BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.1287 of 2014

1)Pitchai
2)Metlin ... Appellants/Petitioners

vs.

1)Rupavathi
2)Bajaj Allianz General Insurance Co.Ltd.,
through its Branch Manager,
No.25/26, Prince Towers,
4th Floor College Road,
Nungambakkam,
Chennai-600 006. ... Respondents/ Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.1792 of 2007 on the file of the Motor Accidents Claims Tribunal, (Principal District Court), Tirunelveli dated 14.06.2010.

For Appellants : Mr.T.Selvakumaran
For R1 : Mr.V.Natarajan
For R2 : Mr.S.Srinivasa Raghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 14.06.2010 made in MCOP.No.1792 of 2007 on the file of the Motor Accidents Claims Tribunal, (Principal District Court), Tirunelveli.

2.It is a case of fatal. After considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.3,97,500/- with interest at 9% per annum. Not satisfied with the quantum of compensation, the claimants have filed this appeal seeking enhancement on the quantum.

3.Learned counsel for the appellants would submit that as per the recent judgment of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition(Civil)No.25590 of 2014 dated 31.10.2017)*, 40% of the income should be added towards future prospects of the deceased. Further, as per the very same judgment, under conventional heads, namely, loss of estate and funeral expenses, Rs.15,000/- each should be awarded. However, in the instant case, the Tribunal has awarded a meagre sum of Rs.2,000/- and Rs.2,500/- towards funeral expenses and loss of estate. He further contended that the Tribunal taking into consideration the age of the mother of the deceased namely, 43, has applied '14' multiplier, instead of taking the age of the deceased as per Sarla Verma's case. If the age of the deceased is taken, then multiplier according to his age namely, 23, is '18' which would be the appropriate multiplier for computing loss of dependency. Therefore, the learned counsel prayed for enhancement on the quantum.

4.Perusal of the records shows that the claimants are parents of the deceased. They claimed that at the time of accident, their son was aged 23 years and was having Fisherman Boat and earned not less than Rs.5,000/- per month. In support of the same, they marked Ex.P7-identification certificate as country fisherman issued to the deceased. Based on the same, the Tribunal fixed the monthly income of the deceased at Rs.4,500/-. After deducting 50% of income towards the personal expenses of the deceased and applying '14' multiplier, the Tribunal awarded Rs.3,78,000/- towards loss of income.

5.Perusal of the impugned judgment shows that the Tribunal has failed to award amount for future prospects. The claimants claimed that the deceased had Fisherman Boat and earned not less than Rs.5,000/- per month. In support of the same, Ex.P7-identification certificate as country fisherman issued to the deceased was also marked. Therefore, as per the judgment in Pranay Sethi's case, 40% of the income is added towards future prospects. After doing so, the income of the deceased comes to Rs.6,300/-(Rs.4500 + Rs.1800). The Tribunal erred in taking the age of the mother of the deceased, instead of taking the age of the deceased. If the age of the deceased namely, 23 is taken, then the multiplier as per Sarla Verma's case would be '18'. After deducting 50% towards the personal expenses and applying '18' multiplier, the loss of dependency works out to Rs.6,80,400/-(Rs.3150x12x18). As per the judgment in Pranay Sethi's case, a sum of Rs.15,000/- each is awarded towards funeral expenses and loss of estate as against Rs.2,000/- and Rs.2,500/- awarded by the Tribunal. The award of Rs.5,000/- granted by the Tribunal towards transportation and Rs.10,000/- towards mental agony are sustained. Accordingly, the compensation is modified as hereunder:-

Loss of dependency	=	Rs.6,80,400/-
Loss of estate	=	Rs. 15,000/-
Funeral expenses	=	Rs. 15,000/-
Mental Agony	=	Rs. 10,000/-
Transportation	=	Rs. 5,000/-
Total	=	Rs.7,25,400/-
(Less)Amount awarded by the Tribunal	=	Rs.3,97,500/-
Enhanced compensation	=	Rs.3,27,900/-

6.The appellants/claimants are entitled to enhanced compensation of Rs.3,27,900/- in addition to Rs.3,97,500 /- awarded by the Tribunal. The appellants shall pay the required additional court fee for the enhanced amount within two weeks from the date of receipt of copy of this judgment. The respondents jointly and severally shall deposit the modified compensation of Rs.7,25,400/- with interest at 9% per annum from the date of claim petition till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their shares in the ratio apportioned by the Tribunal.

Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar (CS-I)

To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.

Copy to:
The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.T.SELVAKUMARAN, Advocate, SR.No.62403
+1cc to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.No.62623

CMA(MD)No.1287 of 2014
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BALA
KK/SV/SAR-1/04.09.2018/3P-6C