

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.1053 of 2018
and
C.M.P.No.8554 of 2018

The Superintendent of Police,
Erode District.Appellant/1st Respondent

Vs

1.Anwar Basha,
S/o.Abdulah,
Anthony Colony, Dharmapuri.1st Respondent/2nd Respondent

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Limited,
12, Ramakrishna Road,
Dharmapuri.2nd Respondent/3rd Respondent

3.Dhanalakshmi,
W/o.Gunasekaran,

4.Minor.Naren,
Rep by his next friend
Dhanalakshmi
S/o.Gunasekaran,
Jeganathan (Deceased),
S/o.Venkidusamy,

5.Sagunthala,
W/o.Jeganathan,
All are residing at 50/17 Bagavan Nagar,
Pachamalai Road, Gobi,
Erode District,
Now at S.R.C.Nagar, Ganapathy Palayam,
Palladam.Respondents 3 to 5/Petitioner

6.Vanithamani, D/o.Late Jeganathan,
50/17 Bagavan Nagar,
Pachamalai Road, Gobi,
Erode District, Now at S.R.C.Nagar,
Ganapathy Palayam, Palladam.

7.Minor G.Haneesh,
S/o.Late Gunasekaran,
Rep. by mother/natural guardian Dhanalakshmi,
50/17, Bagavan Nagar,
Pachamalai Road, Gobi,
Erode District, Now at S.R.C.Nagar,
Ganapathy Palayam, Palladam.

(R6 & R7 impleaded as per order
dated 22.02.2019 made in CMP.No.4470 of 2019
in CMA.No.1053 of 2018)

...Respondents 6 & 7

PRAYER : Civil Miscellaneous Appeal filed against the Award and Decree dated 18.08.2014, passed by the Motor Accident Claims Tribunal (The Court of the Subordinate Judge) Tirupur, made in M.C.O.P.No.163 of 2011.

For Appellant :Mr.A.Dev Narendran
Government Advocate

For Respondents :Mr.D.Venkatachalam (for R2)
Mr.Ma.P.Thangavel (for R3 to R7)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred against the award of Rs.35,31,512/-, for the death of one Mr.Gunasekaran, aged about 29 years, Armed Reserve Police, earning about Rs.15,000/- per month, who died in the accident occurred on 29.12.2010, when he was traveling in a Tempo Traveller which was hit by Transport Corporation's bus.

2.After contest the Tribunal found that the accident occurred because of rash and negligent driving of the Tempo Traveller belonging to the police department and awarded a sum of Rs.35,31,512/-. The said award is being challenged before this Court with regard to quantum only, especially with regard to Rs.4,00,000/- awarded towards loss of love and affection.

3.Mr.Dev Narendran, learned Government Advocate would submit that Rs.4,00,000/- awarded towards loss of love and affection is on the higher side, which is contrary to the dictum laid down in the judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC) and therefore, he seeks to reduce the amount.

4.The learned counsel for the appellant submitted that no amount was awarded towards loss of consortium, transportation and loss of estate and therefore, he seeks for confirmation of the award.

5.The only point raised in this appeal is with regard to award of Rs.4,00,000/- towards loss of love and affection. If one examines the award of Rs.4,00,000/- on the touch stone of the dictum laid down in Pranay Sethi's case, the entire amount under the head loss of love and affection is not sustainable. However, this Court in a number of judgments already held that the award amount towards loss of love and affection is akin to the amount awarded towards loss of consortium to the spouse. In this case, the respondents 4 and 7 are minors, who lost their father. The case of the 7th respondent is very pathetic, he was a still born baby at the time of accident. He was delivered only after the death of his father. The death of the father would cause irreparable loss which cannot be substitute or compensate by anybody or by any amount of money. Therefore, in an endeavour to complete justice, this Court reduces the award amount of Rs.4,00,000/- towards loss of love and affection to Rs.2,00,000/-, which should be shared by respondents 4, 5 and 7. The 4th and 7th respondents being the minor children are entitled to Rs.75,000/- each and the 5th respondent being the mother of the deceased is entitled to Rs.50,000/-. No amount was awarded towards loss of consortium to the 3rd respondent/wife and therefore, a sum of Rs.40,000/- is awarded towards loss of consortium to the 3rd respondent. Similarly no amount was awarded towards loss of estate and transportation. Therefore a sum of Rs.15,000/- each is awarded towards loss of estate and transportation. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses. The same is reduced to Rs.15,000/-. The amount awarded by the Tribunal towards loss of income is confirmed.

Head	Amount (Rs.)
Loss of income	3106512
Loss of consortium	40000
Loss of love and affection	200000
Transportation	15000
Funeral expenses	15000
Loss of estate	15000
Total	3391512

6.Hence, the total compensation payable in this case is Rs.33,91,512/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

7. The apportionment of the modified award amount shall be as per the ratio fixed by the Tribunal. Since the appellant already deposited the entire amount as per the award passed by the Tribunal, the Tribunal is directed to transfer respective shares of respondents 3, 5 & 6/claimants 1, 4 & 6 along with interest to their respective bank accounts, through RTGS, within a period of two weeks from the date of receipt of a copy of this order. As far as the share of the minors'/respondents 4 and 7 are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 3rd respondent/1st claimant is permitted to withdraw interest accruing on such deposits once in three months. The excess amount deposited by the appellant is directed to be refunded to the appellant within a period of one week from the date of receipt of a copy of this order.

8. Accordingly, this appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge,
The Motor Accident Claims Tribunal,
Tiruppur.

2. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr. Ma. P. Thangavel, Advocate sr 49752.

+1 CC to The Special Government Pleader sr 48982.

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AD(CO)
SP(02/02/2021)