

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2576 of 2012
and M.P.No.1 of 2012
and Cross.Obj.No.5 of 2018

C.M.A.No.2576 of 2012

M/s.National Insurance Company Limited
Branch-2, 1272-73
Pazhaniappa Complex,
Mettur Road,
Erode.638 011. ..Appellant/3rd respondent

Vs

1.R.K.Kavitha
2.Minor Latha
3.Minor Prabhu
(2 and 3 are minors, represented
by their mother and their next friend
R.K.Kavitha)

4.Pazhaniammal
5.Subramaniam ..Respondents 1 to 5/Petitioners 1 to 5

6.C.Loganathan
7.V.Vinodsharma ..Respondents 6 and 7
/Respondents 1 and 2

Cross Objection No.5 of 2018:-

1.R.K.Kavitha
2.Minor Latha
3.Minor Prabhu
(2 and 3 are minors, represented
by their mother and their next friend
R.K.Kavitha)

4.Pazhaniammal
5.Subramaniam ..Cross Objectors

Vs

1.M/s.National Insurance Company Limited
Branch-2, 1272-73
Pazhaniappa Complex, Mettur Road,
Erode.638 011.

2.C.Loganathan
3.V.Vinodsharma

..Respondents

(Respondents 2 and 3 remained Exparte before the Tribunal,
hence notice may be dispensed with in this Cross Appeal)

Prayer in both the CMAs and Cross Obj..- Civil Miscellaneous Appeals and Cross Objection filed against the judgment and decree dated 19.01.2012 passed in M.C.O.P.No.700 of 2008 on the file of Motor Accident Claims tribunal, Additional Subordinate Court, Tiruppur.

In CMA.2576/2012:-

For appellant : : Ms.N.B.Surekha
For Respondents : : Mr.MA.P.Thangavel for R1 to R5.

In Cross Objection No.5 of 2018:-

For Cross Objectors : : Mr.MA.P.Thangavel
For respondents : : Ms.N.B.Surekha for R1.

COMMON JUDGMENT

The above Civil Miscellaneous Appeal and Cross Objection are filed challenging the judgment and decree dated 19.01.2012 made in M.C.O.P.No.700 of 2008 on the file of Motor Accidents claims Tribunal, Additional Sub Court, Tiruppur.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners is that on 07.12.2007 at about 8.00 p.m., while the deceased Rajkumar was riding his two wheeler bearing Reg.No.TN-39-AP-5829 in Thiruppur to Mangalam Main Road from east to west near S.R.Nagar, Karuparayan Koil, a Tempo van bearing Reg.No.TN-33-AA-4243 driven by the 1st respondent owned by the 2nd respondent and insured with the 3rd respondent came at high speed in the opposite direction and dashed against the motor cycle of the deceased Rajkumar causing him grievous injuries all over his body, resulting in his death. The accident occurred only due to negligence of the 1st respondent driver, who was driving the above said Tempo Van in a rash and negligent manner. The deceased was aged 41 years and was employed as a Manager in a Private Firm earning Rs.20,000/- per month. He was the only bread winner of the family consisting of wife, children viz., Petitioners 1 to 3 and parents of the deceased, who are Petitioners 4 and 5 herein. Due to the sudden death of the said Rajkumar, the Petitioners is stated to have suffered loss of income and as such, sought for compensation of

Rs.30,00,000/- from the respondents.

3. On the other hand, opposing the Petition, by filing counter, the 3rd respondent Insurance company denied the claim of the Petitioner about the manner in which the accident occurred. The Petitioners' claim about the age, avocation and income of the deceased is denied. The dependency of the Petitioners on the income of the deceased is to be proved. The claim of the Petitioners that the 1st respondent driver drove his van recklessly at high speed is not correct. The Petitioners have to establish that the driver of the two wheeler as well as van possessed valid driving licence and were covered under insurance policy. The claim of the Petitioners is very exorbitant. The 3rd respondent Insurance Company sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3 and produced Ex.P.1 to Ex.P.8 documents to prove the claim. On the side of the 3rd respondent, R.W.1 and R.W.2 were examined and no documentary evidence was produced. The 1st and 2nd respondents remained *exparte*. The Tribunal, on consideration of the available materials on record, found that the negligence of 1st respondent driver alone was the cause for the accident and awarded a sum of Rs.8,35,000/- as compensation directing the 3rd respondent to pay the amount. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance Company has come forward with the appeal. Being not satisfied with the quantum of the Award, the Petitioners/claimants have filed Cross objection.

5. The learned counsel for the 3rd respondent/Insurance Company viz., the appellant in C.M.A.No.2576 of 2012 contends that the Tribunal without properly appreciating the evidence on record, found that the negligence of the Tempo Van driver was the cause for the accident. The Tribunal ought to have fixed contributory negligence as the deceased was reckless in driving the two wheeler and thereby, caused the accident. The Tribunal fixed the monthly income at Rs.6000/- without any basis. The Tribunal erred in deducting only 1/4th of the income towards personal expenses of the deceased whereas it ought to have deducted 1/3rd of the income towards personal expenses. Hence, the 3rd respondent/Insurance company seeks to entertain the appeal and reduce the quantum of award passed by the Tribunal.

6. Per contra, the learned counsel for the Petitioners/claimants/Cross Objectors contend that the Tribunal after considering the documents both oral and documentary available on record wrongly fixed the notional monthly income at Rs.6000/- while the monthly income of the deceased was Rs.20,000/- per month as per Ex.P.8. The Petitioner also

examined the staff of the Private firm in which the deceased was employed as P.W.3 to prove the monthly earnings of the deceased. The Tribunal failed to consider P.W.1 evidence properly. The Tribunal ought to have added 25% of the income towards future prospects. The amount awarded by the Tribunal under different heads is very low. The Tribunal ought to have applied the correct multiplier. Hence, the Petitioners/cross Objectors seeks to entertain their cross objection by enhancing the amount.

7. Heard both sides and perused the records carefully.

8. The Petitioners examined the eyewitness to the occurrence as P.W.2-Kumar. According to him, on 07.12.2007, while he was proceeding in the Tirupur Mangalam Main road, from west to east, the deceased Rajkumar was going ahead of him in his two wheeler TN-39-AP-5829 and at that time, a tempo traveller van came in the opposite direction, dashed against the two wheeler which the deceased was driving, resulting in his death. The 1st petitioner/wife of the deceased viz., Kavitha examined herself as P.W.1 and stated about the accident in the same way. The Petitioners produced Ex.P.1-Copy of FIR to show that the accident occurred due to the negligence of 1st respondent van driver only. The Petitioners also produced Rough sketch of the accident spot as Ex.P.3. It is clear from Ex.P.1-FIR and Ex.P.3-Rough sketch that the accident occurred in the southern side of the east west road as the Petitioners' claim that the deceased was proceeding from east to west. It is clear that he was going on the southern side of the road which is left side of the road. The Offending vehicle which was proceeding in the opposite direction ought to have come on the northern side of the east west road, but it is evident from Ex.P.3 Rough Sketch that the accident occurred only on the southern side on the east west road and not on the north side of the road. If the claim of the 3rd respondent is true, then the accident would have taken place on the northern side of the east west road. However, the evidence of P.W.2/eyewitness of the accident as well as contents of Ex.P.3-Rough Sketch clearly disproves the claim of the 3rd respondent in that regard.

9. On the other hand, R.W.1 who is the employee of the 3rd respondent Insurance company deposed that the rear portion of the tempo van was damaged. There is nothing in the evidence of R.W.1 to make this court disbelieve the version of the petitioners. As rightly held by the Tribunal, considering the direction, in which, the two wheeler was proceeding and the accident occurred due to collision of two moving vehicles in opposite direction, in the event of the accident, the two wheeler ought to have dashed on the right side of the van owned by the 2nd respondent, driven by the 1st respondent. In this

case, there is no such evidence to prove the claim of the 3rd respondent. Further, Ex.P.1 FIR is registered against the 1st respondent vehicle driver only. In such circumstances, considering the facts and circumstances of the case and the attendant circumstances, this court has no hesitation in holding that the accident occurred due to rash and negligent driving of the 1st respondent driver and there is no need or scope to fix any contributory negligence on the deceased who was riding the motor cycle. As such, the conclusion of the Tribunal that the negligence of the 1st respondent van driver alone caused the accident is just and proper and the same needs no interference.

10. Issue Regarding Quantum of Award:-

10.1. Age of the deceased:- According to the Petitioners, the deceased was aged 41 years at the time of the accident and he was earning Rs.20,000/- per month by working as Manager in Nelco Impex, Tiruppur. The age of the deceased is mentioned as 41 in the Petition. In Ex.P.2-Post Mortem Report as well as Ex.P.5-Death Certificate, the age of the deceased is mentioned as 41. In Ex.P.7-Driving Licence, the date of birth of the deceased is shown as 16.01.1966. As such, it is clear that on the date of the accident i.e., 07.12.2007, the deceased was aged 41 years.

10.2. Monthly income of the deceased:- (a) The Petitioners claim that by working as Manager in the Private Firm viz., Nelco Impex, Tiruppur, the deceased was getting Rs.20,000/- per month. To prove his monthly income, the Petitioners produced Ex.P.8 salary proof. The Tribunal fixed the notional income for the deceased at Rs.6000/-. According to the Petitioners, the deceased was earning Rs.20,000/- per month. The Petitioners also examined the staff of the Private concern, in which the deceased was employed as P.W.3/M.Duraisamy and he stated that the deceased was earning Rs.20,000/- per month. To prove the same, he produced Ex.P.8 as Proof of salary of the deceased. The Tribunal, considering the rival contentions found that there is no proof of any Income Tax payment made by the deceased and as such, fixed his monthly income at Rs.6000/-.

(b) The learned counsel for the Petitioners/claimants/Cross Objectors pointed out that the accident having taken place in December 2007, considering the overall employment scenario and the deceased being employed as a Manager in a Private Firm in Tiruppur, claiming Rs.20,000/- as salary, the same is very reasonable and the same ought to have been accepted by the Tribunal. Thus, considering the above said factum, this court deems it fit to fix the monthly income of the deceased at Rs.7000/-.

(c) Future Prospects:- Considering the fact that the deceased was employed in a Private concern in a permanent basis and he was aged 41 years it will be appropriate to award 25% of the income as Future prospects.

(d) Deduction towards Personal expenses:- The Petitioners who

are 5 in number claim themselves to be dependants of the deceased. Even though the 3rd respondent contended that only 1/3rd has to be deducted on the ground that the father of the deceased, 5th petitioner herein is earning member and not dependant on the deceased, there is no evidence to prove that the 5th petitioner was making earnings. Considering the age of the 5th petitioner i.e., 65 years and in the absence of any evidence to prove that he is employed, the claim of the 3rd respondent/insurance company cannot be accepted. As such, 1/4th of the income to be deducted towards personal expenses of the deceased. Thus, the loss of dependency is calculated as follows:-
Monthly income of the deceased fixed by this court:- Rs.7000/-
Add : 25% future prospects = Rs.1750/-
7000 + 1750 = Rs.8750
Deduction towards personal expenses of the deceased:- 1/4th of Rs.8750 = 6560
Monthly income contribution from the deceased :- Rs.6560
Multiplier applied for the deceased aged 41 years:- 14
Loss of Dependency due to the death of the deceased :- 6560 x 12 x 14 = Rs.11,02,080/-.
Thus, a sum of Rs.11,02,080/- is awarded under the head "loss of dependency" to the Petitioners.

11. Compensation towards Conventional Heads:-Following the decision of the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the following amounts are awarded under conventional heads:-
Loss of consortium - Rs.40,000/-
Loss of Estate - Rs.15,000/-
Funeral expenses - Rs.15,000/-.

12. The learned counsel for the Petitioners/Cross Objectors contended that the tribunal ought to have awarded substantial amount towards loss of love and affection for the parents of the deceased as well as children of the deceased who are suffering from the demise of Rajkumar. Refuting the said contention, the learned counsel for the Insurance company/3rd respondent submits that the Apex Court in Pranay Sethi case, held that under conventional heads, compensation has to be granted towards loss of consortium only and therefore, there is no scope in awarding any amount towards loss of love and affection. The alternate plea put forth by the counsel for the Petitioners/cross objectors is that there is no bar to award any amount under the head Loss of love and affection, since the Apex Court has granted compensation for loss of consortium to the deceased wife, the same yardstick should be adopted to the parents and children of the deceased and compensation is to be awarded for loss of love and affection. In support of the same, the learned counsel for the Petitioners/Cross Objectors relied upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174

[1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010], wherein, in paragraph 9, it is held as follows:-

"9. Learned counsel for the appellant/claimants contended that the sum of Rs.10,000/- awarded towards compensation for loss of love and affection is highly inadequate. The award under the head of compensation for loss of love and affection is opposed by the learned standing counsel appearing for the insurance company, contending that in Pranay Sethi's case (supra) the Hon'ble apex court had held that there is no such head existing. But, on a reading of paragraph 54 of the said judgment, it is evident that what was prohibited is awarding of separate compensation under the head of "care to minor" and not under the head of loss of love and affection. Compensation under the head of loss of love and affection is akin to the loss of consortium. Consortium is a compensation paid to the spouse taking into consideration of the loss of companionship, care, help, comfort, guidance, society, solace, affection and sexual relationship with his or her mate; as held by the hon'ble supreme court in Santosh Devi Vs. National Insurance Company Ltd., [(2012) 6 SCC 421]. In the case of children or siblings or parents, there will be loss of the above said emotions and feelings, except the sexual relationship. Therefore, loss of love and affection is almost akin to the loss of consortium, subject to variations in its severity or degree of bondage. Since the Hon'ble Apex Court had upheld the award of compensation for loss of consortium in Pranay Sethi's case (supra), at no stretch of interpretation or imagination it can be held that, the hon'ble Judges of the supreme court had intended to hold that no head under loss of love and affection exists. Therefore, we are not inclined to accept the contention of the insurance company in this regard. In the case at hand, taking note of the fact that the claimants include the mother and younger brother of the deceased, we are inclined to award a sum of Rs.50,000/- under the head of compensation for loss of love and affection, which will entitle the claimants for an enhancement of Rs.40,000/-."

13. The learned counsel for the Petitioners further contended that latterly, the Apex Court itself awarded amount under the head "loss of love and affection" and cited the following Rulings:-

(1) CDJ 2018 SC 083 [Munusamy and others Versus the Managing Director, Tamil Nadu State Transport Corporation

(Villupuram) Ltd. dated 09.02.2018 Civil Appeal No.1754 of 2017;

(2) CDJ 2018 SC 084 [Archit Saini and another Versus The Oriental Insurance Company Ltd., and others, dated 09.02.2018 Civil Appeal Nos.7300-7309 of 2016].

14. On a perusal of the above said Rulings, this court is also of the view that there is no bar or impediment to grant compensation under the head Loss of love and affection to parents and children of the deceased. As such, this court is inclined to award Rs.25,000/- towards loss of love and affection to the children and parents of the deceased.

15. In view of the above discussion, the modified compensation granted by this court is as under:-

Loss of Dependency	=	11,02,080/-
Funeral expenses	=	15,000/-
Loss of consortium	=	40,000/-
Loss of estate	=	15,000/-
Loss of love and affection	=	25,000/-
Total	=	11,97,080/-

Thus, the Petitioners/Cross Objectors are entitled to compensation of Rs.11,97,080/-. The apportionment of the award amount is as follows:-

1st petitioner - 40%.

Petitioners 2 and 3 (minors) - 20% each.

Petitioners 4 and 5 - 10% each.

16. In the result, C.M.A.No.2546 of 2012 filed by Insurance Company is dismissed. Cross Objection No.5 of 2018 filed by the Petitioners/Claimants is Partly Allowed. The modification of the award is as follows:-

(1) The award granted by the Tribunal is enhanced to Rs.11,97,080/- from Rs.8,35,000/-.

(2) The award amount will carry interest at 7.5% per annum from the date of petition till the date of deposit, except for the default period in filing the Cross Objection as observed by this court by order dated 07.02.2018.

(3) The Insurance Company is directed to deposit the enhanced award amount of Rs.11,97,080/-, with proportionate interest and cost, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(4) The Petitioners/claimants 1, 4 and 5 are permitted to withdraw their respective share, as per the apportionment ordered by this court, with accrued interest, before the Tribunal, by filing necessary application, less the amount if any already withdrawn by them. As far as petitioners 2 and 3, being minor, their share amount shall be deposited in Fixed Deposit, in a Nationalised Bank, till they attain majority and

the interest accrued therein, shall be withdrawn by the 1st petitioner/mother, once in 3 months.

(5) Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

nvsri
To

1.The Motor Accident Claims Tribunal,
Additional Subordiante Court, Tiruppur.

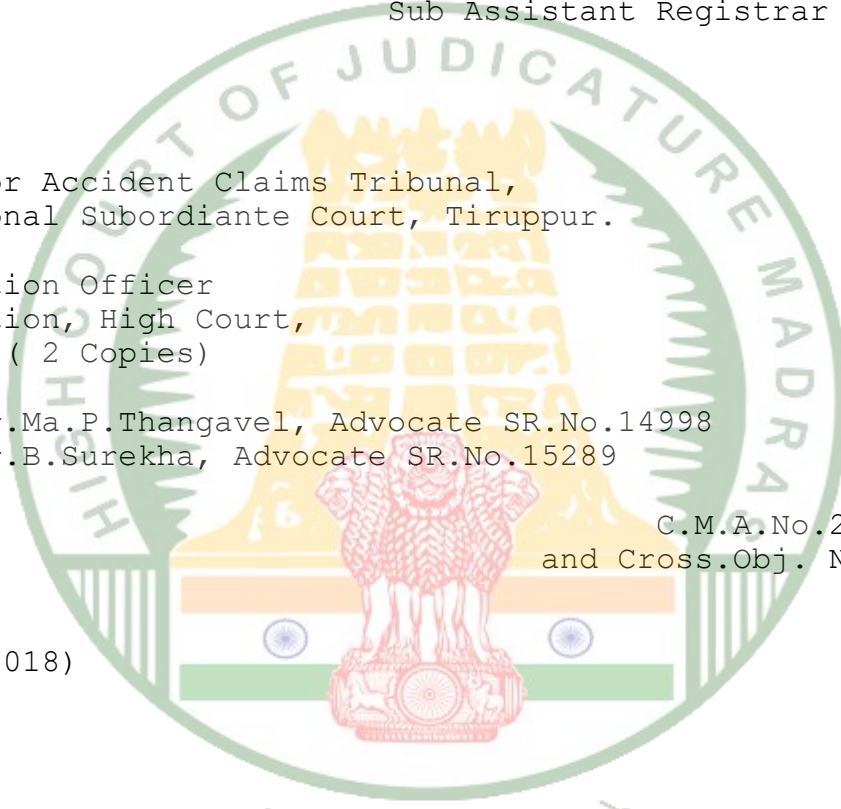
2.The Section Officer
V.R.Section, High Court,
Madras. (2 Copies)

+lcc to Mr.Ma.P.Thangavel, Advocate SR.No.14998

+lcc to Mr.B.Surekha, Advocate SR.No.15289

C.M.A.No.2576 of 2012
and Cross.Obj. No.5 of 2018

NM(CO)
GN(19/04/2018)

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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