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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11 .03.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD) No.689 of 2015

AND

C.M.P (MD).1 of 2015

The Bajaj Allianz General Insurance Company Ltd.
Rep. through its Divisional Manager,
office Branch No.1080,
3rd Floor, United Hampers,
Sathy Road, Ganapathy,
Coimbatore.

... Appellant/2nd Respondent

Vs.

1.Minor B. Selvi Naveena

2.Minor B. Janaha Sree

*(Minor Respondents 1 & 2 represented through
their grandmother/natural guardian N.Rengammal)*

...Respondents No.1 and 2/
Petitioners

3.N.Rengammal

... 3rd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.02.2015, made in M.C.O.P.No.701 of 2012 on the file of the Motor Accident Claims Tribunal/V-Additional District Court, Madurai.

For Appellant :Mr.J.S.Murali

For Respondents :Mrs.Muthukamatchi
for Mr.K.K.Ramakrishnan

* * * * *

JUDGMENT

It is a most unfortunate case in which minor children lost their parents in the same accident before their eyes, when they were travelling together with their parents, in their car on 18.01.2011 from Nochipatti to Ambasamuthiram, driven by their father who lost his control and hit against the median wall on the Four-Way Line Road and subsequently hit against the bus bearing Regn. No.KA11 C 0001 and the car was completely ravaged. Children witnessed their parents dying before their eyes. Therefore, the claim petitions were filed seeking compensation for the death of mother as well as father. The claim petition filed for the death of the father was dismissed as he was the tort-feasor and in the claim petition with regard to compensation for the death of their mother, they were awarded a sum of Rs.22,12,000/- which is being challenged before this Court, by the Insurance Company.



2. Heard Mr. J.S.Murali, learned counsel appearing for the appellant / Insurance Company and Mr.V.Muthukamatchi, learned counsel appearing for the respondents.

3. The only point which has been canvassed before this Court is only with regard to quantum of compensation. Therefore, the issue regarding the negligence is not in dispute and it has attained finality, as there is no challenge by the Insurance Company.

4. The learned counsel appearing for the appellant would submit that the Tribunal erroneously took Rs.6,000/- as monthly income of the deceased mother of the respondents which is contrary to the Division Bench Judgment of this Court reported in **2009 (1) TNMAC 671 (National Insurance Company Limited Vs. Minor Deepika and others)**. In that case, this Court determined the monthly income of an Home Maker at Rs.3,500/- whereas the learned counsel appearing for the respondents would submit that amount determined by the Tribunal is in consonance with the Judgment of this Court reported in **2014 (2) TNMAC 310 (Managing Director, Tamil Nadu State Transport Corporation Limited Vs. S.A.Kannan and two others)**.

5. It was claimed that the deceased mother viz., Parimala Devi, aged about 29 years was doing textile business and earning Rs.15,000/- per month. But, the Tribunal in the absence of any proof regarding the income, determined the income at Rs.6,000/- per month. However, Mr.J.S.Murali, learned counsel appearing for the appellant would submit that for home maker Rs.6,000/-per month is on the higher side, in view of the judgment of the Division Bench of this Court reported in **2009 (1) TNMAC 671 (National Insurance Company Limited Vs. Minor Deepika and others)**. In that case, the accident occurred as early as on 26.03.1999. Whereas in the instant case, the accident occurred on 18.01.2011, nearly after 12 years. The income of the Home maker cannot remain static, even after passage of more than a decade. The same Division Bench liberally dealt with services of a home maker referring to the General Recommendation No.17 of the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW). It also referred to the Note by UNICEF in 2000 that "unpaid care work is the foundation of the human experience". Even otherwise services of a Home Maker who performs the role of many cabinet ministers like Finance Minister and Home Minister etc., without accepting anything monetary benefits from the family members cannot be estimated in terms of money. Therefore, Rs.6,000/- determined by the Tribunal is in consonance with the Judgment of this Court reported in **2014 (2) TNMAC 310 (Managing Director, Tamil Nadu State Transport Corporation Limited Vs. S.A.Kannan and two others)** which is very reasonable and the same is confirmed.

6. In fact, when the lady died, she was hardly 29 years and therefore, naturally 50% has to be added towards future prospects and it is not as if only the men alone could earn. In any event 50% future prospects is not added by this Court, taking into

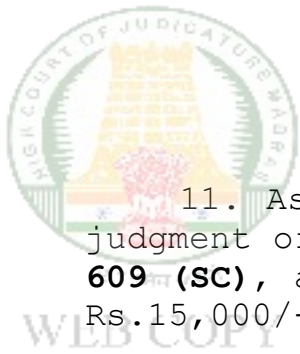
consideration that 1/3rd deduction was not made by the Tribunal towards personal expenses, relying upon the Division Bench Judgment of this Court reported in **2009 (1) TNMAC 671 (National Insurance Company Limited Vs. Minor Deepika and others)**, wherein the child lost both the parents. Therefore, this Court confirms not only Rs.6,000/- determined by the Tribunal, but also non-deduction of 1/3rd towards personal expenses.

7. The age of deceased Parimala was rightly determined as 29 years as per the Post-mortem Certificate Ex.P2. As per the judgment of the Honourable Supreme Court reported in **Sarla Verma vs. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, the appropriate Multiplier "17" was rightly adopted by the Tribunal. Therefore, the loss of dependency arrived at Rs.6000x12x17 = Rs.12,24,000/- is confirmed as reasonable.

8. Mr.J.S.Murali the learned counsel appearing for the appellant would submit that Rs.2,00,000/- awarded by the Tribunal towards loss of love and affection to each of the minors is on the higher side. Both the children were hardly aged about 7 years and 2 years. The fate was very cruel to snatch the lives of both the parents of the respondents/claimants in the accident. If one parent is available, the said parent would have taken care of the children. Here in this case, the respondents/claimants have become almost like orphans depending upon grandparents. Therefore, this Court cannot treat this case like any other case. Moreover, the Tribunal very rightly and appreciably awarded a sum of Rs.2,00,000/- to each of the minors relying upon the Judgment of the Hon'ble Supreme Court in **Vimal Kanwar and others v. Kishore Dan and others** reported in **2013 (1) TN MAC 641(SC)**.

9. The Tribunal had awarded Rs.1,00,000/- each towards loss of guidance as per the decision of the Hon'ble Supreme Court in **Kalpanaraj and others v. Tamil Nadu State Transport Corporation** reported in **2014 (1) TN MAC 708 (SC)**. However, this Court is of the view that loss of love and affection and loss of care and guidance are one and the same. Therefore, the amount awarded under the said head is cancelled. But this Court is inclined to award a sum of Rs.1,00,000/- to each of the minor children towards Loss of Expectation of life as per the decision of the Hon'ble Supreme Court in **Kalpanaraj case (supra)**.

10. The Tribunal has awarded a sum of Rs.1,08,000/- as compensation towards Baby Caretaker relying on the judgment of this Court in reported in **2014 (2) TNMAC 310 (Managing Director, Tamil Nadu State Transport Corporation Limited Vs. S.A.Kannan and two others)**. However, this Court is of the considered view that in the prevailing economy, it is very difficult to find a care taker for just Rs.3,000/- and it would be just and reasonable to award a sum of Rs.6,000/- taking into consideration that the younger child was at the time of accident. Therefore, awarding a sum of Rs.6,000 for the next three years towards caretaker charges, the compensation amounts to Rs.6,000 x 12 x 3 (years) = Rs.2,16,000/-



11. As far as the conventional heads are concerned, as per the judgment of the Honourable Supreme Court reported in **2017 (2) TN MAC 609 (SC)**, a sum of Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses.

12. The Tribunal has awarded a sum of Rs.10,000/- towards Transportation charges. However, this Court is inclined to enhance the same to Rs.30,000/-.

13. The Tribunal has not awarded any amount towards Mental Agony. Since the claimants in the instant case are minor children and they have lost both their parents in front of their eyes, one cannot imagine the amount of mental trauma the children would be undergoing in their life. Therefore, taking a sympathetic view, this Court awards a sum of Rs.1,00,000/- each towards "Shock and Mental Agony".

14. Thus, the compensation of Rs.22,12,000/- awarded by the Tribunal is enhanced to Rs.23,00,000/-.

15. In the result, the Civil Miscellaneous Appeal preferred by the Insurance Company is dismissed. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. Out of the said award amount, the minor claimants 1 and 2 are entitled to Rs.11,50,000/- each. The claimants shall pay additional court fee, if any. Connected miscellaneous petition is closed. No costs.

16. The appellant Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the entire award amount shall be deposited in the account of the minor claimants to be opened in their names in anyone of the Nationalised Banks in interest bearing Fixed Deposit till they attain majority and their natural guardian is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)



To

1.The Motor Accident Claims Tribunal-
V Additional District Court,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1cc to Mr.J.S.MURALI, Advocate, SR.No. 53152

+1cc to Mr.K.K.RAMAKRISHNAN, Advocate, SR.No. 53697

**C.M.A. (MD) No.689 of 2015
AND**

**C.M.P (MD) .1 of 2015
11.03.2019**

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KK/SAR/10.07.2019/5P-6C