IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.410 of 2013

1. A.Mathiazhagi
2. A.Aravinth (minor)
3. A.Sharmila (minor)
4. A.Kousalya (minor)
5. Valliammal
6. Raji (died)

(minors rep.by their mother & next friend
the 1st petitioner) ...Appellants/Petitioners

vs

1. K.Sivakumar
2. Cholamandalam MS General
   Insurance Co.Ltd.,
   "Dare House" 2nd floor, NSCR Bose Road,
   Chennai - 600 001. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.4604 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai dated 26.06.2012.

For Appellant : Mr.R.Kalai Arasan
R1 – Exparte

For Respondents: Mr.N.Vijayaraghavan for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 26.06.2012 made in M.C.O.P.No.4604 of 2007, on the file of the Motor Accidents Claims Tribunal cum (Chief Judge, Court of Small Causes), Chennai.

2. On 22.05.2007, at about 23.15 hours, i) R.Arunachalam (deceased herein) ii) Paulraj, iii) P.I.Sagaya Nirmal Raj and iv) Arulmozhi were travelling in a car, bearing Registration No.TN-01-U-1111 from Senthamangalam to Pondicherry along GST road from north to south direction and while the car was proceeding along Chengalpattu Bye pass road, near Mamandur Palar

bridge, a bus bearing Registration No.TN-20-AB-9459 going ahead of the car suddenly, as an unknown lorry going ahead of the bus suddenly stopped and the car also stopped behind the bus. At that time, lorry bearing Registration No.TN-21-R-9729 was driven in a rash and negligent manner from behind and dashed against the car, due to which, the car went under the bus and got fire and all the passengers in the car died and the Lorry, Car and Bus were completely damaged. The accident had occurred solely due to the rash and negligent driving of the driver of the lorry, bearing Registration No.TN-21-R-9729.

3. K.Sivakumar, the first respondent herein is the owner of the offending Vehicle and Cholamandalam Ms.General Insurance Company Ltd., is the insurer of the offending lorry. Hence, the appellants/claimants, being the wife, son, daughters (two in numbers), mother and father of the deceased R.Arunachalam respectively, they filed a claim petition against both the owner and insurer, viz., first and second respondents, to pay a sum of Rs.14,00,000/- as compensation for the death of said R.Arunachalam.

4. Before the Tribunal, on behalf of the claimant, P.W.1 to P.W.7 were examined and 23 documents were marked as Exs.P.1 to Ex.P.23. None was examined on behalf of the Insurance Company, and no documents were exhibited either.

5. The Tribunal, on appreciation of both oral and documentary evidence, came to the conclusion that the accident occurred due to the rash and negligent driving by the driver of the lorry, bearing Registration No.TN-21-R-9729, and held that the second respondent is liable to pay compensation to the appellants. Thus, the Tribunal by arriving at such conclusion, awarded a sum of Rs.7,28,000/- as compensation to the appellants and directed the second respondent to pay the same.

6. Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with the present appeal, seeking enhancement of the same.

7. The learned counsel appearing for the appellants contended that the deceased was 32 years old at the time of accident and was doing Marble, Mosaic polishing and cutting work and earning Rs.350/- to Rs.400 per day. But the Tribunal has fixed a meager sum of Rs.4,500/- per month as notional income of the deceased and failed to award any amount towards future prospects. It is his further submission that the amounts awarded by the Tribunal under various other heads are also very meager and prayed for enhancement of the compensation.

8. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any proof with regard to the income of the deceased, the amount fixed by the Tribunal as notional income while determining the compensation towards Loss of Dependency is just and fair and the same requires no interference. The Tribunal considering the relationship of the appellants, has awarded compensation under different heads, which are just and proper compensation and prayed for dismissal of the appeal.

9. Heard the learned counsel for the appellants as well as the learned counsel for the 2nd respondent/Insurance Company and perused the materials on record.

10. From the materials on record, it is seen that the appellants have claimed that the deceased was doing Marble, Mosaic polishing and cutting work and was earning Rs.350/- to Rs.400 per day, but they have not produced any document to substantiate their claim. In such circumstances, in the present case, the Tribunal has fixed the notional income of the deceased at Rs.4,500/- per month, which is meager and since the deceased was 32 years old at the time of accident, it is just and necessary to fix appropriate notional income by considering various aspect. The Hon'ble Supreme Court, in the case of 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 in the year 2008.

11. Since in the present case, the deceased was a coolie, doing marble, mosaic polishing and cutting work, definitely, he would have earned not less than Rs.6,000/- per month. Hence, this Court deems it fit to fix Rs.6,000/- as monthly notional income of the deceased. As rightly pointed out by the learned counsel for the appellants/claimants, the Tribunal has failed to add any amount towards future prospects. Hence, this Court following the Constitution Bench's judgment in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, is of the view that the appellants are entitled to 40% of the notional income as future prospects. Thus, if 40 % is added towards future prospects, the loss of dependency works out to Rs.1,00,800/- p.a. [Rs.6000 + 2400/- as future prospects 40% = Rs.8400 x 12 = Rs.1,00,800/- p.a.]. After deducting 1/4th towards personal expenses of the deceased, Rs.75,600/- p.a. (i.e., 1,00,800- Rs.25,200/-), and if multiplier 16 is adopted, the Loss of dependency works out to Rs.75,600/- x 16 = Rs.12,09,600/-. Therefore the “loss of dependency” is modified and enhanced to Rs.12,09,600/-.

12. It is seen from the award that the Tribunal has awarded only a sum of Rs.20,000/- to the first claimant/wife towards loss of consortium. Following the decision rendered by the Hon'ble Apex Court, in the case of Pranay Sethi's case (cited supra), this Court re-fix the compensation as Rs.40,000/- towards consortium. Similarly, the Tribunal has awarded only a sum of Rs.40,000/- towards love and affection, and the same is enhanced to Rs.2,00,000/- [Rs.55,000/- to the 2nd claimant/son, Rs.55,000/- 3rd claimant/daughter, Rs.55,000/- to the 4th claimant/daughter, Rs.25,000/- to the fourth claimant/mother, and Rs.10,000/- to the 5th claimant/father (died during trial)]. Since consortium has been awarded to the first claimant/wife, this Court cannot award any amount towards love and affection. Similarly, the compensation awarded by the Tribunal under the head "Funeral Expenses" at Rs.10,000/- is low and as per the Constitution Bench's judgment rendered in the case of Pranay Sethi's (supra), this Court is inclined to enhance the amount from Rs.10,000/- to Rs.15,000/- Since no amount has been awarded by the Tribunal under the head "Loss of Estate", as per the Constitution Bench's judgment rendered in the case of Pranay Sethi's (supra), this Court is inclined to award a sum of Rs.15,000/- towards Loss of Estate. So far as the compensation awarded by the Tribunal of Rs.10,000/- towards loss of expectation of life, this Court finds the same to be just and it is confirmed as such.

13. Thus, the total compensation payable to the claimants are as hereunder.

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Dependency	Rs.6,48,000/-	Rs.12,09,600/-
Funeral Expenses	Rs. 10,000/-	Rs.15,000/-
Loss of consortium	Rs. 20,000/-	Rs.40,000/-
Loss of love and affection	Rs. 40,000/-	Rs.2,00,000/-
Loss of estate	Nil	Rs.15,000/-
loss of expectation of life	Rs. 10,000/-	Rs.10,000/-
Total	Rs.7,28,000/-	Rs.14,89,600/-

14. Hence, the total compensation payable to the claimants is Rs.14,89,600/-. The said compensation shall be shared by the appellants 1 to 6 herein in the following manner:-

i) The wife of the deceased, who is the first appellant herein shall receive a sum of Rs.6,50,000/-. Since the father of the deceased, who was the sixth claimant died during the trial, his share of Rs.1,00,000/- had to be shared equally by the 2nd, 3rd 4th and 5th, that is to say, except, the wife of the deceased, all the other claimants shall share equally. The son of the deceased, the second appellant herein shall receive a sum of Rs.2,25,000, the first daughter of the deceased, the third appellant herein shall receive a sum of Rs.2,25,000, the second daughter of the deceased, fourth appellant herein shall receive a sum of Rs.2,25,000,and the mother of the deceased, the fifth appellant herein shall receive a sum of Rs.1,64,600/-

15. The second respondent/Insurance Company is directed to deposit the entire amount awarded by this Court with interest and costs from the date of Petition till the date of deposit before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the compensation payable to the first claimant of Rs.6,50,000/- and fifth claimant a sum of Rs.1,64,600/- to the respective bank account through NEFT or RTGS within a period of four weeks thereon.

16. So far as the share in respect of the minor claimants, viz., second, third and fourth appellants herein, is concerned, i.e. a sum of Rs.2,25,000/- each, the same shall be deposited by the Tribunal in any one of the Nationalised Banks, in an interest bearing Fixed Deposit and till the minors attain majority, the 1st respondent being the mother of the second, third and fourth respondents is permitted to withdraw the quarterly interest from the said deposit. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. The claimants are directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

17. In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.7,28,000/- is enhanced to Rs.14,89,600/-. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

dpq

To

The Chief Judge, Small Causes Court
(Motor Accident Claims Tribunal), Chennai

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

+1cc to Mr.M.B.Gopalan, Advocate SR.No.25899

+1cc to Mr.N.M.Muthurajan, Advocate SR.No.24999

C.M.A.No.410 of 2013

AK(CO)
GMY(11/12/2019)