IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.09.2018

Delivered on : 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.316 of 2017

1.Malliga
2.Kokiladevi
3.Minor Karnan
4.Angammal
5.Selvaraj .. Appellants/Petitioners
(The Minor 3rd appellant herein are represented by their next friend 1st petitioner, mother)

Vs.

1.D.Premalatha

2.The United India Insurance Company Ltd.,
Branch Office-III,
Arjuna Towers,
IInd Floor,
248/164, Cherry Road,
Salem. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.07.2015 made M.C.O.P.No.1884 of 2014 on the file of Motor Accident Claims Tribunal (Special District Judge), Dharmapuri.

For Appellants : Mr.S.Sathiaseelan

For Respondents : Mr.T.Ravichandran (for R2)
No Appearance (for R1)



JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.13,40,000/- awarded by the Tribunal for the death of the deceased Sundaram in the accident, the appellants, who are wife, children and parents have preferred the Civil Miscellaneous Appeal seeking enhancement of compensation.

2. Heard the learned counsel for the appellants and the learned counsel for the second respondent.

3. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the driver of the first respondent drove the bus in a rash and negligent manner and caused the accident and the second respondent being the insurer of the offending bus bearing registration No.TN-30 AH 1090 is liable to pay the compensation to the appellants. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the second respondent to pay the compensation is confirmed.

4. The only point that arises for consideration in this appeal is whether the appellants are entitled to get enhanced compensation and if so, to what extent.

5. According to the appellants, at the time of accident, the deceased Sundaram was working as driver in Wish Fruit Drink Company, Salem and was getting daily batta of Rs.250/- apart from monthly salary of Rs.1,500/-. However, the Tribunal erred in taking the monthly income of the deceased at Rs.8,000/- and awarded lesser compensation.

6. In her evidence, P.W.1-Mallika deposed that her husband was working under P.W.3 and was drawing salary of Rs.1,500/- per month. She further deposed that her husband was receiving daily batta of Rs.250/-. P.W.1 also produced Ex.P8-salary certificate issued by the Proprietor of Wish Fruit Drink Company, Salem.

7. The Tribunal held that since there was no correlation in respect of Ex.P8-salary certificate and also the appellants failed to produce salary disbursal register, it would be appropriate to fix the monthly salary of the deceased at Rs.8,000/- and accordingly, the Tribunal has fixed the monthly income of the deceased at Rs.8,000/- for determining the loss of dependency.



8. The learned counsel for the appellants contended that when the appellants have proved the monthly income of the deceased by way of production of salary certificate and by examining the employer, the Tribunal ought to have taken the monthly income of the deceased as mentioned in the salary certificate. This Court finds some force in the submissions made by the learned counsel for the appellants.

9. On a perusal of Ex.P8-salary certificate, it is seen that the Proprietor of Wish Fruit Drink, Salem certified that the deceased was working in their company as driver and he was paid Rs.250/- as daily batta apart from the monthly salary of Rs.1,500/-. The second respondent has not produced any rebuttal evidence in respect of Ex.P8-salary certificate. When the appellants have proved the avocation and had also proved the monthly earnings of the deceased, the Tribunal ought to have considered Ex.P8-salary certificate and accordingly, determine the compensation. As stated supra, in the absence of rebuttal evidence in respect of salary of the deceased, this Court is inclined to take note of the salary mentioned in Ex.P8 and accordingly, fixed the monthly income of the deceased at Rs.10,000/-.

10. In the case on hand, while determining the compensation, the Tribunal has not taken note of the future prospects of the deceased. The learned counsel for the appellants argued that the Tribunal ought to have taken note of the future prospects considering the age of the deceased and 30% addition should be made. In support, the learned counsel for the appellants relied upon the decision in National Insurance Co. Ltd. v. Pranay Sethi and others, reported in 2017 (6) CTC 493.

11. In Pranay Sethi, supra, the Hon'ble Supreme Court held as under:

> "61. ......
> (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards Future Prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of deceased was between 40 to 40 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

12. Admittedly, in the present case, the deceased was aged 40 years at the time of accident and the same has been proved by way of Ex.P2-post-mortem certificate. The second respondent has not disputed Ex.P2. Taking note of the age of the deceased as 40 years and following the decision of the Hon'ble Supreme Court in Pranay Sethi, supra, it would be appropriate to give 30% addition towards future prospects. Adding 30% on the actual salary of Rs.10,000/-, the monthly income of the deceased is calculated at Rs.13,000/-, i.e., Rs.1,56,000/- per annum.

13. The dependent members of the deceased family are 5 in numbers. Therefore, one-fourth deduction has to be made towards personal and living expenses of the deceased. Deducting one-

fourth, the contribution to the family would comes to Rs.1,17,000/- per annum.

14. Since the deceased was aged 40 years, the multiplier to be adopted is 15. Adopting multiplier 15, the loss of dependency is calculated at Rs.17,55,000/-. Accordingly, a sum of Rs.17,55,000/- is awarded towards loss of dependency, as against Rs.10,80,000/- awarded by the Tribunal.

15. The Tribunal awarded Rs.1,00,000/- towards loss of consortium to the first appellant. With respect to conventional heads, Hon'ble Supreme Court in the case of Pranay Sethi (supra), in para No.61 (viii) held that, reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/, Rs. 40,000/- and Rs. 15,000/- respectively.

16. Following the decision of the Hon'ble Supreme Court in Pranay Sethi (supra), a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of consortium to the first appellant is reduced to Rs.40,000/-. Similarly, Rs.25,000/- awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and this Court is inclined to award Rs.15,000/- towards loss of estate.

17. In Magma General Insurance Company Ltd. v. Nanu Ram alias Chuhru Ram and others, Civil Appeal No.9581 of 2018, decided on 18.9.2018, the Hon'ble Supreme Court considered awarding of compensation under the heads parental consortium and filial consortium. In the aforesaid decision, in para 8.7, the Hon'ble Supreme Court held as under:

> "8.7. A Constitution Bench of this Court in Pranay Sethi (2017) 16 SCC 680 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 defied 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."

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 a 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 life time. Children are valued for their love, affection, companionship and their role in the family unit.

......

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."

18. In the present case, the appellants 2 and 3 are daughter and son and the appellants 4 and 5 are parents of the deceased. Following the decision of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. v. Nanu Ram alias Chuhru Ram and others, supra, this Court is inclined to award a sum of Rs.1,60,000/- (Rs.40,000 payable to each of appellants 2 to 5) towards parental consortium and filial consortium respectively.

19. The Tribunal awarded Rs.10,000/- towards transportation charges. Since Rs.10,000/- awarded by the Tribunal towards transportation is reasonable, the same is maintained.

20. In view of the above discussion, the total compensation of Rs.13,40,000/- awarded by the Tribunal is enhanced to Rs.20,00,000/- as under:

| | | | |
|---|---|---|---|
| Loss of dependency | : | Rs.17,55,000.00 | |
| Loss of consortium to first appellant | : | Rs. | 40,000.00 |
| Funeral expenses | : | Rs. | 15,000.00 |
| Loss of estate | : | Rs. | 15,000.00 |
| Transport charges | : | Rs. | 10,000.00 |
| Parental consortium to appellants 2 and 3 (Rs.40,000/- each) | : | Rs. | 80,000.00 |
| Filial consortium to appellants 4 and 5 (Rs.40,000/- each) | : | Rs. | 80,000.00 |
| Total | | Rs.19,95,000.00 | |
| Rounded off to | : | Rs.20,00,000.00 | |

21. Out of total compensation of Rs.20,00,000/-, the first appellant is entitled to Rs.8,00,000/-, the appellants 2 and 3 are entitled to Rs.4,00,000/- each and the appellants 4 and 5 are entitled to Rs.2,00,000/- each.

22. By relying upon the decisions of the Hon'ble Supreme Court in Puttamma and others v. K.L.Narayana Reddy and another, reported in (2013) 15 SCC 45 and Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, reported in (2015) 3 SCC 590, the learned counsel for the appellants prayed enhancement of rate of interest to 12% per annum.

23. In Puttamma and others v. K.L.Narayana Reddy and another, supra, the Hon'ble Supreme Court held:

> "66. ... We, accordingly, set aside the impugned judgment and hold that the claimants are entitled for total compensation of Rs.23,43,688. They shall also get interest on the enhanced compensation at the rate of 12% per annum from the date of filing of the complaint petition. Respondent 2 Insurance Company is directed to pay the enhanced/additional compensation and interest to the claimants within a period of three months by getting prepared a demand draft in their name."

24. In Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, supra, the Hon'ble Supreme Court held:

> "16.The appellants are also entitled to the interest on the compensation awarded by this Court in these appeals @ 9% p.a. along with the amount under the different heads as indicated above. The courts below have erred in awarding the interest @ 8% p.a. on the compensation awarded by them to the appellants without following the decision of this Court in MCD v. Uphaar Tragedy Victims Association, (2011) 14 SCC 481. Accordingly, we award the interest @ 9% p.a. on the compensation determined in these appeals from the date of filing of the application till the date of payment.

25. In Puttamma and others v. K.L.Narayana Reddy and another , supra, the Two Judges Bench of the Hon'ble Court held that the enhanced compensation should carry interest at the rate of 12%, whereas in the latter decision of the Hon'ble Supreme Court in Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, supra, the Three Judges Bench of the Hon'ble Supreme Court awarded interest at the rate of 9%. Since the decision is Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, supra, is of a Three Judges Bench, this Court is inclined to follow the decision in Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, supra. Following the decision of the Hon'ble Supreme Court in Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, supra, this Court is enhancing the rate of interest from 7.5% per annum to 9% per annum.

26. In the result, the Civil Miscellaneous Appeal is allowed with costs. The total compensation of Rs.13,40,000/- awarded by the Tribunal is enhanced to Rs.20,00,000/- payable

with interest at the rate of 9% per annum from the date of claim petition till the date of deposit. The second respondent insurance company is directed to deposit the modified compensation with interest aforesaid within a period of eight weeks from the date of receipt of a copy of this judgment. Out of the total compensation of Rs.20.00 lakhs, the first appellant is entitled to Rs.8,00,000/-; the appellants 2 and 3 are entitled to Rs.4,00,000/- each and the appellants 4 and 5 are entitled to Rs.2,00,000/- each with accrued interest. On such deposit, the appellants 1, 2, 4 and 5 are permitted to withdraw their respective shares along with accrued interest. The amount in respect of minor 3rd appellant is concerned, the same is ordered to be invested in anyone of the nationalised bank till the minor 3rd appellant attains majority and the first appellant is permitted to withdraw the accrued interest once in three months directly from the bank. The appellants are directed to pay the deficit Court fee within a period of four weeks from the date of receipt of a copy of this Judgment.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To
The Motor Accident Claims Tribunal
(Special District Judge), Dharmapuri.

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+1 cc to M/s.S.Sathiaseelan Advocate sr 23256
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