

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

C O R A M

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.20 of 2017
C.M.P.No.7632 of 2017

Reliance General Insurance Company Ltd,
570, Naigam Cross Road,
Next Royal Industries Estate,
Vadala (W),
Mumbai 400 031.
C/o The Manager,
Reliance General Insurance Co. Ltd.,
Rai's Towers, No.2054, 2nd Floor,
Next Senthil Nursing Home,
2nd Avenue, Anna Nagar West,
Chennai 600 040. 2nd Respondent/Appellant

Vs.

1.Bairappa

2.Rathnamma

3.Pavithra

4.Minor.Keerthana,
Rep.by her mother Pavithra, Petitioners/Respondent
Nos. 1 to 4

5.Sivasankar1st Respondent/respondent No.5

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act 1988 against the award and decree, dated
27.01.2010 made in M.C.O.P.No.193 of 2014, on the file of the
Motor Accident Claims Tribunal, Sub Court, Hosur.

For Appellant : Mr.S.Arun Kumar

For Respondents 1-4 : Mr.PA.Sudesh Kumar

For Respondent- 5 : Not ready in notice

JUDGMENT

(Judgement of the Court was delivered by Krishnan Ramasamy,J.,)

- 1.This Civil Miscellaneous Appeal has been preferred by the Appellant/ Insurance Company, challenging both the quantum of compensation and liability awarded by the Motor Accidents Claims Tribunal, Sub Court, Hosur, in and by its award, dated 27.01.2010, passed in M.C.O.P.No.193 of 2014.
- 2.When the matter is taken up for hearing, the learned counsel for the appellant/insurance company made a submission restricting his challenge with only against the quantum of compensation awarded by the Tribunal and he had made formal objections with regard to the fixation of liability.
- 3.The respondents 1 to 4 herein, who are the petitioners/claimants before the Tribunal are father, mother, wife and daughter of the deceased Madesh (late) respectively. It is the case of the claimants that on 15.03.2014, when the deceased was riding his TVS Star City Motor cycle bearing Registration No.TN 24 X 8889 along with his friend Mr.Amarnath who accompanied him as a pillion rider from Bangalore, when they proceeding on the TVS Company Road- Andhivadi Check Post Road, near Nanahini Petrol Bunk, the driver of the Ashok Leyland lorry bearing Registration No. TN 28 AJ 0474, which belongs to the 5th respondent /Sivasankar, which was insured with the Appellant insurance company, came in the opposite directions from Andhivadi Check Post Side, with high speed, in a rash and negligence manner and at an uncontrollable speed, without minding of the rules and regulation of the Motor Vehicle Act and dashed against the motor cycle driven by the deceased. Due to the impact of the accident, the deceased/rider of the motor cycle, sustained serious head injuries and died on the spot.
- 4.Hence, the claimants filed a Claim Petition against the insured as well as the insurer, claiming a sum of Rs.50,00,000/- along with 12% interest as compensation from the date of accident till the date of deposit.
- 5.On behalf of the claimants, the claimants have examined two witnesses PW.1, PW.2 and Exs.P1 to P8 were marked. On the side of respondents/Insurance company, RW.1 was examined and Exs.R1 to R4 have been marked.
- 6.After hearing both parties, the Tribunal awarded a compensation of Rs.24,85,500/- along with costs, in the following manner:

S.No.	Head	Award of the Tribunal
1	Loss of income	Rs. 20,65,500
2	Loss of consortium	Rs. 1,00,000
3	Loss of Love and Affection 2 and 4	Rs. 2,00,000
4	Funeral Expenses	Rs. 20,000
5	Loss of expectation of life and lost of Gratuitous services	Rs. 1,00,000
	Grand Total	Rs. 24,85,500

7.The Court below fixed the entire liability on the part of the 5th respondent-driver and given a finding that the 5th respondent-driver who drove the vehicle in a rash and negligent manner, dashed against the two wheeler, thereby, the rider of the two wheeler sustained severe injuries and died on the spot; further the pillion rider also sustained severe injuries.

8.An eye witness to the accident, who was examined as PW.1 deposed that the accident occurred due to rash and negligent manner of the driving of the driver of the lorry bearing Reg. No. TN 28 AJ 0474. Further, in the FIR also, it has been stated that the accident occurred due to rash and negligent manner of driving of the lorry. To refute this statement, the appellant/insurance company has not elucidated anything from the cross examination of the eye witness and produced any evidences to substantiate the contention, though they have denied the accident occurred due to rash and negligence of the lorry driver.

9.Under these circumstance only, the Tribunal has come to the conclusion that the accident occurred due to rash and negligent manner of the driver of the lorry and accordingly liabilities have been fixed against the owner of the lorry as well as the Insurance Company.

10.In view of these facts, we do not find anything infirmities in the judgment and decree passed by the Tribunal with regard to the fixation of negligence and liabilities. Accordingly, this Court confirmed the liabilities fixed by the Tribunal against the owner of the lorry as well as the Insurance Company.

11.With regard to the quantum of compensation awarded by the Tribunal, the learned counsel appearing for the

appellant/Insurance Company would contend that the Tribunal, while determining the compensation towards Loss of Income, has taken the notional monthly income of the deceased as Rs.9,000/-, which resulted in awarding exorbitant sum of Rs.20,65,500/- The learned counsel submitted that, in the present case, the accident occurred in the year 2014 and the age of the deceased at the time of the accident was 27 years and to prove the monthly income of the deceased, the claimants have not produced any documents. Therefore, learned counsel contended that the notional income fixed by the Tribunal at Rs.9,000/- in the absence of any income proof marked by the claimants is incorrect, and the award of the Tribunal towards Loss of Income requires appropriate reduction. In this regard, the learned counsel relied on the decision of the Hon'ble Supreme Court, in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014(1) TNMAC 459, wherein, the Hon'ble Supreme Court fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident in the year 2008. The learned counsel further contended that the Tribunal also erred in granting 50% towards future prospects and as per the law laid down by the Hon'ble Supreme Court, in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC), only 40% has to be added towards future prospects of the deceased for the age group of 27 years. Like the same, the compensation awarded by the Tribunal towards Love and Affection at Rs.2,00,000/- and Rs.1,00,000/- towards consortium to the wife of the deceased are also on the higher side. 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 (supra), wherein, a sum of Rs.40,000/- was awarded by the Hon'ble Apex Court under the separate head, filial consortium to the father of the deceased and a sum of Rs.40,000/- each as parental consortium to the children of the deceased. The learned counsel, further submitted that the Tribunal has awarded a sum of Rs.1,00,000/- towards Loss of Expectation of Life and Loss of Gratuitous Services and no such compensation can be awarded under the separate head, instead, the Tribunal could have awarded a sum of Rs.15,000/- towards Loss of Estate. Further, he contended that sum of Rs.20,000/- awarded by the Tribunal towards Funeral Expenses is excessive. Therefore, the learned counsel sought for a suitable reduction in the compensation amount awarded by the Tribunal.

12. The learned counsel for the respondents/claimants 1 to 4 has fairly agreed with the Constitution Bench Judgement of the Hon'ble Apex Court. Therefore, we are inclined to add only 40% towards future expense, instead of 50% added by the Tribunal.

13. Though the claimants have not marked any documents, to prove the income of the deceased, however, on the side of the appellant/Insurance Company, no document was marked to dispute the age, income of the deceased and in the absence of any document to controvert the income of the deceased, the Tribunal by taking into consideration that the deceased an Agriculturist Cum Real Estate Agent, has rightly taken the notional monthly income of the deceased at Rs.9,000/- per month. Therefore, we do not find any infirmity in the fixation of the notional income of the deceased by the Tribunal. However, so far as 50% added by the Tribunal towards future prospects is concerned, we feel the same to be on the higher side and by following the ratio fixed by the Hon'ble Supreme Court, in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC), we refix the future prospects fixed by the Tribunal at 40% instead of 50%. So far as the adoption of multiplier by the Tribunal and deduction made towards personal expenses of the deceased are concerned, since the deceased was aged 27 years at the time of the accident, the Tribunal has rightly adopted multiplier of '17' as held by the Hon'ble Supreme Court, in Sarla Varma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. There are four claimants, the Tribunal had rightly deducted 1/4th towards his personal expenses and we confirm the same. Thus, we determine the compensation towards Loss of Income in the following manner :- i.e. (Rs.9,000/- + Rs.3,600/- (40%) x 3/4 x 12 x 17) =Rs.19,27,800/-

14. The 3rd respondent is the wife of the deceased Madesh. The Tribunal has fixed a sum of Rs. 1,00,000/- towards loss of consortium. However the said amount is on the higher side, the Hon'ble Supreme Court, in Pranay Sethi's case (supra) standardized the amount to be awarded towards loss of consortium as Rs.40,000/- to the wife. For loss of love and affection as Rs.40,000/- to the children in the forum of parental consortium and Rs.40,000/- to each of the parents towards Filial consortium for loss of their son.

15. In so far as the compensation to be awarded to the father and mother of the deceased is concerned, viz., the first and second respondents, in the light of 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 (supra), we are inclined to award a sum of Rs.40,000/- each to the first and second respondents, under the separate head, Filial Consortium and a sum of Rs.40,000/- as parental consortium to the 4th respondent. Following the principle laid down by the Hon'ble Apex Court in Pranay Sethi case (supra), we inclined to award a sum of Rs.40,000/- towards "loss of consortium" to the

wife of the deceased, instead of a sum of Rs.1,00,000/- as awarded by the Tribunal. Therefore, this Court is inclined to reduce the award of the Tribunal towards love and affection to a sum of Rs. 1.2 lakhs in the form of Filial and Parental consortium, instead of Rs.2 lakhs awarded by the Tribunal. The Tribunal awarded a sum of Rs. 20,000/- towards funeral expenses, since the same is on the higher side, therefore this Court is inclined to reduce the same to Rs.15,000/-. Further, it is seen from the award of the Tribunal that no amount was awarded to the Loss of Estate, and therefore this Court is inclined to award a sum of Rs.15,000/- towards Loss of Estate.

16.The Tribunal awarded Rs,1,00,000/- towards loss of expectation the life and loss of gratuitous services but however since this Court already awarded compensation towards the loss of income and as well as loss of love and affection, nothing is required to be awarded in the form of loss of expectation of life and loss of gratuitous services as ordered by the Tribunal. Therefore, this Court is inclined to set aside the award of Rs.1 lakhs granted by the Tribunal towards loss of expectation of life and loss of gratuitous services.

17.Accordingly this Court has reduced the award amount from Rs. 24,85,500/- to a sum of Rs. 21,17,800/- in the following manner as stated below:

S.No.	Head	Award modified by this Court
1	Loss of income	Rs. 19,27,800
2	Loss of consortium (wife)	Rs. 40,000
3	Loss of parental consortium (minor daughter)	Rs. 40,000
4	loss of filial consortium (father and mother of the deceased) (40,000 x 2)	Rs. 80,000
5	Loss of estate	Rs. 15,000
6	Loss of funeral expense	Rs. 15,000
	Grand Total	Rs. 21,17,800

18. The appellant/Insurance Company is directed to deposit the entire amount with interest at the rate of 7.5% from the date of claim petition till the date of deposit, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment.
19. This Court also directs the Tribunal to transfer the entire award amount to the claimants by way of RTGS to their respective bank accounts directly within a period of three weeks from the date of deposit of the award amount along with interest, in the event, if any award amount already deposited, the Tribunal is directed to transfer the entire amount in the manner stated below to the claimants within a period of three weeks from the date of the receipt of award:
- the first claimant is entitled to a sum of Rs.1,50,000/-
 - the second claimant is entitled to a sum of Rs.1,67,800/-
 - the third claimant is entitled to a sum of Rs.12,00,000/-
 - the Fourth claimant is entitled to a sum of Rs.6,00,000/-
20. So far the share in respect of the minor claimant is 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 mother of the minor claimant is permitted to withdraw accrued interest once in three months.
21. In the result, this appeal is partly allowed, by reducing the compensation amount from Rs.24,85,500/- to Rs. 21,17,800/- . with 7.5% interest as stated supra. No costs. Consequently, connected miscellaneous petition is also closed. Needless to point out that the claimants shall pay the necessary Court fee, if any, before receiving the copy of this judgment.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs

To

The Subordinate Judge
Motor Accident Claims Tribunal, Subordinate Court, Hosur.

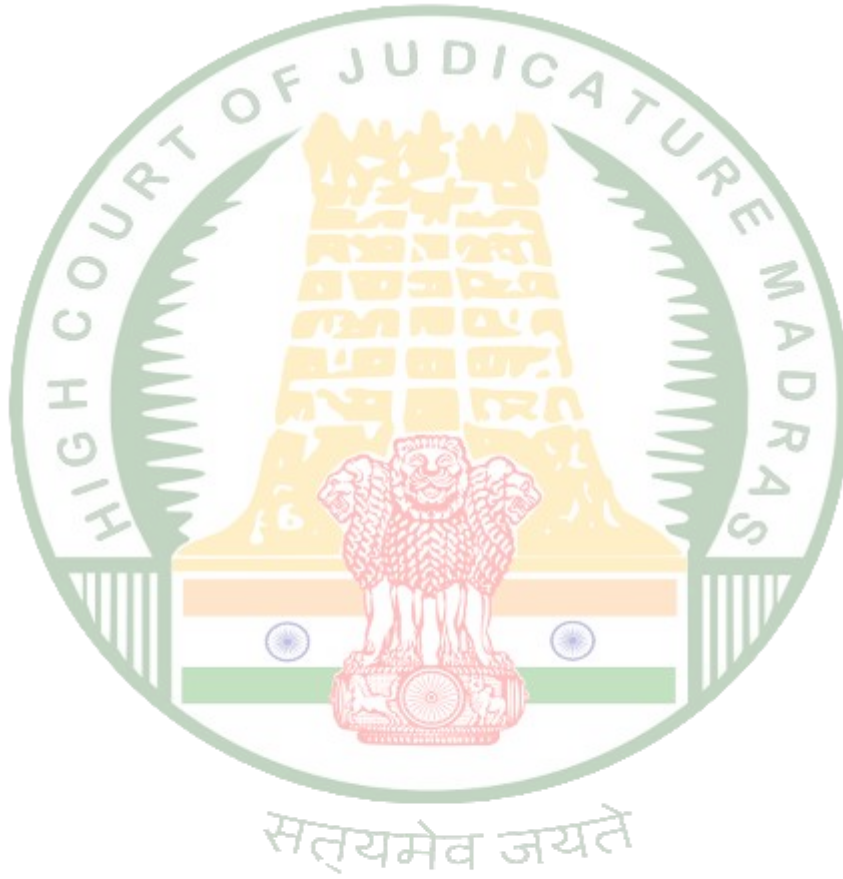
Copy to

The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Arun Kumar, Advocate sr 101740.
+1 CC to Mr.PA.Sudesh Kumar, advocate sr 100994.

C.M.A.No.20 of 2017
C.M.P.No.7632 of 2017

EV (CO)
SP (04/06/2020)



WEB COPY