IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2019

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.2311 of 2017
and
C.M.P.No.12370 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam)
Limited, Railway Station New Road,
Kumbakonam - 612 001. ... Appellant /Respondent

vs.

1.C.V.Jeyvilasinee
2.L.Natarajan
... Respondents/Petitioners

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 11.02.2016 made in M.C.O.P.No.89 of 2015 on the file of the Motor Accidents Claims Tribunal (Special District Judge), Thiruvallur.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.M.Murali

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is filed against the order of the Tribunal in M.C.O.P.No.89 of 2015 on the issue qua the quantum.

2.The respondents/claimants are the parents of the deceased. When the deceased was riding his motorcycle it colluded with the vehicle of the appellant and the deceased died on the spot. For the death of their only son, the respondents herein filed a claim petition, claiming a sum of Rs.79 lakhs as compensation.

3.The Tribunal passed an award for a sum of Rs.67,01,184/- and it was accordingly apportioned between the claimants who are the parents of the deceased by granting Rs.37,01,184/- to the first respondent and Rs.30 lakhs to the second respondent. The monthly income of the deceased was fixed at Rs.63,492/- by adding 50% of the actual salary towards future prospects. By adopting 17 multiplier and after deducting 50% of the amount towards the personal expenses of the deceased, the Tribunal arrived at the pecuniary loss at Rs.64,76,184/-. A sum of Rs.25,000/- has been awarded for funeral expenses and Rs.2 lakhs has been awarded towards loss of love and affection.

4.Learned counsel appearing for the appellant has contended that the Tribunal has committed an error in adding 50% towards future prospects as against 40% as per the judgment of the Apex Court in National Insurance Company Limited Vs. Pranay Sethi and Others ((2017) 16 SCC 680). Similarly, a sum of Rs.2 lakhs ought not to have been awarded as against Rs.80,000/- awarded in the said judgment. Learned counsel submitted that inasmuch as the deceased was working as an Auditor in a private company on permanent job, the Tribunal was not right in awarding 50% towards future income.

5.Learned counsel appearing for the respondents would submit that what is applicable is sub para (iii) of para 61 of the judgment of the Apex Court referred supra. As there is no dispute on the fact that the deceased was having permanent employment, the distinction sought to be made between the Government Servant and other employment cannot be sustained. Even the pay slip of the deceased which has also been relied upon by the appellant would show that it includes all other emoluments viz., house rent allowance, city allowance, special allowance etc., Therefore, the salary is not fixed.

6.In such view of the matter, the Tribunal has rightly fixed the amount towards pecuniary loss. Insofar as the amounts awarded towards loss of love an affection, learned counsel would fairly submit that the ratio laid down by the Apex Court in the judgment referred supra can be followed.

7.Insofar as the fixation of monthly income is concerned, we do not find any error in the award passed by the Tribunal. The Tribunal has rightly taken into consideration the future prospects at 50%. There is no dispute with respect to the multiplier adopted by the Tribunal. Admittedly, the employment of the deceased is permanent employment. The judgment of the Apex Court cannot be made applicable to the Government employees alone. The pay slip also would fairly show that the salary is not fixed. Therefore, we are not inclined to interfere with the aforesaid rationale adopted by the Tribunal.

8.Coming to the other issue, the Apex Court was pleased to hold that what is available to the parents by way of filial consortium is only Rs.40,000/-. This could be applied even to the parents, who lost their only son. It is useful to refer to the recent judgment of the Apex Court, wherein in para 8.7, it has been held as under:

> "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 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.
>
> 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, cooperation, affection, and aid of the other in every conjugal relation."
>
> 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 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 count. However, there was no clarity 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."

9.Inasmuch as the aforesaid decision has been rendered by taking note of the earlier judgment of the Apex Court in National Insurance Company Limited Vs. Pranay Sethi and Others ((2017) 16 SCC 680) referred supra, we are of the view that the claimants are entitled for a sum of Rs.40,000/- each towards filial consortium. Accordingly, the award of the Tribunal is reduced by Rs.1,20,000/- and fixed at Rs.65,81,180/-.

10.The Civil Miscellaneous Appeal stands allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

11.It is submitted by the learned counsel appearing for the appellant that part of the compensation amount has already been deposited. The appellant Transport Corporation is directed to deposit the modified compensation amount along with proportionate interest to the credit of M.C.O.P.No.89 of 2015 on the file of the Motor Accidents Claims Tribunal (Special

District Judge), Thiruvallur, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw their respective shares along with proportionate interest.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Thiruvallur.

2.The Record Keeper,
V.R. Section, High Court, Madras.

+1cc to M/S.D.Venkatachalam, Advocate Sr.12371

C.M.A.No.2311 of 2017

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srg 26/04/2019