects has awarded a very meagre amount as compensation. He further added that without considering the fact that the deceased being a male and aged about 40 years, the findings arrived by the claims tribunal is nothing but erroneous. Hence he prayed to enhance the quantum of compensation fixed by the Claims Tribunal.

6. In this case, in order to prove the rash and negligent act of the driver of the tractor, in the claims tribunal, two witnesses were examined as PW1 and PW2. PW1, who is the first claimant in the claims tribunal deposed that only due to rash and negligent act of the driver of the tractor, the alleged accident had happened. In order to corroborate the said evidence, the eye witness to the alleged accident one Karunakaran was examined as PW4. Further, the copy of the First Information Report, in which the driver of the tractor was added as accused was marked as Ex.P1. In order to dispute the averments made in the First Information Report and evidence given by the PW1 and PW2, nobody was examined on the side of the respondents. Even no documents were exhibited on the side of the respondents in order to deny the rash and negligent act of

the driver. Hence, we come to the conclusion that the alleged accident had happened only due to the rash and negligent act of the driver of the tractor.

7. With regard to the quantum of the compensation, the claims tribunal had fixed the income of the deceased as Rs.3,00/- per day, thereafter without adding future prospects, calculated the pecuniary loss as Rs,2,700/-. It is true that during the time of enquiry, in order to prove the income of the deceased, no documents have been produced by the appellants herein, but they have produced a certificate issued by the Fisheries Department of TamilNadu, which is marked as Ex.P10, which discloses that the deceased was trained by the fisheries department of Tamil Nadu for doing fisheries business. Moreover, the alleged accident had happened in the year 2014 and it would have been very easy for the deceased to have earned Rs.8,000/- per month. Even though, no documents were produced for supporting the established income, the certificate issued by the Fisheries Department of Tamil Nadu is enough to hold that the deceased would have earned Rs.8,000/- per month.

8. Now, in order to calculate the future prospects, it is necessary to refer the judgement of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12, in which, the Hon'ble Apex Court has held that if the deceased is self employed or on a fixed salary and between the age of 40 to 50 years, 25% of the monthly income to be added as future prospects. In this case as per the post-mortem certificate, Ex.P2, the age of the deceased at the time of the death is 45 years, thereby it is necessary to add 25% of the monthly income for calculating the future prospects.

9. Further, in order to calculate the personal and living expenses, the Hon'ble Apex Court in the case of Sarla Verma and Others Vs. Delhi Transport Corporation and another passed in Civil Appeal No. 3483 of 2008 Dated 15.04.2009, has observed that if dependants of the deceased are 4 to 6, one fourth of the total income to be deducted towards the personal and living expenses. Accordingly, we decide to deduct one fourth (1/4) of the total annual income for calculating personal and living expenses.

10. Now, with regard to the multiplier, the Hon'ble Apex Court in the judgment in the case of Sarla Verma (stated supra), has held that if the person is of the age of 45 years, the multiplier of 14 has to be taken into account for calculating loss of dependency. In this case also, as per Exhibit P2, post-mortem certificate, the age of the deceased is 45 at the time of the accident, so the appropriate multiplier for calculating the loss of dependency is 14.

11. Further, the Tribunal has awarded Rs. 25,000/- under the head of loss of consortium and Rs.40,000/- under head of loss of estate. Moreover the tribunal has awarded Rs.60,000/- under the heads of loss of love and affection and Rs.10,000/- towards funeral expenses.

12. As per Pranay Sethi's case, in view of the decision taken by the Hon'ble Apex Court, the above said amounts awarded by the claims tribunal are not in accordance with law,

13. In this regard, now as per the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra), a sum of Rs.70,000/- would be required to be added on account of conventional heads of loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs.15,000/-). Accordingly, we modify the conventional heads as above.

14. Now on going through the other particulars available in the case records, it is seen that the deceased is having two minor children and an aged mother. Loss of love and affection is akin to 'Loss of Consortium'. So, we decided to award Rs.50,000/- each to the 2nd & 3rd claimants under the head of loss of love and affection and Rs.25,000/- to the 4th claimant under the same head. Accordingly, we enhance the award passed by the Claims Tribunal under the said heads.

15. In the light of the above discussion, we have decided that the annual income of the deceased would be Rs.96,000/- (8000 x 12). Adding a component of 25% for future prospects, the income would stand at Rs.1,20,000/-. Deducting one fourth towards personal expenses, the loss of dependency per annum works out to Rs.90,000/-. Applying a multiplier of 14 the total loss of dependency would work out to Rs.12,60,000/-. Further, this Court added an additional amount of Rs.70,000/- towards conventional heads and Rs.1,25,000/- towards loss of love and affection.

Hence, total compensation payable to the claimants is as hereunder:

i.	Loss of dependency	:	Rs.12,60,000/-
ii.	Los of Estate	:	Rs. 15,000/-
iii.	Loss of Consortium	:	Rs. 40,000/-
iv.	Funeral Expenses	:	Rs. 15,000/-
v.	Loss of Love and Affection by the respondents 2 & 3 herein .	:	Rs. 1,00,000/-
vi.	Loss of Love and Affection by the 4th respondent		

herein .	:	Rs. 25,000/-
Total Compensation	:	Rs. 14,55,000/-

The claimants are directed to pay the additional court fee for the enhanced award amount within a period of one month.

16. The 2nd respondent/Insurance Company is directed to deposit the entire award amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first appellant is permitted to withdraw Rs.5,00,000/- (Rupees Five Lakhs Only) along with proprotionate interest, the second and third appellants are permitted to withdraw Rs.3,00,000/- (Rupees Three Lakhs Only) along with proprotionate interest each and the fourth appellant is permitted to with draw the remaining amount of Rs.3,55,000/- (Rupees Three Lakhs Fifty Five Thousand Only) along with proprotionate interest. The share in respect of the 3rd appellant who is a minor, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till she attains majority. The 1st appellant, being the mother of the 3rd appellant, is permitted to withdraw the quarterly interest from the said deposit.

17. In the result, the Civil Miscellenous Appeal is allowed and the award passed by the Claims Tribunal to the tune of Rs. 5,88,600/- is enhanced to Rs.14,55,000/-. The said amount shall carry the interest rate of 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ak
To

The Motor Accident Claims Tribunal,
Subordinate Judge, Neyveli.

+1cc to Mr.P.Paramasiva Doss, Advocate Sr.31681

gj ii[co]
srg 22/11/2018