IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 08.10.2018
DELIVERED ON : 10.12.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.2105 of 2018

1. Mythili
2. S.Mukundan
3. S.Mythreyan (minor)
4. S.Jeeva Jothi (minor)
(R3 and R4 are represented by their mother and next friend, Mythili)
5. Angammal ... Appellants/Petitioner

Vs

1. A.Lakshmi
(R1-Remained exparte before the Tribunal)

2. Universal Sompo General Insurance company Limited
Capitale Towers, 5th Floor
'B' Wing, No.554-555
Anna Salai, Teynampet
Chennai - 600 018. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 13.12.2017 passed in M.A.C.T.O.P.No.4655 of 2015 by the Motor Accidents Claims Tribunal, Special Sub Judge I, Small Causes Court, Chennai.

For Appellants : Ms.M.Malar

For Respondents: Ms.Vijaya Kamala for 2nd respondent

JUDGMENT

Impugning the decree and judgment dated 13.12.2017 passed in M.A.C.T.O.P.No.4655 of 2015 by the Motor Accidents Claims Tribunal, Special Sub Judge I, Small Causes Court, Chennai, the present appeal is filed by the claimants.

2. The facts in a nutshell are as under: The appellants are the claimants. The first appellant is the wife of the deceased. Appellants 2 to 4 are children of the deceased. The fifth appellant is the mother of the deceased. On 28.4.2015, at about 8.45 PM, while one Sankar (deceased) was riding the motorcycle

bearing registration No.TN-21-S-8857 at the left side of Kelambakkam - Vandalur Salai, near Kannapuram Kattu Paguthi, Kanchipuram District, an Innova Car bearing registration No.TN-11-K-3333 driven by its driver, drove in a rash and negligent manner and hit the motorcycle. Due to the said accident, Sankar sustained severe head injury and multiple grievous injuries and after the accident, he was taken to the Government Medical College Hospital, Chengalpattu, where the doctor declared that the injured died due to multiple injuries.

3. The claim petition was filed claiming a sum of Rs.25,00,000/- as compensation pleading that the first respondent, who is the owner of the vehicle, and the second respondent, who is the insurer of the vehicle, both are vicariously and statutorily liable to pay compensation to the appellants.

4. The said claim petition was resisted by the second respondent insurance company by disputing the age, income and occupation of the deceased. It was alleged that the appellants are bound to establish with documentary evidence that the vehicle involved in the accident is covered by valid insurance policy and that its driver was holding a valid driving licence at the time of accident. In any event, it was alleged that the compensation claimed is without proof, disproportionate, exorbitant and without any legal basis.

5. The Tribunal, by judgment and decree dated dated 13.12.2017 passed in M.A.C.T.O.P.No.4655 of 2015, awarded a sum of Rs.19,00,000/- as compensation.

6. Seeking enhancement of compensation, the appellants had filed this appeal.

7. The learned counsel appearing for the appellants contended that the Tribunal failed to consider that the deceased was aged about 45 years at the time of accident and was working as a Building Maistry and earned about Rs.600/- per day, and had erroneously fixed the income of the deceased as Rs.10,000/- per month and further deducted $1/4^{th}$ from the said sum towards his personal expenses. She further contended that the deceased was the sole breadwinner of the family.

8. The learned counsel further contended that the amount awarded towards love and affection is too meagre, considering the fact there are five dependants and the minor children are at the stage of schooling. She added that more amount of compensation ought to have been awarded under the heads of future prospectus; loss of expectation of life; mental agony, loss of estate, etc.

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

10. I have heard M/s.M.Malar, learned counsel for the appellants and M/s.Vijayakamala, learned counsel for the 2nd respondent and also perused the materials available on record.

11. 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 second respondent insurance company and therefore, the Tribunal rightly ordered that the second respondent insurance company is liable to pay the compensation to the appellants.

12. The point that arises for consideration is whether the compensation awarded by the Tribunal for the death of deceased needs enhancement.

13. In the claim petition, it is stated that at the time of accident the deceased was aged 43 years and was earning Rs.600/- per day by by doing building maistry work. As far as the age of the deceased is concerned, the appellants have produced Ex.P2-post mortem certificate, wherein his age was mentioned as 45 years. The appellants have also produced ExP4-death certificate, wherein also the age of the deceased was mentioned as 45 years. Thus, at the time of accident, the deceased was aged 45 years, which the Tribunal has rightly taken.

14. In so far as income of the deceased is concerned, the appellants claimed that at the time of accident, the deceased was working as building maistry and was earning Rs.600/- per day. To prove that the deceased was earning Rs.600/- per day, the appellants have not produced any documents. Even to prove the avocation of the deceased, no documents have been produced by the appellants. In the absence of proof, the Tribunal has fixed the notional monthly income of the deceased at Rs.10,000/-.

15. By relying upon the decision of the Hon'ble Supreme Court in Neeta v. Divisional Manager, MSRTC, Kolhapur, reported in 2015 (1) TN MAC 161 (SC), the learned counsel submitted that in a case of carpenter the Hon'ble Supreme Court has taken the monthly income at Rs.12,000/- and since at the time of accident the deceased was working as maistry, a sum of Rs.12,000/- per month may be taken for determining the compensation.

16. In Neeta v. Divisional Manager, MSRTC, Kolhapur, supra, the Tribunal fixed the income of the deceased at Rs.4,500/- per month and the High Court fixed the income at Rs.6,000/- per month. Aggrieved by the quantum, the claimants therein have preferred appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court held that in the absence of documentary evidence in support of claim, the Tribunal and High Court ought to have taken monthly salary at Rs.12,000/- as fixed by the State Government as Minimum Wages for Carpenters under the Minimum Wages Act. In paragraph 8, the Hon'ble Supreme Court held as under:

> "8. .... Thus, the Tribunal and the High Court have committed an error, both on facts and in law in not taking the correct monthly income of both the deceased for computation of Loss of Dependency, keeping in view the fact that they were Carpenters which is the skilled job. Therefore, the monthly income of the deceased taken by the Tribunal and the High Court for determination of Loss of Dependency is erroneous, as it is not in accordance with the guiding factors laid down by this Court in the catena of cases to arrive at the just monthly income earned by both the deceased in the absence of documentary evidence. Therefore, the same is liable to be set aside and it has to be properly determined by taking the gross income of both the deceased. The Tribunal and the High Court even in the absence of the Salary Slip/Certificate ought to have taken the monthly salary of both the deceased at Rs.12,000/- p.m. keeping in view, the Minimum Wages Act, 1948 Notification, wherein, the State of Karnataka on the basis of the said Notification for the relevant period, had fixed the Minimum Wage of the Carpenters in their Report, which is a skilled job in the Zone-II and the deceased were working in the aforesaid Zone at Belgaum District, during the relevant period of their death. Further, it should have been noted by both the Tribunal and the Appellate Court that the Minimum Wages fixed in the Notification is not fair wage and therefore, they could have taken the monthly salary on the basis of real wages that were being paid in the absence of documentary proof on the basis of speculation. ...."

17. Though the appellants have not produced any material to show that at the time of accident, the deceased was drawing Rs.600/- per day, as per the decision of the Hon'ble Supreme Court in Neeta v. Divisional Manager, MSRTC, Kolhapur, supra, in the absence of Salary Slip/Certificate, it would be appropriate

to take the monthly salary of the deceased at Rs.12,000/- keeping in view that more or less the carpenter and maistry are drawing similar wages. Thus, in the case on hand, it would be appropriate to fix the monthly salary of the deceased at Rs.12,000/-. It is apposite to mention that now a days, carpenter and building maistry who were involved in building construction work are drawing Rs.800/- per day. Since accident is of the year 2015, at least, a building maistry would have earned Rs.400/- per day. Therefore, following the decision of the Hon'ble Supreme Court in the case of Neeta v. Divisional Manager, MSRTC, Kolhapur, supra, this Court fixed the monthly salary of the deceased at Rs.12,000/-.

18. While fixing the monthly income, the Tribunal has given 25% addition for future prospects. In the present case, the learned counsel for the appellants seeks 40% addition for future prospects. In S.L.P. (Civil) No.25590 of 2014, dated 31.10.2017 (National Insurance Co. Ltd. v. Pranay Sethi and others), the Hon'ble Supreme Court held that in a case of deceased was self-employed or on a fixed salary where the deceased was between the age of 40 to 50 years, an addition of 25% should be given.

19. In the case on hand, at the time of accident, the deceased was aged 45 years. Therefore, the appellants are entitled only 25% addition for future prospects, which the Tribunal has rightly given. If we take the monthly income of the deceased at Rs.12,000/- and adding 25% addition for future prospects, the monthly salary would comes to Rs.15,000/- and the annual income would comes to Rs.1,80,000/-.

20. The number of dependents in this case is 5. Ex.P5 is the legal heir certificate, wherein it has been mentioned that the 1st appellant is the wife, appellants 2 to 4 are sons and daughter of the deceased and the 5th appellant is the mother of the deceased. In Smt. Sarla Verma and others v. Delhi Transport Corporation and another, reported in (2009) 4 MLJ 997 (SC), the Hon'ble Supreme Court held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3; one-fourth where the number of dependent family members is 4 to 6; and one-fifth where the number of dependent family members exceed 6.

21. The learned counsel for the appellants submitted that since there is no other earning male member in the family and the appellants 3 and 4 are minors at the time of accident, the Tribunal ought not to have deducted the personal expenses of the deceased. There is no force in the submission of the learned counsel for the appellants.

22. As stated supra, in the present case, the number of dependent family members is 5. Therefore, one-fourth has to be deducted as personal and living expenses of the deceased. Deducting one-fourth towards personal and living expenses, the contribution to the family would comes to Rs.1,35,000/- per annum.

23. As far as multiplier to be applied in this case is concerned, as per the decision of the Hon'ble Supreme Court in Smt. Sarla Verma and others v. Delhi Transport Corporation and another, supra, for the age group 41 - 45 years, the multiplier to be applied is "14". Adopting multiplier "14", the loss of dependency would comes to Rs.18,90,000/- (Rs.1,35,000 x 14 = Rs.18,90,000/-).

24. The Tribunal awarded compensation on conventional heads as under:

Loss of Consortium	...	Rs. 40,000.00
Loss of love and affection	...	Rs.2,50,000.00
Loss of estate	...	Rs. 15,000.00
Transport charges	...	Rs. 5,000.00
Funeral expenses	...	Rs. 15,000.00

25. In S.L.P. (Civil) No.25590 of 2014, dated 31.10.2017 (National Insurance Co. Ltd. v. Pranay Sethi and others), the Hon'ble Supreme Court has set out various amounts to be awarded as compensation under the conventional heads in case of death. The relevant portion of decision is reproduced herein below:

> "Therefore, we think it seemly 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 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."

26. Following the decision of the Hon'ble Court in National Insurance Co. Ltd. v. Pranay Sethi and others, supra, the compensation of Rs.15,000/- towards loss of estate, Rs.5,000/- towards transport charges and Rs.15,000/- towards funeral expenses awarded by the Tribunal are maintained.

27. In the present case, the Tribunal awarded Rs.40,000/- towards loss of consortium to the first appellant. 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."
>
> .....
>
> 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."

28. In the present case as per the decision of the Hon'ble Supreme Court in Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and others, supra, apart from the first appellant/wife, the appellants 2 to 4/children are also entitled to get compensation under the head 'loss of consortium'. Thus, this Court deem it appropriate to award the appellants being the wife and children of the deceased, an amount of Rs.40,000/- each for loss of spousal consortium and parental consortium respectively.

29. The Tribunal awarded Rs.2,50,000/- towards loss of love and affection. At the time of accident, the first appellant was aged 38 years and the appellants 2 to 4 have lost their father at the younger age. In a catena of decisions, the Hon'ble Supreme Court awarded Rs.50,000/- towards loss of love and affection to each of the claimants. In my opinion, since appellants are wife, sons, daughter and mother and five in numbers, the Tribunal awarded Rs.2,50,000/- and the same is maintained.

30. In the light of the above mentioned discussion, the total sum of Rs.19,00,000/- awarded by the Tribunal is enhanced to Rs.23,75,000/-as under:

Heads	Rs.
Loss of dependency	18,90,000.00
Loss of love and affection	2,50,000.00
Loss of consortium (Rs.40000 x 5)	2,00,000.00
Funeral expenses	15,000.00
Loss of estate	15,000.00
Transport charges	5,000.00
Total	23,75,000.00

31. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.19,00,000/- awarded by the Tribunal in M.C.O.P.No.4655 of 2015, dated 13.12.2017 on the file of the Motor Accident Claims Tribunal (Special Sub Judge No.1 to deal with MCOP Cases), Small Causes Court, Chennai is enhanced to Rs.23,75,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit payable by the second

respondent. Out of the total compensation of Rs.23,75,000/-, the first appellant being the wife is entitled for a sum of Rs.6,00,000/- and appellants 2 to 4 being the children are entitled for a sum of Rs.5,00,000/- each and the fifth appellant being the mother is entitled for a sum of Rs.2,75,000/- with accrued interest. In so far as other directions viz., mode of deposit, withdrawal of the compensation and deposit of the minor amount in a Nationalised Bank, the order of the Tribunal remain unaltered. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Special Sub Judge I
Small Causes Court
Chennai.

+1cc to Ms.M.Malar, Advocate sr.no.85279
+1cc to Ms.Vijaya Kamala, Advocate sr.no.84894

Civil Miscellaneous Appeal No.2105 of 2018

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