IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.458 of 2013

1.Maheswari

2.Poongodi ...Appellants

..Vs..

1.P.Dharmalingam

2.Iffco-Tokiio General Insurance
Company Limited,
Tulsi Chambers, 3rd Floor,
D.No.195, T.V.Swamy Road,
R.S.Puram, Coimbatore. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 09.06.2011, passed in M.C.O.P.No.903 of 2006, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.Ma.Pa.Thangavel

For Respondents: Mr.C.R.Krishnamoorthy for R2
R1 – Ex-parte

JUDGMENT

The appellants are the claimants in M.C.O.P.No.903 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal. They filed the above said claim petition under Section 166 of the Motor Accident Claims Tribunal, seeking compensation of Rs.5,00,000/- for the death of one Manikandan, brother of the appellants/claimants in a road accident that took place on 25.02.2006, at about 09.30 p.m. at Namakkal to Sendamangalam main road, when the deceased Manikandan was a pillion rider in TVS XL Super bearing Registration No.TN 28 A 9383 belonging to the first respondent.

2. According to the appellants/claimants, when the deceased Manikandan was nearing Sendamangalam Sudukadu, the first

respondent, who was riding TVS XL Super bearing Registration No.TN 28 A 9383, hit the TVS susuki bearing Registration No. TN 28 A 5345, which was coming from the opposite direction, as result of which, the deceased Manikandan sustained grievous injuries all over the body and was admitted in Aravinth hospital for 1st aid and died after two days. They further contended that the rash and negligent driving of the driver of the TVS XL Super bearing Registration No.TN 28 A 9383 belonging to the first respondent was the cause of the accident and the said vehicle was insured with the second respondent, both the first and second respondents are jointly and severally pay compensation to the appellants.

3.The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent IFFCO TOKIO General Insurance Company Limited, Coimbatore contested the claim petition. The learned Principal District Court, Namakkal after analysing the evidence on record, awarded a compensation of Rs.3,30,000/- 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 dependency (Rs.3,000/-x12x16x1/2)	Rs.2,88,000/-
2.	Loss of love and affection	Rs.40,000/-
3.	Funeral expenses	Rs.2,000/-
Total		Rs.3,30,000/-

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

6.Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants/claimants would contend that this Appeal is filed only questioning the quantum of compensation awarded by the Tribunal. The deceased was working as a Sales Manager in a Granite Company, Salem and was earning a sum of Rs.6,000/- per month. The appellants/claimants are the sisters of the deceased. The father and mother of the deceased pre-deceased the deceased. Therefore, on the date of accident, there were only three members in the family of the deceased i.e., the deceased, the elder sister aged about 23 years and the younger sister aged about 20 years. Both the sisters of the deceased are not working elsewhere and hence, they were totally dependent on the income of the deceased alone and also not married. In these circumstances, when the deceased was earning a sum of Rs.6,000/- per month, the Tribunal fixed only Rs.3,000/- as the notional income of the deceased. The Tribunal has also deducted 1/2nd towards the personal expenses of the deceased when there are two dependents depending on the income of the deceased. This Court in the light of the principles laid down by the Hon'ble Supreme Court in Magma General Insurance Company Limited Vs. Nanu Ram, reported in 2018 (SCC) SC 1546,

> "This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third, as contribution to the family will be taken as two -third."

is of the view that, it would be appropriate to deduct 1/3rd towards the personal expenses of the deceased. Since the responsibility of the deceased is more towards his family. However, the Tribunal has wrongly deducted 1/2nd towards the personal expenses.

7.The learned counsel appearing for the second respondent/Insurance Company would submit that it would be appropriate to fix the salary in the range between Rs.4,000/- to Rs.5,000/- since he is only 19 years old and he was working in a Granite Company and was a bachelor. In these circumstances, especially, the Tribunal has fixed a sum of Rs.3,000/- per month as the monthly income of the deceased.

8.Heard, the learned counsel for the appellants and learned counsel for the second respondent.

9.The Tribunal has fixed the monthly income of the deceased as Rs.3,000/-. However, this Court is of the considered view that awarding a sum of Rs.3,000/- for a person working as a Sales Manager in the year 2006 is very meagre. 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, in the present case, both the sisters of the deceased are not working anywhere. They were totally dependent on the income of the deceased alone and were not married. Since, admittedly, the deceased was earning a sum of Rs.6,000/- per month, the income fixed by the Tribunal is re-fixed as Rs.6,000/- per month as the entire family was totally dependent on the income of the deceased.

10.In these circumstances, the notional income of the deceased fixed as Rs.6,000/-. However, the Tribunal has not awarded any amount towards future prospects. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, as the age of the deceased was 19 years, 40% should be added towards future prospects of the deceased. Thus, the monthly income of the deceased is fixed at Rs.8,400/-. Since the deceased died as a Bachelor, and he is the only earning member and has two unmarried sisters, who are unemployed and non earning members in the family and the parents are pre-deceased, it would be appropriate to deduct 1/3 of his earning towards his personal expenses and accordingly 1/3 has to be deducted towards the personal expenses of the deceased. As rightly pointed out by the learned counsel appearing for the appellants, the deceased aged about 19 years and the proper multiplier to be adopted in the instant case is 18 as per the law laid down in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. But, the Tribunal wrongly adopted the multiplier 16.

Calculation:

Notional Income = Rs.6,000/-

40% Future Prospects = Rs.2,400/-

Total = Rs.6,000/- + Rs.2,400/-

= Rs.8,400/-x 1/3 = Rs.2,800/-

= Rs.8,400/- - Rs.2,800/- = Rs.5,600/-

Loss of dependency

= Rs.5,600/- x 18 x 12

= Rs.12,09,600/-

11. The Tribunal has awarded a sum of Rs.40,000/- towards love and affection. However, the amount awarded by the Tribunal towards love and affection is very meagre. This court is inclined to award a sum of Rs.50,000/- to the 1st claimant and Rs.50,000/- to the 2nd claimant. Thus, the amount awarded by the Tribunal towards love and affection is enhanced from Rs.40,000/- to Rs.1,00,000/-. However, the Tribunal has failed to award any amount towards loss of estate and transportation and therefore, this Court awards a sum of Rs.15,000/- towards loss of estate and Rs.10,000/- towards transportation. The Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses. This court accepts the contention of the appellants/claimants that the amount awarded by the Tribunal towards funeral expenses is very low and this Court is inclined to increase the award towards loss of funeral expenses from Rs.2,000/- to Rs.5,000/- 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.12,09,600/-
2.	Love and affection (Rs.50,000/- x2)	Rs.1,00,000/-
3.	Funeral expenses	Rs.5,000/-
4.	Transportation	Rs.10,000/-
5.	Loss of estate	Rs.15,000/-
	Total	Rs.13,39,600/-

Thus, the appellants/claimants are entitled to a sum of Rs.13,39,600/-, which shall carry interest at the rate of 7.5% per annum from the date of 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.3,30,000/- to Rs.13,39,600/-, which shall carry interest at the rate of 7.5% per annum.

(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 Insurance Company 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 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 after following due process of law.

(a) The 1st appellant/claimant is entitled to a sum of Rs.6,69,800/- together with accrued interests and costs.

(b) The 2nd appellant/claimant is entitled to a sum of Rs.6,69,800/-.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

The Motor Accidents Claims Tribunal,
The Principal District Court,
Namakkal.

+1cc to Mr.Ma.P.Thangavel, Advocate, SR.No.13673
+1cc to Mr.C.R.Krishnamoorthy, Advocate, SR.No.12532

C.M.A.No.458 of 2013

Kak(14/10/2019)