IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.734 of 2014

1.V.P.Rajan
2.R.Rani ...Appellants/Claimants

..Vs..

1.S.Pradeep Chordia

2.The National Insurance Company Limited,
No.751, Mount Road, III Floor,
Chennai 600 002. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 30.11.2005 in M.C.O.P.No.2583 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants : Mr.A.N.Viswanatha Rao

For R1 : Mrs.P.R.Vandana for Mrs.Surana & Surana

For R2 : Mr.D.Baskaran

JUDGMENT

The appellants are the claimants in M.C.O.P.No.2583 of 2004 on the file of the learned Chief Judge, Court of Small Causes, Chennai. They have 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 his son, namely, R.Ramesh.

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

On 15.02.2004, at about 00.20 hours, the deceased was riding the motorcycle bearing Registration No. TN 09 P 7948 from east to west direction in Dr.Radhakrishnan Salai, Opposite to Arikant Nitoo Bank, Mylapore. At that time, a car bearing Registration No.TN 07 S 9645, belonging to the first respondent, which was driven by its driver in a rash and negligent manner, suddenly turned towards west direction and hit the two wheeler. As a result of which, the deceased sustained fatal injuries and died on the spot. Thereafter, the F.I.R. in Crime No.89/M2/2004 was registered at Shatri Nagar Police Station.

3.A counter affidavit was filed by the first respondent denying all the allegations of the claimants and it was stated that the compensation claimed was highly excessive. Further, it was stated that the accident occurred in “U” turn, which was close to the center median. The deceased rode the motor cycle in a rash and negligent manner, dashed against the car and involved in the accident and they are not responsible for the accident.

4.The second respondent has also filed a counter affidavit denying the age, occupation, income of the deceased and the alleged accident.

5. Before the Tribunal, on the side of the claimants, they themselves examined as PW1 and PW2 and filed certain documents i.e., Exs.P1 to P9. Further, one Mr.V.P.Sivaraman examined as PW.3 and one Mr.R.Thothathiri examined as PW.4. On the side of the respondents,, neither any witness was examined nor any document was marked.

6. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded a sum of Rs.2,07,096/- as compensation under various heads. Aggrieved by the award, the appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act 1988, seeking for enhancement of compensation.

7. Mr.A.N.Viswanatha Rao, learned counsel appearing for the appellants/claimants would firstly contend that the age of the deceased R.Ramesh was 21 years at the time of the accident and he was a clerk in Procargo company and was earning a sum of Rs.6,000/- per month. The learned counsel further submitted that the Tribunal, while determining the compensation towards 'Loss of Dependency', fixed a sum of Rs.2,000/- per month as notional income of the deceased, which is too low. In this connection, the learned counsel placed reliance on the decision rendered by the Honourable Supreme Court in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, wherein, the Honourable Supreme Court even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional income at Rs.6,500/- per month. Therefore, he submitted that the notional income fixed by the Tribunal at Rs.2,000/-, who sustained injuries in the accident occurred in the year 2008, is meager. Thus, he submitted that the

compensation awarded by the Tribunal towards 'Loss of Dependency' may be enhanced by fixing the notional income of the deceased at Rs.6,000/- per month.

8.The learned counsel for the appellants/claimants further submitted that the Tribunal has failed to award any amount towards 'future prospects', and as held by the Honourable Supreme Court in the case of National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, the Tribunal ought to have awarded 40% towards future prospects of the injured.

9. Mr.D.Baskaran, learned counsel appearing for the second respondent/Insurance Company fairly submitted that the appellants/ claimants have not proved that the deceased was a clerk and was receiving a monthly salary of Rs.6,000/- at the time of the accident, P.W.4 deposed that the deceased was employed only for 3 months prior to the accident. Therefore, he fairly opposed that the compensation awarded by the Tribunal under the head 'Loss of Dependency' is just and fair.

10. On perusal of the order of the Tribunal dated 30.11.2005, it is seen that though it was stated by the respondents that the car driver was not responsible for the accident, they neither produced any documentary evidence nor examined the car driver. Therefore, the Tribunal has come to the conclusion that the accident occurred only due to the negligent driving of the car driver. It is also seen that Mr.R.Thothathiri who was the employer of the deceased examined as PW4 on the side of the claimants and deposed that the deceased was employed at the time of accident, and a salary certificate of the deceased was also produced by him, which was marked as Ex.P9. While considering the same, the sum of Rs.2,000/- fixed by the Tribunal as monthly income of the deceased is found to be meager, and it is hereby fixed at Rs.5,000/-.

11.It is further seen from the order of the Tribunal that the Tribunal has not awarded any amount towards future prospects, especially, when the deceased was aged just 21 years on the date of accident. As held by the Hon'ble Supreme Court in the case of Pranay sethi cited (supra) for the age group of 21 years, 40% should be added towards future prospects. It is further seen that the Tribunal has wrongly applied the multiplier as 12 for the age group of 21 years. This court is inclined to adopt the multiplier as '18', as per the ratio laid down by the Hon'ble Apex Court in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. It is also seen that the Tribunal has wrongly deducted 1/3rd towards personal expenses of the deceased. As the deceased was unmarried at the time of the accident, 1/2 should be deducted towards personal expenses of the deceased. Hence, it has to be corrected.

12. It is further seen that the Tribunal has awarded only a sum of Rs.5,000/- towards love and affection to the appellants/ claimants and this court is inclined to enhance the same to Rs.40,000/-. The Tribunal has awarded a meager sum of Rs.5,000/- each towards Funeral Expenses and Loss of estate. This court accepts the contention of the appellants/claimants that the amount awarded by the Tribunal towards funeral expenses and loss of estate are very low and this Court is inclined to increase the award at Rs.15,000/- each towards loss of funeral expenses and loss of estate respectively. Thus, the compensation awarded by the Tribunal is modified in the following manner:

S.No	Head	Amount granted in Rs.
1.	Income to be taken	5,000.00
2.	Adding 40% for future prospects	2,000.00
3.	Deductions of ½ for personal expenses of the deceased (Rs.7,000/- -Rs.3,500/-)	3,500.00
4.	Loss of dependency (Rs.3,500/- x 12 x 18)	7,56,000.00
5.	Loss of estate	15,000.00
6.	Love and affection	40,000.00
7.	Funeral expenses	15,000.00
	Total	8,26,000.00

Thus, the appellants/claimants are entitled to a sum of Rs.8,26,000/-, which shall carry 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 partly allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.2,07,096/- to Rs.8,26,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellants/claimants are directed to pay the court fee for the enhanced amount of Rs.6,18,904/- and the Registry is directed to draft the decree only after the payment of court fee.

(iv)The second respondent, the National Insurance Company Limited, is directed to deposit the entire amount, awarded by this Court along with interest and costs 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. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the appellants should file a petition and on receipt of the same. The Tribunal shall transfer the amount to the claimants' bank account through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

vkr

To
The Motor Accidents Claims Tribunal,
The Chief Judge,
Court of Small Causes, Chennai.

+2cc to M/s.A.N.Viswanatha Rao, Advocate SR.50451
+1cc to M/s.Surana & Surana, Advocate SR.51031
+1cc to Mr.D.Baskaran, Advocate SR.51008

C.M.A.No.734 of 2014

GP(CO)
CB(11/03/2020)