IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2079 of 2007
and CMP.No.21899 of 2017

1. P.Hindhumathi

2. P.Krishna Karthick (Minor)
represented by his mother
and next friend, P.Hindhumathi

3. Muniammal ... Appellants/Petitioners

vs.

1. A.K.Ganapathy

2. The United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 2. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 31.08.2006 made in M.C.O.P.No.1435 of 2005 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For appellants : Mr.K.Suryanarayanan
For respondent-1 : No appearance
For respondent-2 : Mr.S.Arunkumar

JUDGMENT

The present appeal is preferred against the award dated 31st August, 2006 passed by the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai, whereby the Tribunal awarded a total compensation of Rs.10,50,000/- along with interest @ 7.5% per annum to the appellants, who are the wife, son and mother of one K.Prabakaran, who died in a motor vehicle accident that had occurred on 10.09.2004.

2. The factual scenario in nutshell is as follows:

On 10.09.2004 about 12.15 hours, while the deceased K.Prabakaran was proceeding in his motorcycle bearing Regn.No.TN05 K 4996 from Vanaram on Poonamallee High Road, a lorry bearing Regn.No.TN28 Z 1479 came in a rash and negligent manner and knocked him down from behind, resulting in multiple grievous injuries leading to his instantaneous death. Stating that the accident had occurred due to the rash and negligent driving of the driver of the lorry and the 2nd respondent insurance company was liable to pay compensation, the appellants/legal heirs of the deceased filed a claim petition seeking compensation of Rs.55,00,000/-. The Tribunal, upon evaluation of the oral and documentary evidence adduced by the parties, awarded a total compensation of Rs.10,50,000/- with interest at 7.5%pa from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellants have filed this appeal seeking enhancement of the same.

3.The learned counsel for the appellants contended that when the deceased was earning Rs.13,000/- by way of commission from LIC, besides getting Rs.9,500/- as salary from a private concern, the Tribunal has erred in taking his income only at Rs.7,500/- per month; further, a provision should have been made for future prospects at the rate of 40% as per the dictum laid down by the Supreme Court in National Insurance Company Limited v. Pranay Sethi and others [2017 (2) TNMAC 609]; the conventional damages awarded by the Tribunal are also very meagre; and hence, the compensation awarded by the Tribunal needs interference in the hands of this Court by way of enhancement.

4.Denying the submissions so made by the learned counsel for the appellant, the learned counsel for the second respondent insurance company submitted that the deceased was employed as a Manager in Sri Mangala Exports and his duty time was between 9.00am to 5.00pm; the wife of the deceased as P.W.1 admitted that her husband was not personally doing the work of LIC agent and he used to avail the services of another person for LIC business; and as per the bank account transactions, the commission from LIC continued to come, even after the demise of the deceased; and hence, there is no pecuniary loss in respect of the LIC business. Thus, according to the learned counsel, the Tribunal, after considering the oral and documentary evidence available on record, has awarded the compensation, which is just and reasonable and hence, the same does not call for any interference by this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the second respondent insurance company and perused the materials available on record carefully and meticulously.

6.This is a claimants' appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, there is no requirement for this Court to go into the findings of the

Tribunal on negligence and the liability of the insurance company to pay compensation.

7.The appellants contend that they are entitled for higher compensation; the Tribunal ought to have taken the entire income of the deceased as Rs.22,500/- (Rs.9,500/- as salary from Sri Mangala Export Garment Manufactures and Rs.13,000/- as commission from LIC), while determining compensation towards pecuniary loss; and a provision should have been made for future prospects at the rate of 40%, as per the dictum laid down in Pranay Sethi case (cited supra); and further, the conventional damages awarded by the Tribunal are very meagre. Whereas, the said contention was resisted by the insurance company stating that even after the demise of the deceased, the commission from LIC continued to come and the claimants stepped into the shoes of the deceased and hence, there is no pecuniary loss in respect of the LIC business. In this regard, he placed reliance on the following decisions of this Court:

(i)In National Insurance Co.Ltd v. Sujatha Rajalakshmi and others [2011 (1) TNMAC 34 (DB)], it was observed that being the claimant continuing the business run by the deceased father and source of income also continues, only the valuable guidance and services of the deceased had been taken into consideration while computation.

(ii)In the case of National Insurance Co. Ltd. v. K.Ramya and others [2017 (2) TNMAC 522 (DB)], the deceased, aged about 31 years, proprietor/ partner/ director of various firms/ companies was earning Rs.87,500/- per month and the award of Rs.4,29,37,700/- passed by the Tribunal was reduced to Rs.57,90,000/- after taking only notional income for computation, in view of the fact that there was no loss of income on account of demise of the deceased, as income continued even after death; and (iii)In Oriental Insurance Co.Ltd v. S.Vishnu Ganga and others [2018 (2) TNMAC 1 (DB)], considering the fact that the business was continued, the claimants stepped into the shoes of the deceased and became partners and hence, held that there was no pecuniary loss in respect of the business and only the loss of income of the deceased is the remuneration received. Thus, according to them, no interference is warranted in respect of the award passed by the Tribunal.

8.It is seen from the award that the Tribunal has taken the monthly income of the deceased as Rs.7,500/-. It is significant to look into the evidence and materials adduced by the appellants. The appellants claimed that the deceased was having a total income of Rs.22,500/- to Rs.25,000/- per month which consists of Rs.9,500/- as salary by working as Manager in Sree Mangala Exports Garment Manufacturer and Rs.13,000/- as LIC agent. Ex.P7 is the salary certificate of the deceased. As per Ex.P19-copies of vouchers with statement of accountant, the monthly salary of the deceased was Rs.9,500/-. The evidence of P.W.4/employee of Sree Mangala Exports Garment Manufacturer, would reveal that income tax was not deducted from the salary of the deceased. Further, the appellants examined P.W.1 and P.W.2 and marked Ex.P8-letter assigning registration number for the deceased, Ex.P9-commission bills, Ex.P10-details of commission bonus and tax, Ex.P11-copies of Form 16A and Ex.P14-bank pass book of the deceased, with regard to their claim that the deceased was getting approximately Rs.13,000/- per month by way of commission as LIC agent. However, the Tribunal has rejected the income earned through LIC business, as the deceased was not personally doing the same and the said income continued to come, even after his demise and accordingly, taken the monthly income of the deceased as Rs.7,500/-, considering the fact that income tax was not deducted from his salary.

9.Having regard to the materials and evidence available on record, this Court finds no error or infirmity in taking the monthly income of the deceased as Rs.7,500/- and rejecting the income earned through LIC business, in view of the observations made by the Division Bench of this Court in the aforesaid decisions cited on the side of the insurance company.

10.However, in the light of the guidelines laid down by the Supreme Court in Praynay Sethi case, the Tribunal ought to have made addition at the rate of 40% towards future prospects, considering the age of the deceased as 32 years. Hence, this Court is inclined to make addition of 40% towards future prospects, while computing compensation towards loss of dependency. Accordingly, the income of the deceased works out to Rs.10,500/- (7500 + 7500 x 40%) and the annual income comes to Rs.1,26,000/-. After deducting 1/3rd towards personal expenses of the deceased, the annual contribution of the deceased to his family comes to Rs.84,000/-. Applying the multiplier of 16, based on the age of the deceased (32 years), the compensation towards loss of dependency works to Rs.13,44,000/-. Accordingly, the award of the Tribunal under this head is enhanced from Rs.10,20,000/- to Rs.13,44,000/-.

11.That apart, the Tribunal has awarded only a meagre sum of Rs.15,000/- towards loss of consortium and love and affection and Rs.5,000/- towards funeral expenses. Further, no amount was awarded towards loss of estate. Considering the fact that the deceased died at the age of 32 years and the appellants being his wife, minor child and mother, lost the love and affection of the deceased, this Court is of the view that the ends of justice would be met by enhancing the compensation towards loss of consortium and love and affection to Rs.1,10,000/- [Rs.50,000/- + (Rs.20,000/- x 3)] and towards funeral expenses to Rs.15,000/-, besides awarding Rs.21,000/- towards loss of estate and are accordingly awarded. There is no modification with regard to the award of Rs.10,000/- towards loss of expectation of life. Thus, the compensation awarded by the Tribunal is enhanced to Rs.15,00,000/- from Rs.10,50,000/-, with interest at 7.5% per annum from the date of claim petition, the break-up details of which read as follows:

Sl. No.	Head	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Dependency	Rs.10,20,000/-	Rs.13,44,000/-
2	Loss of Consortium, love and affection	Rs. 15,000/-	Rs. 1,10,000/-
3	Funeral Expenses	Rs. 5,000/-	Rs. 15,000/-
4	Loss of expectation in life	Rs. 10,000/-	Rs. 10,000/-
4	Loss of Estate	...	Rs. 21,000/-
	Total	Rs.10,50,000/-	Rs.15,00,000/-

12.In fine, this appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the aforesaid compensation amount along with interest and costs, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the share of the appellants 1 and 3 / claimants as per the ratio of apportionment made by it, to their respective Savings Bank Account, through RTGS, within a period of one week thereafter. In respect of the share of the minor second appellant/claimant, the Tribunal shall invest the same in any one of the nationalised banks in interest accrued deposit, till he attains majority and the interest accrued thereon shall be permitted to be withdrawn by the first appellant/claimant once in three months. Needless to state, the appellants shall pay the required court fee, if not already paid. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mra/rk

To
1. The Chief Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104.

+1 Cc to Mr.K.Suryanarayanan, Advocate sr 99095.

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and
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RLD(CO)
SP(13/08/2020)