

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.08.2017
Judgment Pronounced on : 28.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1815 of 2009
and Cros.Obj. No.50 of 2017

CMA.No.1815 of 2009 :

The National Insurance Company Ltd.
Branch Office
No.74-A, Paramathi Road
Namakkal Town
Namakkal District. Appellant/2nd Respondent

Vs.

1.Kalaiselvi
2.Minor.Ambiga
(Minor represented by her friend, guardian
mother Kalaiselvi) ...1 & 2 Respondents/Petitioners
3.R.Manikandan3rd Respondent/1st Respondent

Cros.Obj.No.50 of 2017 in C.M.A.No.1815 of 2009:

1.Kalaiselvi
2.Minor.Ambiga
(Minor represented by her friend, guardian
mother Kalaiselvi)
.... Cross Objectors/Respondents 1 & 2

Vs.

1.The National Insurance Company Ltd.
Branch Office
No.74-A, Paramathi Road
Namakkal Town
Namakkal District. ...1st Respondent/Appellant

2.R.Manikandan2nd Respondent/3rd Respondent
[R2 set exparte before the Tribunal]

Prayer in CMA.No.1815 of 2009:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 31.12.2008 made in O.P.No.328 of 2008 on the file of the Motor Accidents Claims Tribunal (Fast Track

Court), Namakkal.

Prayer in Cros.Obj No.50 of 2017:- Cross Objection filed under 41 Rule 22 of C.P.C. against the C.M.A.No.1815 of 2009 on the file of this Court, filed against the decree and judgment dated 31.12.2008 made in MCOP.No.328 of 2008 on the file of the Motor Accident Claims Tribunal (Fast Track Court) Namakkal.

In CMA.No.1815 of 2009 :

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.Ma.P.Thangavel

[for R1 & R2]

R3 [No appearance]

In Cros.Obj.No.50 of 2017:

For Cross Objectors : Mr.Ma.P.Thangavel

For Respondents : Mr.D.Bhaskaran [for R1]

JUDGMENT

Challenging both the extent of liability and compensation of Rs.8,62,000/- awarded to the claimants, who are the legal representatives of the deceased of a fatal road accident that took place on 18.11.2007, the insurance company, the second respondent before the Tribunal has approached this Court. The claimants on their part has preferred cross objection seeking enhancement of compensation. Parties would be referred to by their ranks before the Tribunal.

2. The deceased was a certain Shanmugam who at that relevant time was riding the two wheeler bearing Registration No.TN 28 M 7237, when a lorry belonging to the first respondent, driven rashly and negligently by him, dashed against the said motor cycle, owing to which, Shanmugam suffered multiple injuries and was immediately taken to M/s.Arvind Hospital, Namakkal, where he succumbed to his injuries later. Claiming that Shanmugam was 47 years at that relevant time, that he was running a business of Body Labour Works for vehicles in the name and style of 'Sri Angalamman Body Labour Works' and was earning not less than Rs.15,000/- per month, and the support he had been given his family was lost due to his death. Hence the claimants have approached the Tribunal seeking a compensation of Rs. 15,00,000/-.

3. Before the Tribunal, the second respondent (appellant herein) has denied negligence on the part of the lorry, took exception for not impleading the owner and insurer of the motor

cycle which the deceased was riding and also that the victim did not possess a valid and effective licence to ride a two wheeler. It also objected to the quantum of compensation claimed as excessive.

4. The Tribunal has found negligence entirely on the driver of the offending lorry, of which the appellant is the insurer. Turning to quantum, the Tribunal had relied on Ext.P8 and Ext.P9 to indicate that Shanmugam was running a Body Building Works for lorries and the Tribunal has reckoned his monthly income at Rs.8,000, deducted 1/3rd thereof towards his personal expenses and has arrived at the compensation of (Rs.8000 x 12 x 13 x 2/3) Rs.8,32,000/- towards loss of support. For loss of consortium Rs.10,000/- was awarded and for loss of love and affection Rs.10,000/- each was awarded, and for transport and funeral expenses Rs.5,000/- on each head was awarded.

5.1 The insurance company/appellant essentially harped on the contributory negligence on the part of the victim of the accident and also took exception to the monthly income as determined by the Tribunal. In particular, it is contended that the documents produced by the claimants only indicate that the victim of the accident was perhaps running a business for Body Building for lorries, but none of the documents before the Tribunal provide a rational basis for fixing a notional monthly income of Rs.8,000/-.

5.2 On the same point, the learned counsel for the respondents/claimants would contend that the Tribunal ought to have reckoned the monthly income of the victim at Rs.15,000/-. Besides, he also argued that the compensation on non-pecuniary heads of damages are far too inadequate.

6.1 When it goes as an admitted fact that the victim of the accident had run a business in lorry body building labour works, a sum of Rs.8,000/- that the Tribunal has fixed as notional monthly income does not appear unreasonable. But since there was no proof of actual income, this Court may not be able to raise the same. However, based on the law declared in National Insurance Co., Ltd., Vs Pranay Sethi [2017(2) TN MAC 609 (SC)], 25% must be added towards future prospects of increase in income since the victim fell in the age group of 40-50 years and in self employed category. Accordingly, the total compensation payable on this head would be Rs.10,40,000/-.

6.2. Hence, the cross objectors have not been able to convince this Court about a need to enhance a compensation for the loss of family support that the deceased would have provided.

6.3. However on the head of non-pecuniary damages this Court however needs to bring it in tune with the ratio in Pranay Sethi case. Accordingly, compensation the head of loss of consortium is increased from Rs.10,000/- to Rs.40,000/-. For funeral expenses, the amount awarded is enhanced from Rs.5,000/- to Rs.15,000/-.

6.3 The one other head that remains to be addressed is compensation for loss of love and care to two minor children. On this head there was some arguments advanced by both sides. The counsel for the appellant would argue that in Pranay Sethi case, the Hon'ble Supreme Court capped the total compensation payable on conventional heads at Rs.70,000/- and backed his argument with authorities in Laxmidhar Nayak & Others Vs Jugal Kishore Behera & Others [2018(1)TN MAC 181 (SC), Ramrao Lala Borse & Another Vs. New India Assurance Co. Ltd., & Another [2018(1) TN MAC 145 (SC)], Reliance General Insurance Co. Ltd., Vs. Shalu Sharma & Others [CDJ 2018 SC 065] and New India Assurance Co. Ltd. Vs. Vinish Jain [2018 (1) TNMAC 181 (SC)]. Refuting the said argument, counsel for the cross-objector/claimants would argue, that in Pranay Sethi's case, the Supreme Court has left open the issue of payment of compensation on the head of love and care of minor children open, and Archit Saini & Another Vs The Oriental Insurance Company Ltd., & Others [CDJ 2018 SC 084], the Supreme Court has awarded Rs.1,90,000/- towards loss of love and care. He further argued that in G.Mahalakshmi & Others Vs. R. Manokaran & Others [CDJ 2018 MHC 2014], a Division Bench of this Court has awarded Rs.50,000/- on this head, and even Kerala High Court has awarded the same in Valsamma & another Vs V.A.Baiju and others [2017 SCC OnLine Kerala 23174], the Court has ordered Rs.50,000 towards loss of love and care for the children. On a proper evaluation of the authorities this Court finds that in Pranay Sethi's case the Supreme Court has not appeared to have awarded any compensation on the head of love and care. On the head of loss of estate Rs.15,000/- is awarded.

7. As to the head of transportation, the amount awarded by Tribunal remains unaltered. Thus, the final statement of the compensation payable in terms of this order is tabulated below :

Heads of Compensation	Amount (Rs.)
Loss of support	10,40,000/-
Loss of consortium	40,000/-
Loss of estate	15,000/-
Transportation	5,000/-

Heads of Compensation	Amount (Rs.)
Funeral Expenses	15,000/-
Total :	11,15,000/-

8. In the result, the appeal is dismissed. Cross objection filed by the claimants seeking enhancement of compensation is partly allowed by enhancing the award amount from Rs.8,62,000/- to Rs.11,15,000/-. The appellant/insurance company is directed to deposit the enhanced award amount of compensation along with interest at the rate of 7.5% per annum as determined by the Tribunal, within six weeks from the date of receipt of a copy of this award, less any amount already deposited. The apportionment of compensation to the claimants shall be done in the same manner as it was done by the Tribunal. The share of the minor claimant shall remain deposited in the Nationalised Bank till she attains majority, and on she attaining majority, she is permitted to withdraw her deposit amount. However, the first respondent is permitted to withdraw the interest amount accrued thereon to the share of minor claimant, once in three months. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ds
To:

1.The Motor Accident Claims Tribunal
Fast Track Court,
Namakkal.

copy to

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

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 32584.

CMA.No.1815 of 2009
& Cros.Obj No.50 of 2017

RJ(CO)
GSP(18/07/2018)