IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1008 of 2013

1.R.Vijayalakshmi
2.R.Sowmiya (minor)
rep by M.N.F.RVijayalakshmi
3.Thangamani
4.Asaithambi ... Appellants/Petitioners

..Vs..

1.Parveen Travels,
No.115/6, Santha Vellore
S.V.Chathiram, Sriperumbudur

(R-1 set exparte in lower court)
(R-1 notice may be dispensed with)

2.New India Assurance Company
Limited, No.80, Arcot Road,
Porur, Chennai 116. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.08.2010 in M.C.O.P.No.161 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court II, Poonamallee.

For Appellants : M/s.Y.Jayanthi Baskar for Mr.J.Mahalingam

For Respondents : No appearance

JUDGMENT

The appellants are the claimants in M.C.O.P.No.161 of 2008, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court II, Poonamallee. They filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of one Ravichandran, husband of the first claimant/first appellant, father of the second claimant/second appellant and son of the third and fourth claimants/third and fourth appellants in a road accident that took place on 22.08.2007.

2.At about 21.30 hours, the deceased Ravichandran was riding his two wheeler bearing Registration No.22 AC 8951, on Mount Poonamallee high road from south direction. At that time, a speed bus bearing Registration No.TN 21 H 5697 belonging to the first respondent in the same road from east to west direction, hit the two wheeler, as a result of which, the deceased Ravichandran sustained multiple injuries and died. The further contention of the appellants/claimants is that the rash and negligent driving of the driver of the bus bearing Registration No. TN 21 H 5697 belonging to the first respondent was the cause of the accident and that since the said bus was insured with the second respondent / the New India Assurance Company Limited, both of them are jointly and severally liable to pay compensation to the claimants.

3. The owner of the bus, namely the first respondent remained absent before the tribunal and therefore, he was set ex-parte. The second respondent the New India Assurance Company Limited contested the claim petition. The Claims Tribunal after analysing the evidence on record, awarded a compensation of Rs.5,53,400/- together with interest at the rate of 7.5% per annum to the appellants/claimants.

4.The Compensation awarded by the Tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income (Rs.2,400/- x12x18)	Rs.5,18,400/-
2.	Funeral expenses	Rs.5,000/-
3.	Loss of consortium	Rs.10,000/-
4.	Love and affection	Rs.20,000/-
Total		Rs.5,53,400/-

5.Not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of compensation.

6. When the matter is came up for hearing on 21.02.2019, there was no representation for the respondents. Hence the matter was directed to be posted under the caption 'for orders' on 25.02.2019 i.e., today. Even today, there is no representation for the respondents. This Court is not inclined to keep this matter pending and is proceeding to decide the same on merits. Heard the submissions made by the learned counsel for the appellants/claimants.

7. M/s.Y.Jayanthi Baskar, learned counsel appearing for the appellants/claimants would firstly contend that the age of the deceased was 25 years and it was confirmed by the Post Mortem Certificate (Ex.P3) and the accident had taken place on 22.08.2007, therefore, the age of the deceased was fixed as 25 years at the time of the accident. The deceased was working as a Waiter in Spencer Plaza, Chennai. The learned counsel further submitted that the deceased was earning a sum of Rs.3,500/- per month as well as a sum of Rs.1,500/- (Rs.50/- x30) per month through batta. Totally, he was earning a sum of Rs.5,000/- (Rs.3,500/- + Rs.1,500/-) per month. In order to substantiate the same, Ex.P6, Salary certificate was marked. Moreover, the co-worker, who was examined as PW3 has deposed that he was working along with the deceased for the past 5 years and that the deceased was earning a monthly salary of Rs.5,000/- during the year 2007. The learned counsel pointed out that, While determining the notional income of the deceased, the Tribunal has failed to consider the batta for a sum of Rs.1,500/- and fixed his notional income as Rs.3,500/- instead of Rs.5,000/- and assigned no reasons for such fixation.

8.As far as first contention is concerned, this Court finds force in the sbumission of the learned counsel for the appellants. Therefore, this Court is inclined to refix the notional income as Rs.5,000/-(Rs.3,500/- monthly income of the deceased + Rs.1,500/- batta) instead of Rs.3,500/- as fixed by the Tribunal.

9.Coming to another contention of the learned counsel for the appellants, as rightly pointed out by the learned counsel for the appellants, the Tribunal failed to apply the principle laid down by the the Hon'ble Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459.

10.Yet another contention raised by the learned counsel for the appellants is that the Hon'ble Apex Court in Syed Sadiq (supra), fixed the monthly notional income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. However in the present case, the Tribunal fixed a sum of Rs.3,500/- as notional income for the deceased. Before fixing the income, the Tribunal should have borne in mind the principle laid down by the Apex Court in Syed Sadiq case (cited supra) as regards notional income plus reasonable income in addition. It is just necessary for the Tribunal to bear the following factors before fixing the notional income of the deceased and the following other factors:

> (i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect

of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

(ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

(iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhacement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour ”.

11. The Honourable Supreme Court in Syed Sadiq (supra) fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Since the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, the notional income of Rs.3,500/- fixed by the Tribunal in the accident occurred in the year 2007 is not proper and this Court set aside the same and re-fix the notional income of the deceased as Rs.5,000/- per month.

12.A perusal of the records shows that the deceased had one minor child, wife and parents as his dependents. However, the Tribunal has wrongly deducted 1/3 towards the personal expenses of the deceased instead of 1/4.

13.The Tribunal has not awarded any amounts towards future prospects, especially, when the deceased was aged just 25 years on the date of accident. As per the decision rendered by this Court in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, for the age of group of 25 years, 40% should be added towards future prospects and the income after adding the future prospects would be Rs.7,000/- (Rs.5,000/- + Rs.2,000/-) per month and 1/4th should be deducted towards the personal expenses of the deceased. The Tribunal has rightly applied the multiplier as 18, for the age group of 25 years and the same was also confirmed by the Post Mortem Report (Ex.P.3). However, in the present case, as held by the Hon'ble Apex Court in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the loss of dependency of the deceased is as follows:

Calculation:

Notional Income = Rs.5,000/-
40% Future Prospects = Rs.2,000/-
Total = Rs.5,000/- + Rs.2,000/-
= Rs.7,000/-

Loss of dependency
= Rs.7,000/- x 18 x 12 x 3/4
= Rs.11,34,000/-

14.The tribunal has awarded a sum of Rs.20,000/- towards love and affection. As per the decision rendered in Pranay sethi (supra), the wife is entitled only a consortium and therefore, the compensation under the head of love and affection can be awarded only to the claimants 2 to 4. Accordingly, this court inclined to increase the compensation awarded by the tribunal towards love and affection is from Rs.20,000/- to Rs.70,000/- to the 2nd claimant. This Court is inclined to award a sum of Rs.10,000/- each to the claimants 3 and 4 and a sum of Rs.50,000/- to the 2nd claimant towards love and affection. The Tribunal also failed to award any amount towards loss of estate. Therefore, this Court inclined to award a sum of Rs.15,000/- towards loss of estate. The tribunal has awarded a sum of Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. In view of the settled law by the Hon'ble Apex in Pranay sethi (supra), the loss of consortium awarded by the Tribunal is increased from Rs.10,000/- to Rs.40,000/- and funeral expenses is increased from Rs.5,000/- to Rs.15,000/- respectively. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.11,34,000 /-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Love and affection to the 2nd claimant	Rs.50,000/-
6.	Love and affection to the 3rd and 4th claimants (Rs.10,000/- x 2)	Rs.20,000/-
Total		Rs.12,74,000/-

Thus, the appellant/claimant is entitled to a sum of Rs.12,74,000/- together with interest at the rate of 7.5% per annum.

15.In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii)The compensation awarded by the Tribunal is enhanced from Rs.5,53,400/- to Rs.12,74,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The New India Assurance Company Limited is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of two weeks thereon.

(v) On such deposit being made, the appellants/claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The 1st appellant/claimant is entitled to a sum of Rs.6,74,000/- together with accrued interests and costs.

(b) The 2nd appellant/claimant is entitled to a sum of Rs.4,00,000/-.

© The 3rd and 4th appellants/claimants are entitled to a sum of Rs.1,00,000/- each.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Additional District and Sessions Judge,
Fast Track Court II, Poonamallee.

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

C.M.A.No.1008 of 2013

NRJK(CO)
GMY(28/06/2019)