BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:28.11.2019
CORAM
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A(MD).Nos.823 and 844 of 2019
and
C.M.P.(MD).No.11125 of 2019
in
C.M.A(MD).No.844 of 2019

C.M.A(MD).No.823 of 2019

1.Rajendran
2.Anandhavalli ... Appellants/Petitioners

Vs.

Vijayakumar (Died)
1.Packiyam
2.Tmt.P.Anandhavalli
3.The National Insurance Company Ltd.,
Represented through its Divisional Manager,
Divisional Office, North Veli Street,
Madurai.

4.P.Jeyaraman
5.The National Insurance Company Ltd.,
Represented through its Divisional Manager,
Divisional Office, North Veli Street,
Madurai. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 18.07.2017 passed in M.C.O.P.No.1743 of 2015, on the file of the Motor Accident Claims Tribunal/Sessions Judge, Communal Clash Cases, Madurai.

For Appellants :Mr.C.Vakeeswaran
For R3 and R5 :Mr.D.Sivaraman

C.M.A(MD).No.844 of 2019

M/s.National Insurance Company Ltd.,
Rep through its Divisional Manager
Having Office at: North Veli Street,
Madurai. ... Appellant/4th Respondent

Vs.

1.Rajendran ... 1st Respondent/1st Petitioner
2.Ananthavalli ... 2nd Respondent/2nd Petitioner
3.Packiam ... 3rd Respondent/2nd Respondent
4.Tmt.P.Anandhavalli ... 4th Respondent/3rd Respondent
5.P.Jeyaraman ... 5th Respondent /5th Respondent
6.M/s.National Insurance Company Limited,

Rep through its Divisional Manager,
Having Office at Divisional Office,
North Veli Street,
Madurai-625 001. ... 6th Respondent/6th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 18.07.2017 passed in M.C.O.P.No.1743 of 2015 on the file of the Motor Accident Claims Tribunal/Sessions Judge, Communal Clash Cases, Madurai.

For Appellants :Mr.D.Sivaraman
For R1 and R2 :Mr.C.Vakeeswaran

COMMON JUDGMENT

The Civil Miscellaneous Appeal in C.M.A(MD).No.823 of 2019 has been filed by the appellants/claimants and C.M.A.(MD).No.844 of 2019 has been filed by the Insurance Company. In both the appeals, the appellants have challenged only the quantum of compensation awarded by the Tribunal.

2.The brief facts of the case are as follows:
On 03.10.2014 at about 11.30 p.m., the deceased Karthikeyan along with his friend one Karthick travelled in a Maruti Swift car bearing Registration No.TN 63 AH 6767 from Trichy to Madurai, in a rash and negligent manner and suddenly crossed the median of the road and dashed against the Tata Maxi Cab bearing Registration No.TN 54 Y 2070 coming from south to north direction. As a result of which, the deceased Karthikeyan sustained grievous injuries all over the body and died on the spot. Hence, the claimants filed M.C.O.P.No.1743 of 2015 claiming a sum of Rs.30 lakhs as compensation.

3.Before the Tribunal, on the side of the claimants, as many as 24 documents were marked as Exs.P1 to P24 and P.Ws.1 to 3 were examined as witnesses and on the side of the respondents, no documents were marked and no witnesses were examined.

4.After considering the oral and documentary evidence, the Tribunal has given a finding that the accident had occurred only due to the rash and negligent driving on the part of the first respondent/owner cum driver of Maruthi Car and directed the National Insurance Company to pay the compensation of Rs.19,94,000/- with 7.5% interest per annum. Aggrieved against the award passed by the Tribunal, the appellants are before this Court.

5.The main challenge in the present appeal is only with regard to the fixation of future prospects. The Tribunal has awarded 50% of the future prospects, while determining the loss of income.

6.The learned counsel appearing for the appellant/Insurance Company by referring to the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd., v. Pranay Sethi and Others*** reported in ***2017(2) TNMAC 609(SC)***, submitted that as far as the future prospects is concerned, it has been standardized.

7.In the present case, the job of the deceased is not a permanent one and he was working in a private concern. With regard to the permanency of the job, the claimants have not examined any witness, since he is working in a private concern. The job is temporary in nature and at any point of time, he may lose the job. Therefore, it is not a permanent job and the Tribunal by following the principle laid down by the ***Pranay Sethi's case***, should have awarded 40% towards future prospects.

8.On the other hand, the learned counsel appearing for the claimants would contend that the nature of the job and the capacity of the deceased to earn higher income in future may be considered while calculating future prospects. In this regard, he referred to the judgment of the Hon'ble Supreme Court in the case of ***Sureshchandra Bagmal Doshi and others v. New India Assurance Co. Ltd., and others*** reported in ***2018(1) TN MAC 755 (SC)***, wherein paragraph Nos.10 and 11 reads as follows:

> *"10.On having heard the learned counsel for the parties and having examined the record, we may note that the parties are ad idem on the assessment of the income of the deceased at Rs.6,273 per month. The question, thus, is whether the Tribunal was right in increasing the amount for future rise in income by 100 per cent, or the High Court was within its right to reduce the said amount to 50 per cent.*
>
> *11.We have the benefit of the Constitution Bench Judgment of this Court in National Insurance Co. Ltd., v. Pranay Sethi and ors., 2017(2) TN MAC 609 (SC) : AIR 2017 SC 5157. While examining the observations in Sarala Verma (supra), the Constitution Bench gave its imprimature to the addition of 50 per cent to actual salary of the deceased towards Future Prospects where the deceased had a permanent job and was below the age of 40 years, as in the present case. However, learned Counsel for the Appellant has brought to our notice a recent Order passed by this Court in S.L.P.(C) No.22134/206 and other connected matters dated 22.11.2017 wherein while taking note of the view expressed by National Insurance Co. Ltd., (supra), it has been observed that the percentage for calculating future rise in income is no bar to future prospects being taken at a higher level where the assessment is*

based on actual evidence led to the satisfaction of the Tribunal/the Court that the future prospects were higher than the standard percentage. Learned Counsel, thus, submitted in the context of the evidence led in the present case that the two certificates dated 16.10.1998 and 08.07.2005 were proved in terms whereof the deceased's future prospects would have entitled her to a Gross Salary in the range of Rs.14,000/- to Rs.17,000/- per month. No doubt the Second Certificate is dated 08.07.2005, after a lapse of 7 years from the First Certificate, but then that would be a more realistic estimate of what a person holding that post would be earning at that stage of time. There is no rebuttal evidence led by the Insurance Company and we see no reason to doubt these Certificates. Thus, the assessment of the Tribunal is based on the evidence led in the present case. As noticed above, the standardized percentage is capable of being varies if the evidence is so led."

By referring to the above said judgment, the learned counsel submitted that the Court can ascertain and fix the future prospects on case to case basis. In view of the above said submission, there is no impediment for the Tribunal to fix higher percentage of the future prospects depending upon the facts. Therefore, this Court is of the view that there is no error on the part of the Court below. Hence, he prayed to confirm the award passed by the Court below.

9.On a perusal of the judgment of the Constitution Bench, it is clear that the future prospects has been standardized for the person, who is working in a permanent employment and also the person, who is working in a temporary employment and getting fixed salary. Since the claimants failed to let any evidence to vary from such standardized future prospects as stated by the Hon'ble Apex Court, the Tribunal should follow only the standardized future prospects. In order to vary the standardized future prospects as held by the Hon'ble Apex Court, it is just and necessary the claimants should have to let the evidence.

10.In the present case, the claimants may have got increased future prospects in future beyond the standardized future prospects fixed by the Hon'ble Apex Court. However, this Court is of the view that the Tribunal has fixed 50% for the future prospects, without any appropriate evidence. Hence, this Court revise the future prospects as 40% (instead of 50% fixed by the Tribunal as 40%, as per the Decision of the Hon'ble Apex Court.

11.As the age of the deceased was 24 years, the Court has taken the multiplier '18'. There are two claimants and the deceased was a bachelor and therefore, the Tribunal has rightly deducted 50% towards personal expenses of the deceased. As far as the income of the deceased is concerned, the Tribunal has fixed the income at Rs.12,000/-, which is not disputed by the appellant/Insurance Company. Therefore, the loss of income is (12,000 + 4,800 x 12 x 18 =36,28,800 x ½) = 18,14,400/-. Therefore, the loss of income fixed by the Tribunal at Rs.19,44,000/- stands revised to Rs.18,14,400/-.

12.The Tribunal has awarded a sum of Rs.20,000/- towards love and affection. In this regard, the learned counsel appearing for the claimants would contend that the Tribunal ought to have fixed filial consortium of 40% each to the parents. In this regard, the learned counsel referred to the judgment of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd., vs. Nanu Ram Alias Chuhru Ram & Ots***. Reported in ***Supreme Today***, wherein paragraph No.8.7 reads as follows:

> *"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 is family. With respect to a spouse, it would include sexual relations with the deceased spouse, Rajesh and Ors. v. Rajbir Singh and Ors. (2013) 9 SCC 54.*
>
> *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, co-operation, affection, and aid of the other in every conjugal relation". (BLACK'S LAW DICTIONARY (5TH ED. 1979).*
>
> *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 caused 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 the 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, Rajasthan High Court in Jagmala Ram @ Jagmal Singh & Ors. v. Sohi Ram & Ors. 2017 (4) RLW 3368 (Raj); Uttarakhand High Court in Smt.Rita Rana & Anr. v. Pradeep Kumar & 6 Ors., 2014 (3) UC 1687; Karnataka High Court in Lakshman and Ors. v. Susheela Chand Choudhary & Ird, (1996) 3 Kant LJ 570 (DB). 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."

13.In view of the judgment of the Hon'ble Supreme Court, this Court is of the view that the parents are entitled to get filial consortium, instead of love and affection as ordered by the Tribunal. Therefore, a sum of Rs.20,000/- awarded by the Tribunal towards love and affection, stands set aside and this Court is inclined to award a sum of Rs.80,000/- as filial consortium. According to the learned counsel for the appellant/Insurance Company, the Tribunal awarded a sum of Rs.20,000/- towards funeral expenses, which is on the higher side and the same is reduced to Rs.15,000/-. No amount was awarded by the Tribunal for loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. The Tribunal awarded a sum of Rs.10,000/- towards transportation, which is just and reasonable and the same is confirmed. Therefore, the compensation awarded by the Tribunal stands revised from Rs.19,94,000/- to Rs.19,34,400/- in the manner stated below:

S. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed / enhanced / granted
1.	Transport Expenses	10,000/-	10,000/-	confirmed
2.	Loss of income	19,44,000/-	18,14,400/-	reduced
3.	Loss of Estate		15,000/-	confirmed
4.	Loss of filial Consortium	20,000/- (love and affection)	80,000/-	enhanced
5.	Funeral Expenses	20,000/-	15,000/-	reduced
	Total compensation	19,94,000/-	**19,34,400/-**	

14.In view of the above, the judgment and decree of the trial Court in M.C.O.P.No.1743 are modified and the compensation is reduced from Rs.19,94,000/- to Rs.19,34,400/- and the appeal preferred by the Insurance Company in C.M.A.(MD).No.844 of 2019, is allowed in part and the appeal preferred by the claimants in C.M.A.(MD).No.823 of 2019 is dismissed. The Insurance Company is directed to deposit the modified amount of Rs.19,34,400/-, if already not deposited, within a period of eight weeks from the date of receipt of a copy of this judgment, along with interest at the rate of 7.5% p.a. The Tribunal is directed to transfer the entire amount to the claimants by way of RTGS/NEFT system, after getting their Account details, within a period of three weeks thereafter, without waiting for any application from the claimants, as per the apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Motor Accidents Claims Tribunal,
Sessions Judge,Communal Clash Cases,Madurai.

2.The Record Keeper, VR Section (2 copies)
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.D. SIVARAMAN, Advocate (SR-102579 and 102580[F]

+2 CC to M/s.C. VAKEESWARAN, Advocate (SR-102613[F]and 102614

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SMA/20/05/2020/7P/8C **28.11.2019**