IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2927 of 2019

1 S.ARJUN
2 S.ASWIN
3 P.KALIYAMMAL
4 K.PONNUSAMY ... Petitioners/Appellants
(cause title accepted vide order
28.06.2019, made in C.M.P.13202/2019
IN CMA.Sr.No.35247 of 2019.

Vs

1 P.MOHANRAJ
(R-1 remained ex parte before the Tribunal.
2 THE DIVISIONAL MANAGER
UNITED INDIA INSURANCE CO LTD.
NO.2 , BHUVANESWARI COMPLEX
DR.SANKARAN ROAD
NAMAKKAL.

3 S.SELVAMANI

4 MINOR S. AJAIN
S/O. LATE P.SUBRAMANIYAN
Minor Rep. BY next friend/guardian
Mother S.Selvamani ... Respondents
R1 remained set ex-parte before the Tribunal. Hence notice may be dispensed with.

PRAYER :

The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against award in the Judgment and Decree dated. 15.11.2018 made in MCOP No.204/2015 on the file of MACT/ Principal District Court at Namakkal.

For Appellants : Mr.MA.Pa.Thangavel
Respondent-2 : Set expart before the Tribunal
For Respondent-2 : Mr.S.Arun Kumar
For Respondents 3 & 4: Mr.E.P.Senniyagiri

JUDGMENT

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

1. This appeal has been filed by the appellants / claimants, challenging the quantum of award in the judgment and decree dated 15.11.2018 made in MCOP passed by the Principal District Court at Namakkal.

2. The brief facts of the case as follows:
On 03.09.2014 at about 4 P.M. in between Tiruchengode to Namakkal Main Road near Silluvankadu, when the deceased was riding his mother cycle bearing Registration No.TN 34 F 7895, at that time, the first respondent vehicle Minidoor three Wheeler Tempo bearing Registration No.TN.28 K 0012 which was driven by the first respondent in a rash and negligence manner, without observing road traffic rules, suddenly dashed against the two wheeler ridden by the deceased. Due to the said accident the deceased sustained fracture injuries all over his body and he was admitted at Erode Sudha Hospital for treatment and after better treatment, the injured Subraminan succumbed to injures and died on the same day. At the time of accident, the deceased was aged about 45 years and he was hale and healthy.

3. According to the claimants, the deceased was the owner of the JCB Machine and he was doing JCB hiring business and earning Rs.30,000/- per month, apart from said earning, he was earning Rs.50,000/- per month from his 40 acres of agricultural land. Subsequent to the accident the police also registered a case in Cr.NO.137/2014 under Sections 279, 304 (A) of IPC, against the owner cum driver of the Minidor. Since the owner-cum-driver of the Tempo is responsible for the accident, the claimants filed Claim against both the owner as well as Insurer of the offending vehicle.

4. On behalf of the claimants, the claimants were examined as PW.1, and PW.2 and marked Exs.P1 to P21. On the side of respondents, no one was examined but they have marked only rough sketch as Ex.R1.

5. After hearing both parties, the Court below determined the compensation in the following manner:

S.No.	Head	Award of the Tribunal
1	Loss of income	Rs. 7,02,000
2	Future prospects of 25%	Rs. 1,75,500
3	Loss of Estate	Rs. 14,500
4	Loss of consortium	Rs. 5,000
5	Funeral Expenses	Rs. 15,000
6	Loss of consortium	Rs. 40,000

S.No.	Head	Award of the Tribunal
	Grand Total	Rs. 9,47,000

6. Now the claimants have preferred the present appeal, challenging the quantum of compensation awarded.
7. The learned counsel for the claimants submitted that the deceased was the owner of two JCP machines and by virtue of hiring the same, he was earning a sum of Rs.40,000/- per month. Apart from said income, he was also earning a sum of Rs.50,000/- per month from his 40 acres of agricultural lands. Further, even in the claim petition, the monthly income of the deceased was mentioned as Rs.80,000/- per month. In these circumstances, the Tribunal without considering the contention of the claimants /appellants, fixed a sum of Rs. 6,000/- per month as the notional income of the deceased. Further, the learned counsel contended that the present accident was occurred on 03.09.2014, considering the increase in the cost of living, the tribunal ought to have fixed at least a sum of Rs.15,000/- as monthly income, even if the claimants failed to produce any documents to substantiate the income of the deceased, however, the tribunal has fixed a meagre sum of Rs.6,000/- per month, as notional income of the deceased. Therefore, he pleaded before this Court that a sum of Rs.50,000/- may be fixed as notional income of the deceased. It is further submitted that there are totally six claimants, and hence, the Tribunal ought to have deducted 1/5TH towards the personal expenses of the deceased whereas, the Tribunal has deducted only 1/4th towards personal expenses, which resulted in awarding lesser sum towards Loss of Income. Further, the learned counsel contended that the Tribunal has failed to award any compensation towards Loss of Love and Affection to the minor children and also failed to award compensation to the parents of the deceased. In support of his contention, he relied on the law laid down by the Hon'ble Supreme Court, in the case of Magma General Insurance Company Vs. Nanu Ram alias CHUHRU RAM and others, reported in [(2018) II SCC 892] wherein, a sum of Rs.40,000/- each was awarded by the Hon'ble Suunder under the separate head, filial consortium to the father and mother of the deceased and a sum of Rs.40,000/- as parental consortium to the children of the deceased. Further, the learned counsel contended that even the compensation awarded by the Tribunal under other heads are on the lower side and prays for appropriate enhancement.
8. The learned counsel appearing for the second respondent / Insurance Company would fairly submit that the notional income fixed by the Tribunal is on the lower side, and it has to be re-fixed by this Court, by following the judgment of the

Hon'ble Apex Court passed in Syed Sadiq V. Divisional Manager, Uniter India Insurance Co. Ltd. reported in 2014(1) TNMAC 459. Therefore, the learned counsel appearing for the Insurance Company/ second respondent herein would contend that a sum of Rs.3,000/- may be added in addition to a sum of Rs. 6,000/- fixed by the Tribunal as notional income of the deceased. He further submitted that the compensation awarded under other heads need not be interfered with.

9.Heard the learned counsel for the appellants, learned counsel for the second respondent/ Insurance company and the learned counsel for respondents 3 and 4.

10. Admittedly, the claimants have failed to file any supporting documents to prove the monthly income of the deceased and in the absence of such documents, the tribunal has taken the monthly income of the deceased at Rs.6,000/- per month and determined the compensation towards Loss of Income. Aggrieved by such award, the claimants have filed the present Civil Miscellaneous Appeal. However, as contended by the learned counsel appearing for the second respondent/Insurance company, the Hon'ble Apex Court in the case of Syed Sadiq (supra) has fixed a sum of Rs.6,500/- as notional income for a vegetable vendor, for the accident occurred in the year 2008. In the present case, the accident was occurred in the year 2014. Hence, in the present case, certainly, some additional income need to be added while fixing the notional income of the deceased, by considering the increase in the cost of living. Therefore, this Court is of the view that it would be appropriate to fix a sum of Rs. 9,000/- as the notional income, instead of Rs.6,000/- fixed by the tribunal. Though the learned counsel for the claimants initially reluctant to accept the same, subsequently, he has accepted to the same and filed the calculation memo.

11.The age of the deceased was taken by the tribunal as 47 years based on Ex.P3, post-materm certificate. Further, in the present case by following the principles laid down by the Hon'ble Apex Court, in Sarla Varma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the tribunal, has rightly applied the multiplier of 13.

12.Further, for the age group of 47 years, as held by the Hon'ble Apex Court in National Insurance company Ltd Vs. Pranay Sethi reported in (2017) 16 SCC 680, 25% requires to be added towards future prospects, which the Tribunal has rightly fixed. Insofar as the $1/4^{th}$ deduction made by the Tribunal towards the personal expenses of the deceased, we are of the view that the same is incorrect and as in the present case, there are six claimants and as per the law laid down by the Hon'ble Apex Court in the Sarala verma's case (supra) ,if there are 6 claimants, $1/5^{th}$ ought to be deducted while determining compensation towards Loss of Dependency. Hence, this Court is inclined to deduct $1/5^{th}$ instead of $1/4^{th}$ as deducted by the Tribunal. Hence, loss of income of the deceased would be Rs.14,04,000/-(Rs.9000/- + 2,250/- (25% of Rs.9,000/-) x 12 x 13x 4/5).

13.The Court below has awarded a sum of Rs.15,000/- for funeral expenses, and Rs.40,000/- towards loss of consortium to the wife of the deceased, and Rs. 14,500/- towards Loss of Estate, and by following the ratio laid down by the Hon'ble Apex Court in, National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, the compensation awarded by the Tribunal under the three conventional heads is modified in the manner stated below:

S.No.	Head	Award of the Tribunal
1	Loss of Estate	Rs. 15,000/-
2	Loss of consortium	Rs. 40,000/-
3	Funeral Expenses	Rs. 15,000/-

14.No amount was awarded for the transportation expenses and hence this Court is inclined to award a sum of Rs.10,000/- towards transportation expenses.

15.Following the Constitution Bench decision of the Hon'ble Apex Court in Pranay Sethi (supra) cases, the Tribunal has rightly awarded Rs.40,000/- towards loss of consortium to the wife of the deceased. The Tribunal failed to award compensation towards Loss of Love and Affection for the minor children and the parents. In this connection, reference is made to the case of Magma General Insurance co.Ltd Vs. Nanu Ram Alias Chuhur Ram and others in C.A.No.9581 of 2018 wherein it has held as follows:

> "A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.
> In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.
>
> The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.3 Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."4 Parental consortium is granted to the child upon the premature death of a parent, for

loss of “parental aid, protection, affection, society, discipline, guidance and training.” Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and 3 Rajesh and Ors. vs. Rajbir Singh and Ors. (2013) 9 SCC 54 4 BLACK'S LAW DICTIONARY (5th ed. 1979) family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child’s consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count5. However, there was no clarity with 5 Rajasthan High Court in Jagmala Ram @ Jagmal Singh & Ors. v. Sohi Ram & Ors 2017 (4) RLW 3368 (Raj);

Uttarakhand High Court in Smt. Rita Rana & Anr. v. Pradeep Kumar & 6 Ors. With respect to the principles on which compensation could be awarded on loss of Filial Consortium. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium."

16. In the present case, the deceased had three children, out of three , two are minor children and one is major. As held by the Hon'ble Apex Court in the above judgment, all the three children of the deceased are entitled for the parental consortium on account of the premature death of the father. In view of the loss of parental guidance and support, this Court is inclined to award a sum of Rs.40,000/- each to the children/Appellants 2 to 4 and for the loss of son, the parents are also entitled for the filial consortium and hence, both the parents are entitled for filial consortium, at a sum of Rs.40,000/-each. Accordingly the consortium of the claimants is fixed at a sum of Rs. 2,00,000/- for the claimants 2 to 6.

17. In view of the above reasoning, the compensation awarded by the tribunal at Rs.9,47,000/- is reconstructed to Rs. 16,84,000/- with the following break up details:

- for the loss of dependency : Rs.14,04,000/-,
- for the loss of consortium to the wife : Rs.40,000/-
- for loss of parental consortium to the 2nd appellant (son of the deceased) : Rs.40,000/-
- for loss of parental consortium to the 3rd appellant (first son of the deceased) : Rs.40,000/-
- for loss of parental consortium to the 4th appellant (3rd son of the deceased) : Rs.40,000/-
- Filial Consortium(mother of the deceased) : Rs.40,000/-
- Filial Consortium (father of the deceased) : Rs.40,000/-
- Loss of estate : Rs.15,000/-
- Funeral expenses : Rs.15,000/-
- Transportation : Rs.10,000/-

Total : Rs.16,84,000/-

18. The Insurance company /second respondent is directed to deposit the entire compensation amount as awarded by this Court, after deducting the amount, if any, already deposited along with interest at 7.5% per annum from the date of the petition till the date of deposit within a period of eight weeks from the date of receipt of this order.

19. On such deposit, the tribunal is directed to transfer the entire award amount to the major claimants to their respective bank accounts by way of RTGS within a period of three weeks from the deposit made by the second respondent/ insurance company and award amount shall be disbursed to the claimants in

the following manner:

(a) The second, third and fourth claimants are entitled to a sum of Rs.2,00,000/-each

(b) The first claimant/Wife of the deceased is entitled to a sum of Rs.9,00,000/-

(c) The Father of the deceased is entitled to a sum of Rs. 84,000/- and

(d) The Mother of the deceased is entitled to a sum of Rs.1,00,000/-

20.So far the share in respect of the minor claimants are concerned, the same shall be deposited by the Tribunal in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the first claimant/mother of the children is permitted to withdraw accrued interest once in three months.

21.In the result, this appeal is partly allowed, by enhancing the compensation amount from Rs.9,47,000/- to Rs.16,84,000/- with interest as stated supra. No costs. Consequently, connected miscellaneous petition is also closed. Needles to point out that the appellants shall pay the necessary Court fee for the enhanced compensation amount, before receiving the copy of this judgment.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Principal District Court,
Namakkal.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.100649
+1cc to Mr.E.P.Senniyangiri, Advocate, S.R.No.100852
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.100821

C.M.A.No.2927 of 2019

RGN(CO)
CB(27/08/2021)