IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

CMA.NO.543 OF 2013

1. K.Pousiya Begam
2. S.Kadhar Sultan ..Appellants/Petitioners

Vs.

1. V.Ravi
2. Royal Sundaram Alliance Insurance Co Limited
No.45 & 46, Sundaram Towers, Whites Road,
Chennai 600 014. ..Respondents/Respondents

Civil Miscellaneous Appeal filed against the Judgment and decree dated 27.11.2012 made in MCOP.NO.3381 of 2011 on the file of the Motor Accident Claims Tribunal, (XIX Additional Court) Chennai.

For Appellant : Mr.V.Mohan Choudary

For Respondents: Mr.M.Krishnamoorthy for R2

: R1 set exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation, against the order dated 27.11.2012 made in M.C.O.P.No.3381 of 2011, on the file of Motor Accident Claims Tribunal (XIX Additional Court), Chennai.

2. The appellants are the claimants in M.C.O.P.No.3381 of 2011, on the file of XIX Additional Court (Motor Accidents Claims Tribunal), Chennai. They filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Syed Sahul Naina. The first appellant is the mother of the deceased and second appellant is the father of the deceased. The accident took place on 08.07.2011.

3. On 08.07.2011 at about 17:15 hrs when the deceased was crossing the Velacherry main road from North to South, a lorry bearing Registration No.TN21-AW-2768 came in a rash and negligent manner from Medavakkam towards Tambaram and knocked down the deceased and thereby caused multiple injuries to the deceased which resulted in death.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry bearing Registration No.TN21-AW-2768 and the respondents 1 and 2 are jointly and severally liable to pay compensation to the appellants. The Tribunal awarded a sum of Rs.3,50,000/- as compensation to the appellants and directed the respondents 1 and 2 to pay the same.

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

6. The learned counsel appearing for the appellants contended that the deceased was 17 years old and was earning Rs.300/- per day by doing part time work in a milk supplying unit. The Tribunal fixed a meager sum of Rs.15,000/- per year as notional income of the deceased. The Tribunal has not awarded any amount for future prospects and the amounts awarded by the Tribunal under different heads are very meager and prayed for enhancement of the compensation.

7. 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 amounts fixed by the Tribunal as notional income is not meager. The Tribunal considering the relationship of the appellants, has awarded amounts under different heads which are just and proper compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellants as well as the learned counsel for the 2nd respondent and perused the materials on record.

9. The deceased was aged about 17 years old at the time of accident. Even though the claimants stated that the deceased was earning income from milk supplying unit by doing part time job, there is no evidence to substantiate the said income. The Tribunal fixed the annual income at Rs.15,000/- and by applying multiplier "16" arrived the loss of income at Rs.2,40,000/-. A further sum of Rs.1,00,000/- towards "loss of love and affection" and a sum of Rs.5,000/- towards "funeral expenses" and Rs.5,000/- towards transportation were awarded to the

claimants. In total the Tribunal awarded a sum of Rs.3,50,000/- as compensation to the appellants and directed the respondents 1 and 2 to pay the same to the claimants with interest at 7.5% p.a.

10. The Tribunal has considered the annual income at Rs.15,000/- p.a. which is very meagre and adopted the multiplier as "16" based on the schedule II of the Motor Vehicles Act. On the other hand the appellants claimed a sum of Rs.300/- per day i.e., Rs.9,000/- per month. In the present case the notional income should be fixed by providing appropriate weightage to the increase in cost of living. The Tribunal has not considered and provided any weightage to the increase in cost of living while fixing the notional income. This Court finds that fixing the notional income for a 17 years old boy a sum of Rs.300/- per day would be on the higher side. It is no doubt in the present case it is just and necessary to provide appropriate weightage while fixing the notional income taking into consideration of the increase in cost of living. Even if you are taking into consideration the cost of living this Court finds fixing a sum of Rs.9,000/- per month as pleaded by the learned counsel for the appellants would be on the higher side. Taking into consideration of the age of the deceased, this Court finds that it would be appropriate to fix the notional income of the deceased at Rs.4,500/- p.m. for the purpose of awarding the compensation to the dependants. The Tribunal applied multiplier '16', whereas the correct multiplier applicable for the age group between 15 to 25 years is '18' as per decision rendered in Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The Tribunal has not granted any amount for future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. Further, in order to calculate the personal expenses the Hon'ble Apex Court in the case of Sarla Verma (cited supra) has observed that if the deceased is a bachelor, 50% of the total income to be deducted towards the personal expenses of the deceased. Therefore in this case 50% of the total annual income of the deceased is deducted.

Calculation

Notional income = Rs.4,500/-

40% Future Prospects = Rs.1800/- p.m.

Annual Income = Rs.6300 x 12 = Rs.75600

Deducting 50% = Rs.37800

Annual dependency = Rs.75600 - Rs.37,800 = Rs.37,800/-

Loss of dependency = Rs.37,800 x 18 = Rs.6,80,400/-

Therefore the "loss of dependency" is enhanced to Rs.6,80,400/- from Rs.2,40,000/-

11. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection, since the awarded amount is too high and the same is reduced it to Rs.80,000/-. (Rs.40,000/- each for 1st and 2nd claimants). Under the head "Funeral expenses" this Court is inclined to enhance the amount from Rs.5,000/- to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India. As no amount has been awarded under the head "loss of estate" this Court is inclined to award a sum of Rs.15,000/- as per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). The Tribunal awarded a sum of Rs.5,000/- under the head "Transportation" and the same is enhanced to Rs.10,000/-.

12. Hence the total compensation payable to the claimants are as hereunder.

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of income	Rs.2,40,000/-	Rs.6,80,400/-
Funeral Expenses	Rs.5,000/-	Rs.15,000/-
Loss of love and affection	Rs.1,00,000/-	Rs.40,000/- to the first appellant Rs.40,000/- to the second appellant
Loss of estate	Nil	Rs.15,000/-
Transportation	Rs.5,000/-	Rs.10,000/-
Total	Rs.3,50,000/-	Rs. 8,00,400/-

13. The total amount of compensation shall be shared by the claimants 1 & 2 herein, in the following manner:-

The mother of the deceased who is the first appellant herein shall receive a sum of Rs.4,00,200/- and the father of the deceased who is the second appellant herein shall receive a sum of Rs.4,00,200/-.

14. The Insurance Company/second respondent 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. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through NEFT or RTGS within a period of one week thereon. 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. 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.

15. Accordingly, the Civil Miscellaneous Appeal is partly allowed by enhancing the award of the Tribunal from Rs.3,50,000/- to Rs.8,00,400/- with interest and costs. Consequently, connected miscellaneous petition is also closed, if any. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dpq

To

The XIX Additional Court, Chennai
Motor Accidents Claims Tribunal.

+2 cc'S to M/s.V.Mohan Choudary, Advocate, Sr.No. 13243
+1 cc to M/s.M.krishnamoorthy, Advocate, Sr.No. 13011

C.M.A.No.543 of 2013

GP(CO)
CSL/22.07.2019