IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.371 of 2013

1.S.Sakkina

2.S.Kathija Beevi (Minor)
(Second appellant declared as major & 1st Appellant in discharged from the guardianship, vide order of court dt.09.01.2014 made in MP.Nos.1 & 2 of 2014 in CMA.No.371 of 2013)

3.S.Hafiza ...Appellants(Claimants)

..Vs..

1.M.Gnanasoundari

2.ICICI Lombard General Insurance Company Limited,
Arihant Plaza, No.84/85,
Walltax Road, Chennai 12.

Now functioning at
ICICI Lombard General Insurance Company, Chotabhai Towers,
No.140, Nungambakkam High Road,
Chennai 6. ... Respondents(Respondents)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 24.09.2012, passed in M.C.O.P.No.2086 of 2011, on the file of the IV Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants : M/s.P.T.Salim Fathima

For Respondents : M/s.R.Sree Vidhya for R2
R1 - Ex-parte

JUDGMENT

The appellants are the claimants in M.C.O.P.No. 2086 of 2011, on the file of the IV Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai. They filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.24,00,000/- for the death of one Sheik Ahamed, husband of the first claimant, father of the second and third claimants in a road accident that took place on 18.05.2011, at about 11.45 hours, when the deceased Sheik Ahamed was riding the motorcycle bearing Registration No. TN 02 S 6485 from Vyasarpadi to Chennai Central.

2. According to the appellants/claimants, when he was reaching top of Basin Bridge in Erukkanchery High Road and on signal, took a right turn to proceed towards Pulianthope, at that time a speeding lorry bearing Registration No.TDJ 4797 belonging to the first respondent and insured with the second respondent, ignoring the traffic signal, hit his motorcycle, as a result of which, the deceased sustained multiple injuries and died on the spot. The further contention of the appellants/claimants is that the rash and negligent driving of the driver of the lorry bearing Registration No. TDJ 4797 was the cause of the accident and that, since, the said lorry was insured with the second respondent, both of them are jointly and severally liable to pay compensation to them.

3.The owner of the lorry bearing Registration No. TDJ 4797 remained absent before the Tribunal and therefore he was set ex-parte. The second respondent ICICI Lombard General Insurance Company Limited, Chennai contested the claim petition. The learned IV Judge, Court of Small Causes, Chennai after analysing the evidence on record, has awarded a compensation of Rs.6,58,400/- together with interest at the rate of 7.5% per annum to them.

4. 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.

5. M/s.P.T.Salim Fathima, learned counsel appearing for the appellants/claimants contended that the deceased was doing business in selling and repairing watches, earning a sum of Rs.13,000/- to Rs.15,000/- per month. However, there was no proof produced by the appellants/claimants before the Tribunal with regard to the income of the deceased. Therefore the Tribunal fixed a sum of Rs.4,500/- per month as the notional income of the deceased. While fixing a sum of Rs.4,500/- per month as the notional income of the deceased, the Tribunal did not provide any justification for the same.

6.Mrs.R.Sree Vidhya, learned counsel appearing for the Insurance Company would submit that the notional income fixed by the Tribunal at Rs.4,500/- per month may be enhanced to Rs.5,500/- due to the cost of living and increase in price of the essentials.

7.The Hon'ble Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. However, the Tribunal fixed a sum of Rs.4,500/- as notional income for the deceased, without any rational and any application of mind. Before fixing the income, the Tribunal should have considered the notional income fixed by the Apex Court in Syed Sadiq case (cited supra) plus reasonable income addition to the deceased electrician 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.
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> (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 deceased 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 ”.

8. The Honourable Supreme Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, 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.4,500/- fixed by the Tribunal is not proper and this Court set aside the same and re-fix the notional income of the deceased as Rs.8,000/- per month, after taking into consideration, the accident occurred in the year 2011 and increase in cost of living.

9.A perusal of the records shows that the deceased had two children and wife as his dependents. However, the Tribunal has deducted 1/3 towards the personal expenses of the deceased. The Compensation awarded by the Tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income	Rs.6,08,400/-
2.	Loss of consortium	Rs.10,000/-
3.	Funeral expenses	Rs.10,000/-
4.	Love and affection to each petitioner (Rs.10,000/- x 3)	Rs.30,000/-
Total		Rs.6,58,400/-

10.The Tribunal has not awarded any amounts towards future prospects, especially, when the deceased was aged just 39 years on the date of accident. Since the deceased was a watch mehanic, the notional income is fixed as Rs.8,000/-. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards future prospects and the income would be Rs.10,000/- (Rs.8,000/- + Rs.2,000/-) per month and 1/3rd should be deducted towards the personal expenses of the deceased and the proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation:

Notional Income = Rs.8,000/-
25% Future Prospects = Rs.2,000/-
Total = Rs.8,000/- + Rs.2,000/-
= Rs.10,000/-x 2/3 = Rs.6,667/-

Loss of earning capacity
= Rs.6,667/- x 13 x 12
= Rs.10,40,052/- it is rounded off to Rs.10,40,000/-

11. The tribunal has awarded a sum of Rs.30,000/- towards love and affection. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, the wife is entitled only a consortium and therefore, the compensation can be awarded only to the claimants 2 and 3 towards love and affection. Accordingly, this court inclined to award a sum of Rs.20,000/- to the 2nd claimant and Rs.20,000/- to the 3rd claimant. The amount awarded by the tribunal towards love and affection is increased from Rs.30,000/- to Rs.40,000/-. However, the Tribunal has failed to award any amount towards loss of estate and therefore, a sum of Rs.15,000/- is awarded towards loss of estate. This tribunal has awarded a sum of Rs.10,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses. This court accepts the contention of the appellants/claimants and the loss of consortium is increased from Rs.10,000/- to Rs.40,000/- and funeral expenses is increased from Rs.10,000/- 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 earning capacity	Rs.10,40,000 /-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Love and affection (Rs.20,000/- x 2)	Rs.40,000/-
Total		Rs.11,50,000/-

Thus the claimants are entitled to a sum of Rs.11,50,000/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

12.In the result,

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

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.6,58,400/- to Rs.11,50,000/-, which shall carry interest at the rate of 7.5% per annum.

(iii) The appellant/claimant is 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 Insurance Company is directed to deposit the entire amount awarded by this Court 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 and the apportionment shall be as ordered by this Court. 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.

(a) The 1st appellant/claimant is entitled to a sum of Rs.5,50,000/- together with accrued interests and costs.

(b) The 2nd and 3rd appellants are entitled to a sum of Rs.3,00,000/- each.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vkr

To

The IV Judge,
Small Causes Court,
The Motor Accidents Claims Tribunal,
Chennai.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.M.Swamikannan, Advocate, S.R.No. 13068
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 13047

C.M.A.No.371 of 2013

SV(CO)
GN(13/02/2020)