BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 15.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.(MD) No.724 of 2013

1. Mary Josephine Punitha
2. Pradesh J.R.Thomas

3. Minor Mary Praveena Antonio
(Appellant No.3 declared as major and Appellant No.1discharged from guardianship vide order dated 20.06.2012 in M.P.(MD)No.1 of 2012 in CMA(MD)No.1353 of 2011) ... Appellants/petitioners

- Vs -

1. P.R.S.Sreenivasan

2. The United India Insurance Co. Ltd.,
rep. by its Branch Manager,
P.W.D.Office Road, Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

3. Dominio Savio
(R1&R3 Ex-parte before the lower Court)

4. The New India Assurance Company Limited,
Muvattupuzha Branch,
Rep. By its Branch Manager,
Opp. Anna Stadium,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District. ... Respondents/Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 18.04.2011 made in M.C.O.P.No.73 of 2007 on the file of the Motor Accidents Claims Tribunal, District Court, Kanniyakumari at Nagercoil.

For Appellants	:	Mr.C.Godwin
For R-2	:	Mr.B.Rajesh Saravanan
For R-4	:	Mr.B.Vijay Karthikeyan

J U D G M E N T

The appeal is directed against the judgment and decree, dated 18.04.2011 passed in M.C.O.P.No.73 of 2007 by the learned District Judge, Motor Accidents Claims Tribunal, Kanniyakumari at Nagercoil.

2.The case of the claimants in the petition is briefly as follows:

On 29.04.2006 at about 15.15 hours, the deceased was travelling in the van bearing registration No.TN 74 B 0397 from Palayamkottai to Nagercoil and when it was proceeding near Vagaikulam New Colony, a lorry bearing registration No.TCK 3353 belonging to the first respondent came from the opposite side in a rash and negligent manner and dashed against the van, as a result of which, the deceased and six others travelling in the van died and others sustained multiple serious injuries. Hence, the legal heirs of the deceased filed a petition before the Tribunal claiming compensation of Rs.50,00,000/-

3. Before the Tribunal, on the side of the petitioners, the first petitioner was examined as P.W.1 and Exs.P1 to P49 were marked. On the side of the respondents R.Ws.1 to 3 were examined and Exs.R1 to R9 were marked.

4. On consideration of the evidence available on record, the Tribunal has awarded a sum of Rs.15,82,000/- payable by the respondents 1 and 2 with interest at the rate of 7.5%. Aggrieved over the award, the appeal has been preferred by the claimants for enhancement of compensation.

5.The present appeal has been filed challenging the quantum of compensation. The second respondent / Insurance Company has also filed an appeal in C.M.A.(MD)No.1353 of 2011 challenging the liability fixed by the Tribunal. The Court below fixed the entire liability against the driver of the lorry. Today (08.11.2019), this Court, after considering all the materials available on record, has disposed of the said C.M.A.(MD)No.1353 of 2011, by modifying the order of the Court below and fixing the liability against the driver of the lorry and the driver of the van as 50 : 50 and accordingly, the disability is fixed against the respondent Insurance Company in the ratio of 50:50. Therefore, now the only point for determination in this appeal is what is the just compensation?

6.The learned counsel for the appellants / claimants has mainly challenged the fixation of the monthly income of the deceased and the application of multiplier. He would contend that as per Ex.P40- the last pay certificate, the deceased was drawing a sum of Rs.35,211/- in the month of April 2006. The accident occurred on 29.04.2006. Therefore, at the time of accident, the deceased was drawing a sum of R.35,211/-. However, the Court below has wrongly deducted Provident Fund Recovery of Rs.5445/-; Festival allowance of

Rs.300/-; Bus allowance Rs.175/- and C.B.N.Tirunelveli Rs.2,800/- from the monthly salary of the deceased. He would further contend that the income tax of Rs.2,250/- is only to be deducted from the monthly income of the deceased. Therefore, out of the gross salary of Rs.35,211/-, the Court below is supposed to deduct the income tax of Rs.2,250/- and hence, the award of the Tribunal requires interference.

6.1 The learned counsel appearing for the Insurance Company fairly submitted that the Tribunal wrongly deducted the Provident Fund and other allowances but failed to deduct anything with regard to the income tax. With regard to the all other aspects, the respondent would contend that the award may be confirmed.

7.Considering the submission made by the learned counsel for the appellants / claimants and the respondents and upon perusing the records, this Court is of the opinion that out of the gross salary of a sum of Rs.35,211/-, the Court below is supposed to deduct only the income tax of Rs.2,250/-. Accordingly, by deducting the said income tax amount, the loss of salary of the deceased would be a sum of Rs.32,961/- p.m.

8.The learned counsel for the appellants /claimants would contend that while determining the loss of income of the deceased, as per the decision of Hon'ble Apex Court in ***NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI***, reported in ***2017 (2) TN MAC 609 (SC)***, the Tribunal should have calculated the future prospects as 15% since in the present case, the deceased was earning a fixed salary and aged about 52 years.

9.The learned counsel for the respondents / Insurance Companies have also fairly submitted that as per ***PRANAY SETHI*** case, the Tribunal is supposed to have added 15% towards future prospects.

10.In view of the above submissions and the settled proposition of law, if 15% is added towards future prospects, the loss of income of the deceased would be a sum of Rs.37,906/- (Rs.32,961 + Rs.4,945). Since there are three dependants in this case, as per the judgement ***Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC),*** 1/3rd has to be deducted. The loss of income after deduction would be Rs.25,271/- (Rs.37,906 - Rs.12,635/-). Since the age of the deceased was 52 years old at the time of accident, the appropriate multiplier to be applied as per the ***Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)*** case, is '11'. If the multiplier '11' is applied, the loss of income would be Rs.25,271 x 12 x 11 = **Rs.33,35,772/-.**

11.The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium. However, as per the decision of the Hon'ble Supreme

Court in ***NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI***, reported in ***2017 (2) TN MAC 609 (SC)***, the wife is entitled for a sum Rs.40,000/- . Therefore, the loss of consortium is enhanced to **Rs.40,000/-** from Rs.10,000/-. The Tribunal has awarded a sum of Rs.3,500/- towards funeral expenses, which is very low and hence, the same is enhanced to **Rs.15,000/-**, as per ***PRANAY SETHI*** case. The Tribunal has not awarded any amount for loss of estate and hence, a sum of **Rs.15,000/-** is hereby awarded towards loss of estate. The Tribunal awarded a sum of **Rs.11,500/-** towards transportation; a sum of **Rs.1,000/-** towards damage to clothes and a sum of **Rs.20,000/-** towards loss of love and affection to the petitioners 2 and 3; which are reasonable and hence, the same are confirmed.

12. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	15,36,000	33,35,772	enhanced
2.	For consortium	10,000	40,000	enhanced
3.	For loss of estate	Nil	15,000	awarded
4.	For funeral expenses	3,500	15,000	enhanced
5.	For transportation	11,500	11,500	confirmed
6.	For damages to clothes	1,000	1,000	confirmed
7.	For loss of love and affection to the petitioners 2 and 3	20,000	20,000	confirmed
	Total	Rs.15,82,000/-	Rs.34,38,272/- rounded off to Rs.34,38,000/-	By enhancing a sum of Rs.18,56,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from **Rs.15,82,000/-** (Rupees Fifteen Lakhs Eighty Two Thousand Only) to a sum of **Rs.34,38,000/-** (Rupees Thirty Four Lakhs Thirty Eight Thousand Only);

(ii) The second and fourth respondents herein shall deposit their 50 : 50 share of the award amount along with 7.5% interest from the date of claim petition till the date of deposit, before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited;

(iii) On such deposit being made, the first claimant/wife is entitled for a sum of Rs.20,00,000/-; the second claimant/son is entitled for a sum of Rs.7,19,000/- and the third claimant/daughter is entitled for a sum of Rs.7,19,000/-, with proportionate interests and costs.

(iv) The Claimants are directed to submit their Savings Bank Account Details along with the copies of their passbooks to the Tribunal **forthwith**;

(v) The claimants are directed to pay the additional Court Fees, if any, within a period of **three weeks** from the date of receipt of a copy of this judgment; and

(vi) On such payment of Additional Court fees, if any, by the claimants and upon the deposit made by the Insurance Companies, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the Claimants, through RTGS/NEFT system, after getting their Account Details, within a period of three weeks thereafter;

(vii) In the facts and circumstances of the case, there shall be no order as to costs.

(viii) It is made clear that in the present case, necessary income tax has already been deducted and therefore, there is no need for any income tax deduction on the compensation to be paid by the Insurance Companies. Hence, this Court directs the Insurance Companies to depsoit their entire share amount without deducting any amount for income tax.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

The District Judge,
Motor Accidents Claims Tribunal,
Kanniyakumari at Nagercoil.

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

+1 CC to Mr.C.GODWIN, Advocate (SR-98873[F] dated 18/11/2019)
+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate (SR-99264[F] dated 19/11/2019)

C.M.A.(MD)No.724 of 2013
15.11.2019
(1/3)

MK (28.02.2020) 6P 6C