IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 09.10.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.1953 of 2018

1.Kuppan
2.K.Shanthi ... Appellants/Claimants

Vs

1.B.Sasikumar
2.B.Ramesh
3.The National Insurance Company Ltd.,
No.378, Mint Street,
Chennai-600 079. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 16.2.2018 passed in M.C.O.P.No.85 of 2017 by the Motor Accidents Claims Tribunal (Additional District Judge), Kanchipuram.

For Appellants : Mr.Y.Jyothish Chander

For Respondents: Mr.S.Arunkumar

JUDGMENT

Impugning the decree and judgment dated 16.2.2018 passed in M.C.O.P.No.85 of 2017 by the Motor Accidents Claims Tribunal (Additional District Judge), Kanchipuram, the present appeal is filed by the claimants for enhancement.

2. The facts in a nutshell are as under: The appellants are claimants. On 27.3.2008 at about 3.00 P.M. the deceased Prakash Kumar was riding a Hero Honda motorcycle bearing registration No.TN-21 AB 6266 and while he was riding the same in Kavalan street slowly, the Tata lorry bearing registration No.TN-05 V 0446 belonging to the 2nd respondent, insured with the 3rd respondent, driven by the 1st respondent in a rash and negligent manner dashed against the motorcycle. As a result of which, the deceased sustained grievous injuries on his head and stomach. Immediately, he was taken to the Government Hospital, Kanchipuram and given first aid. Thereafter, he was taken to the Government Hospital, Chennai, where the deceased was pronounced dead by 5.50 P.M. Regarding the accident, a criminal case in Crime No.152 of 2008 was registered against the driver of lorry. At the time of accident, the deceased was aged 20 years and had completed Diploma in Mechanical Engineering. He was selected as Apprentice in TVS Group Companies for a monthly salary of Rs.6000/-. The petitioners are parents of the

deceased. Stating that the accident occurred due to rash and negligent driving of the driver of the lorry, the appellants have filed the claim petition claiming compensation of Rs.10,00,000/-.

3. Denying the accident, the 3rd respondent filed counter stating that due to the negligence on the part of the deceased, the accident was happened. Further, at the time of accident, the deceased was not possessing a valid driving licence to drive the two wheeler. It is stated that the claim made by the appellants for the death of the deceased was highly excessive and exorbitant and prayed for dismissal of the claim petition.

4. Before the Tribunal, the 1st appellant examined himself as P.W.1 and one Someshwaran was examined as P.W.2 and marked Exs.P1 to P15. On the side of the contesting 3rd respondent, no oral and documentary evidence was adduced.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing registration No.TN-05 V 0446 insured with the 3rd respondent. As far as quantum of compensation is concerned, taking the monthly income at Rs.5,000/- and adding 50% for future prospects and deducting 50% towards personal expenses, the Tribunal has calculated the contribution to the family atRs.3,750/-. Adopting multiplier 18, the Tribunal awarded total compensation of Rs.8,40,000/-. Being dissatisfied with the quantum of compensation, the appellants have preferred this appeal.

6. The learned counsel for the appellants submitted that since the deceased was a Mechanical Diploma holder, the Tribunal ought to have taken the monthly salary of the deceased at Rs.12,000/- per month. However, the Tribunal was not justified in summarily arriving at a sum of Rs.5,000/- under the head income when the appellants have produced Ex.P6, wherein his salary was mentioned as Rs.5,200/-. He would submit the Tribunal has failed to award any amount towards loss of love and affection and also erred in granting only Rs.15,000/- each under the head funeral expenses and loss of estate. Therefore, the learned counsel prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the 3rd respondent insurance company reiterated the contentions raised before the Tribunal and prayed for dismissal of this appeal.

8. I have heard Mr.Y.Jyothish Chander, learned counsel for the appellants and Mr.S.Arunkumar, learned counsel for the respondents and also perused the materials available on record.

9. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellants and secondly, none of those findings are under challenge. Only quantum of compensation is under challenge by the appellants. Further, the appellants have proved that the offending vehicle had a valid insurance policy at the time of accident and was insured with the 3rd respondent insurance company and therefore, the Tribunal rightly ordered that the 3rd respondent insurance company is liable to pay the compensation to the appellants.

10. The point that arises for consideration is whether the compensation awarded by the Tribunal for the death of deceased needs to be enhanced.

11. According to the appellants, at the time of accident, the deceased was aged 20 years and had completed Diploma in Mechanical Engineering and was selected as Apprentice in TVS Group of Companies for a monthly salary of Rs.6,000/-. There is no dispute that the deceased was possessing technical qualification. The appellants have produced Exs.P7 and P15 to show that the deceased was selected for one year Government Apprenticeship training at Brakes India Limited with a stipend of Rs.5,200/- per month.

12. As rightly observed by the Tribunal, if the deceased had completed the apprenticeship, he would have got a definite job with attractive salary. When such being the position, the Tribunal ought to have taken the monthly income of the deceased at Rs.6,000/- instead Rs.5,000/-. Considering the qualification acquired by the deceased, it would be appropriate to take the monthly income of the deceased at Rs.6,000/-.

13. Since the deceased was a skilled person, it would be appropriate to give 50% addition towards future prospects per month. Adding 50%, the monthly income is calculated at Rs.9,000/-.

14. The deceased was a bachelor and the appellants are parents of the deceased. In Sarla Verma and others v. Delhi Transport Corporation and another, reported in (2009) 4 MLJ 997 (SC), the Hon'ble Supreme Court held that if the parents are the dependents half of the income has to be deducted for personal expenses. If we deduct half of the income, the contribution to the family would comes to Rs.4,500/- per month and the annual contribution would comes to Rs.54,000/-.

15. As stated supra, at the time of accident, the deceased was aged 20 years. For the age group 15 - 20, the multiplier to

be applied is "16". Adopting multiplier "16", the loss of dependency is calculated at Rs.9,72,000/-.

16. The Tribunal awarded Rs.15,000/- towards loss of estate and another sum of Rs.15,000/- towards funeral expenses. In Civil Appeal No.6961 of 2015 etc. batch dated 31.10.2017 (National Insurance Co. Ltd. v. Pranay Sethi and others), the Hon'ble Supreme Court held that figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. Since amounts awarded by the Tribunal towards loss of estate and funeral expenses are as per the decision of the Hon'ble Supreme Court, the same are maintained.

17. The Tribunal has not awarded any amount towards loss of love and affection. Awarding of compensation towards parental consortium came up for consideration before the Hon'ble Supreme in Civil Appeal No.9581 of 2018 (Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and others), decided on 18.9.2018, wherein the Hon'ble Supreme Court held as under:

> "8.7. A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.
>
> In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.
> .....
>
> Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation".
>
> Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."
>
> Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their life time. Children are valued for their love, affection, companionship and their role in the family unit.

....

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."

18. Thus, in the decision in Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and others, supra, the Hon'ble Supreme Court permitted the Tribunal to award an amount of Rs.40,000/- when parent has lost their unmarried son. Following the said decision, a sum of Rs.40,000/- each is awarded under the head Filial consortium.

19. In the light of the above mentioned discussion, the total sum of Rs.8,40,000/- awarded by the Tribunal is enhanced to Rs.10,82,000/- as under:

Heads	Rs.
Loss of dependency	9,72,000.00
Loss of consortium (Rs.40000 x 2)	80,000.00
Funeral expenses	15,000.00
Loss of estate	15,000.00
Total	10,82,000.00

20. In Nagappa v. Gurudayal Singh and others, reported in (2003) 2 SCC 274 : 2004 (2) TN MAC 398 (SC), the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such

as award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable.

21. In the present case, based on the evidence produced by the appellants and considering the dependency and also following the decision of the Hon'ble Supreme Court in Nagappa v. Gurudayal Singh and others, supra, this Court enhanced the compensation to Rs.10,82,000/- and the claimants are directed to pay the difference court fee.

22. In the result, the Civil Miscellaneous Appeal is allowed. The total compensation of Rs.8,40,000/- awarded by the Tribunal is enhanced to Rs.10,82,000/-. The 3rd respondent is directed to deposit the enhanced compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within period of eight weeks from the date of receipt of a copy of this order. The enhanced compensation of Rs.2,42,000/- will carry interest only from the date of this order till the date of deposit. The appellants 1 and 2 are entitled equal share with accrued interest and costs. The appellants are directed to pay difference court fee within a period of four weeks from the date of receipt of a copy of this order. On payment of court fee, the Registry is directed to draft the decree. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Motor Accident Claims Tribunal,
Additional District Judge,
Kanchipuram.

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

+1cc to Mr.Y.Jyothish Chander, Advocate, S.R.No.69496
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.69778

Civil Miscellaneous Appeal No.1953 of 2018

rrs 14/12/2018