IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM
C.M.A.No. 2157 of 2017
and CMP.No. 11467 of 2017

The Oriental Insurance Co.Ltd.,
D.O. II Floor, S.V. Complex 179,
Easwaran Koil Salai,
Puducherry-605001. ..Appellant /2nd Respondent

Vs.

1. Premsagar Yadave
2. Urmiladevi
3. Missionaries of Charity, Puducherry,
   Anbu Nilayam, Reddiyarpalayam,
   Puducherry. ..Respondents/Petitioners 1 & 2 and 1st Respondent

PRAYER in : Civil Miscellaneous Appeal filed under Section 173 of MV Act against the Judgment and decree dated 18.04.2016 passed in MCOP. No. 304 of 2012 on the file of the Motor Accidents Claims Tribunal (I Addl. Sub Court) Cuddalore.

For Appellant : Ms. M.Bharathi
For M/s. S. Manohar
For Respondents : Mr.D.S.Thirumavalavan - R1 & R2
R3- Exparte

JUDGMENT

This Civil Miscellaneous has been preferred against the judgement and decree dated 18.04.2016 passed in MCOP. No. 304 of 2012 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.I), Small Causes Court, Chennai.

2. Brief facts leading to the claim application are as follows;

2.1 On 11.06.2011 at about 11.30 hrs, when the claimant was standing on the extreme mud portion of Puducherry-Villupuram

Main Road, near Maruthur Road, Kandamanglam, the 1st respondent's Tempo Traveller Regn.No. PY01-AD-9975 came at a great speed in a rash and negligent manner, without making horn, and dashed against a bicyclist, a motor cyclist and then dashed against the claimant. As a result, the claimant sustained multiple grievous and took treatment. The accident occurred due to the negligence on the part of the driver of the 1st respondent's tempo traveller. Inspite of the effective treatment the healh condition was not restored and the parents of claimant also put to lot of mental agony and incurred huge medical expenses. Hence, he claimed sum of Rs.50,00,000/- as compensation.

2.2 The insurance company in their counter statement denies the mode of accident by stating that it is the petitioner who negligently crossed the highway without noticing the vehicles on the road and invited the accident. Therefore,the claimant is responsible for the accident and the petition is not maintainable. The sum claimed on various heads also exorbitant.

2.3 The tribunal after analysing the oral pleading, documents and evidence, has concluded that the accident had occurred only to due to rash and negligent driving on the part of the driver of the 1st respondent vehicle and awarded a sum of Rs.7,54,000/- as compensation under various heads. Aggreived against the said liability, the insurance company has preferred this appeal to set aside the award passed by the tribunal

2.4 The grievance of the appellant/insurance company is that there is no proof of death of the victim and that no post-mortem and death certificate were filed to prove the same.The further grievance raised by the appellant is that no medical records produced by the claimant for the continuous treatment of 3 years since the death occured in the meantime 2013 when the date of accident was on 11.06.2011, since no proof for death of the victim were filed before the tribunal, hence the finding of the tribunal in the above said aspect is not reasonable one. The sum awarded as compensation under various heads are excessive and awarded without following the precedents of the Supreme Court as well as this Court.

3. Heard both sides and perused the documents available on record.

4. On perusal of records, it is seen that the deceased was 18 years old, sustained number of injuries and was studying 10th standard at the time of the accident. Ex.P5 -accident register reveals the fact that the deceased sustained grievous injuries

and also there was huge blood loss due to the said accident. Apart from taking treatment in the Venkateswara Medical College Hospital, he was also given treatment in Appollo Hospital. As per Ex.P7 - Discharge summary, he under gone surgery on 14.06.2011 and discharged from hospital on 18.07.2011. As per Ex.P6- Discharge summary, he was given treatment for the C6,C7 facial reduction and his spinal cords were very much affected due to the said accident. It is also seen that he has also taken treatment in Geetha Hospital at Uttarpradesh and no documents were filed by the claimant to prove the continuous treatment taken by him. However, PW8- doctor had deposed that due to the said accident, his nerves system and lungs were severely affected, which may cause infection in future and leads to death. Though the claimant has not produced any medical evidence for his continuous treatment, since he died after two years of accident, the tribunal has relied upon the evidece of PW8 and has come to the conclusion that the death caused to the deceased only due to the greivous injuries suffered by him in the said accident.

5. The main argument of the appellant/Insurance Company is that it could not be acceptable that he died in the year 2013 due to injuries sustained by him in the year 2011. It is seen that no post-mortem certificate was produced before the tribunal to prove the cause of death of the deceased. But, the tribunal on considering the document Ex.P8, wherein the doctor has described the nature of injuries and also stated that the nerves system and lunges were severely damaged and his spinal was also got damaged and he could travel only by train or Flight. The tribunal by considering the said facts has concluded that during the period of treatment i.e after discharge from the hospital, his lungs got infected that also likely to be the reason for the death of the deceased. Though it is vehemently contended by the appellant/insurance company that the claimants have not produced any document to prove the continuous treatment, it is seen that they have also not produced any documents to prove that the deceased had lived in normal condition after discharge from the hospital. Hence, the tribunal has concluded that the injured had died only due the injuries sustained by him in the accident that took place in the year 2011. This Court finds no error in the said findings of the tribunal.

6. With regard to the compensation determined by the tribunal, the age of the deceased was 18 years, while determination of income, the tribunal has discussed that even if the deceased was working as collee, definitely he would have earned Rs.5,000 per month, and on the said basis, has fixed the

monthly income at Rs.5000/- and calculated the loss of income at Rs.5,60,00 /- by deducting 1/3 towards personal expenses and applying the multiplier 14.

7. The other arguments of the appellant is that if the deceased is unmarried and there cannot any sum of consortium at Rs.1 lakh. In this connection, it is relevant to extract the judgment of the High Court of Punjab and Haryana in the case of Oriental Insurance Company Vs. Mohindro Devi and Others.

> "7. Although, as per paragraph 61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), `40,000/- is payable on account of loss of spousal consortium, yet as per the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, it has been held that "consortium" is a compendious term 3 of 8 FAO No.10136 of 2014 (O&M;) which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'" and `40,000/- each was awarded to the father and sister of the deceased on account of loss of filial consortium. Relevant extract of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra) as well as in Magma General Insurance Co. Ltd.'s case (supra) is reproduced as under:-
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> 61(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be `15,000/-, `40,000/- and `15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."
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> 8.7 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 ofConsortium. 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 4 of 8 FAO No.10136 of 2014 (O&M;) loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."4 Parental consortiumis 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.

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 5 of 8 FAO No.10136 of 2014 (O&M;) child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of FilialConsortium. 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 count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of FilialConsortium. 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."

8. In view of the above decision, this Court finds it proper in awarding a sum of Rs.1,00,000/- to the parents of the deceased, who lost their son at the young age under the head 'Loss of Consortium', the same is confirmed.

9. With regard to the sum awarded under the head love and affection is not on the higher side. The sum awarded under the funeral expenses is reduced from Rs.24,000/- to Rs.15,000/. Regarding the sum under head 'Transporation expenses at

Rs.20,000/-, it is seen that the deceased was given treatment from the year 2011 to 2013 in various hospitals and the observation also made by the doctor to the effect that the injured can travel only train or flight because of his health condition and hence the sum awarded under the head is enhanced to Rs.50,000/-.

10. Further, this Court by taking into consideration the fact that the claimants/parents herein have accompanied their son for his treatment who sufferred severed injuries and taken treatment for three years i.e. till his death, is inclined to grant some amount under the head 'Mental agony'. Accordingly, a sum of Rs.50,000/- is granted under the head 'Mental Agony'.]

Accordingly, the sum awarded by the tribunal is modified as follows

Head	Sum awarded by the tribunal (Rs.)	Sum modified by this Court. (Rs.)
Loss of Income	5,60,000	5,60,000
Loss of Consortium	1,00,000	1,00,000
Loss of Love and Affection	50,000	50,000
Funeral Expences	24,000	15,000
Transport Expenses	20,000	50,000
Mental Agony	....	50,000
Total	7,54,000	8,25,000

11. In view of the above enhancement, this Civil Miscellaneous Appeal is dismissed .No costs. Consequently, connected Miscellaneous Petition is closed. The claimants/respondents 1 & 2 herein are directed to pay the additional court fee for the enhanced award amount.

12. The appellant/Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest at 7.5% per annum and costs, before the Tribunal as per the apportionment ordered by the tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank accounts thro' RTGS within one week thereon. The rate of interest for the modified amount shall carry 7.5% per annuam.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal
Cuddalore

+1 cc to M/s.S.Manohar,Advocate Sr.No. 48289
+1 cc to M/s.D.S.Thirumavalavan, Advocate Sr.No.48301

AKM/22.11.19/7P-4C /

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