IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.855 of 2013

1.S.Shanthi
2.S.Karthik
3.S.Ganesh
4.S.Rajesh (minor)
(4^{th} Petitioner Minor Rep by
her Mother and Next Friend 1^{st} Appellant)

...Appellants/Petitioners

..Vs..

1.K.Mohamed ali

2.M/s.The New India Assurance
Company Limited,
No.6, Casa major road,
"Casa Blanca" Egmore
Chennai 8.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 27.09.2012 in M.C.O.P.No.2310 of 2009 on the file of the Motor Accidents Claims Tribunal, XV Additional Judge, Chennai.

For Appellant : Mr.V.Mohan Choudary
For Respondents : Mr.C.Ramesh Babu for R2
R1 – Ex-parte

JUDGMENT

The appellants are the claimants in M.C.O.P.No.2310 of 2009, on the file of the Motor Accident Claims Tribunal, XV Additional Judge, Chennai. They filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Sekar, husband of the first claimant/appellant and father of the other claimants/appellants in a road accident that took place on 01.04.2009.

2.The brief case of the appellants/claimants is as follows:

At about 23.00 hours, he was travelling in the recovery vehicle bearing Registration No. TMJ 3124 belonging to the first respondent in GNT Road from Madras towards Gummudipoondi, due to over speed the driver lost his control suddenly cut-across and applied brake, he fell down, as a result of which, the deceased Sekar sustained multiple injuries and died in the hospital during the course of treatment. The further contention of the appellants/claimants is that the rash and negligent driving of the driver of the recovery vehicle bearing Registration No. TMJ 3124 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent the New India Assurance Company Limited both of them are jointly and severally liable to pay compensation to them.

3. The owner of the recovery vehicle bearing Registration No. TMJ 3124 remained absent before the tribunal and therefore, he was set ex-parte. The second respondent the New India Assurance Company Limited contested the claim petition. The learned XV Additional Judge, Chennai after analysing the evidence on record, awarded a compensation of Rs.4,82,000/- 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.4,32,000/-
2.	Funeral expenses	Rs.5,000/-
3.	Loss of consortium	Rs.20,000/-
4.	Love and affection	Rs.25,000/-
Total		Rs.4,82,000/-

5.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.

6. Mr.V.Mohan Choudary, learned counsel appearing for the appellants/claimants would contend that the deceased was a cleaner cum spare driver earning a sum of Rs.300/- per day and the Tribunal fixed a sum of Rs.4,500/- per month as the notional income of the deceased. The appellants/claimants are the only legal heirs of the deceased Sekar, they are entitled for

compensation. The tribunal has fixed the notional income of the deceased as Rs.4,500/- instead of Rs.9,000/- 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.

7.Yet another contention raised by him is that in the Hon'ble Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly notional 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. 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. It is just and necessary for the Tribunal before fixing the notional income of the deceased, it should have considered 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.

(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 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. He further contended that in the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, it would be proper to fix the same amount i.e., Rs.6,500/-in the present case also.

9.Mr.C.Ramesh Babu, learned counsel for the second respondent would contend that the tribunal has awarded a just compensation of Rs.4,82,000/-, taking into consideration various aspects and the same need not be disturbed at this juncture.

10.A perusal of the records shows that the deceased had three children and wife as his dependents. However, the Tribunal has deducted 1/3 towards the personal expenses of the deceased instead of 1/4.

11.The Tribunal has not awarded any amounts towards future prospects, especially, when the deceased was aged just 45 years on the date of accident. Since the deceased was a cleaner cum driver, this Court is inclined to refix the notional income as Rs.6,500/- instead of Rs.4,500/- as fixed by the Tribunal. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, for the age of 45 years, 25% should be added towards future prospects and the income after addition of future prospects would be Rs.8,125/- (Rs.6,500/- + Rs.1,625/-) per month and $1/4^{th}$ should be deducted towards the personal expenses of the deceased. In terms of the decision of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343, multiplier method is warranted as far as the present case is concerned and the proper multiplier to be adopted in the instant case is 14 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The loss of income of the injured is as follows:

Calculation:

Notional Income = Rs.6,500/-
25% Future Prospects = Rs.1,625/-
Total = Rs.6,500/- + Rs.1,625/-
= Rs.8,125/-

Loss of pecuniary benefits
= Rs.8,125/- x 14 x 12 x 3/4
= Rs.10,23,750/-

12.The tribunal has awarded a sum of Rs.25,000/- 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 to 4 towards love and affection. Accordingly, this court inclined to award a sum of Rs.30,000/- each to the claimants. The amount awarded by the tribunal towards love and affection is increased from Rs.25,000/- to Rs.90,000/-. However, the Tribunal has failed to award any amount towards loss of estate and therefore, this Court awarded a sum of Rs.15,000/- towards loss of estate. The tribunal has awarded a sum of Rs.20,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. This court in consensus with the ratio laid down by the Hon'ble Apex Court in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, the loss of consortium is increased from Rs.20,000/- to Rs.40,000/- and funeral expenses is increased from Rs.5,000/- 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.10,23,750 /-
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.30,000/- x 3)	Rs.90,000/-
Total		Rs.11,83,750/-

Thus, the appellants/claimants are entitled to a sum of Rs.11,83,750/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

13.In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.4,82,000/- to Rs.11,83,750/-, 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 New India Assurance Company Limited, 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. On such deposit being made, the Tribunal shall transfer the amount to the claimant's 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, as the 4th appellant would have also attained majority by now.

(a) The 1st appellant/claimant is entitled to a sum of Rs.4,33,750/- together with accrued interests and costs.

(b) The 2nd to 4th appellants/claimants are entitled to a sum of Rs.2,50,000/- each.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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

+2 Ccs to Mr.V.Mohan Choudary , Advocate sr 15038.
+1 CC to Mr.C.Ramesh Babu, Advocate sr 15887.

C.M.A.No.855 of 2013

CNR(CO)
SP(17/08/2021)