



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD) .No.696 of 2018

1.Angayarkanni

2.Pappa

... Appellants/Petitioners in M.C.O.P

Vs.

1.Jamal Mohammed Yunus

...R1/R1 in M.C.O.P

2.Reliance General Insurance Company Limited,
Trichirapalli represented by its Branch Manager,
having office at No.15-A, P.L.A., Kanagu Towers,
11th Cross, Main Road, Thillai Nagar,
Tiruchirapalli - 18.

... Respondent No.2/

Respondent No.2 in M.C.O.P

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 12.02.2014 made in M.C.O.P.No.1319 of 2011 on the file of the Special District Judge, Motor Accident Claims Tribunal, Thanjavur.

For Appellants : Mr.R.Mathiyalagan

For R1 : Mr.I.Velpradeep

For R2 : Mr.K.Gokul

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the claimants challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special District Judge, Thanjavur in M.C.O.P.No.1319 of 2011, dated 12.02.2014.

2. The learned counsel appearing for the appellants/claimants submitted that at the time of accident, the age of the deceased was 35 years old and the Tribunal has fixed a sum of Rs.6,000/- as notional income of the deceased. He further submitted that the Tribunal has applied the correct multiplier '16' and no amount was awarded towards future prospects, as held by the Hon'ble Apex Court in the case of **National Insurance Company Vs. Pranay Sethi and others** reported in **2017(2) TN MAC 609 (SC)**. Further, no amount was awarded towards consortium to the first appellant/wife and the amount awarded by the Tribunal towards funeral expenses is also too low and no amount was awarded towards loss of estate. He also submitted that as held by the Hon'ble Apex Court **in the case of Pranay Sethi**, for the age group of 35 years, 40% is required to be added towards future prospects. A sum of Rs.40,000/- towards consortium, a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.15,000/- to the loss of estate to be added, as held by the Hon'ble Apex Court in the case of **Pranay Sethi**, and the amount



awarded by the Tribunal towards love and affection of the appellants also too low and hence, the same is required to be enhanced.

3. On the other hand, the learned counsel appearing for the second respondent/Insurance Company contended that even though the appeal has been filed by the Insurance Company challenging the quantum of compensation as well as the liability fixed by the Tribunal, this Court dismissed the appeal even at the time of admission stage, without issuing any notice to the respondents/claimants. Therefore, he contended that once this Court has confirmed the award, there is no interference required by this Court once again in the appeal filed by the claimants.

4. Heard the learned counsel for the appellants / claimants and the learned counsel for the respondents/Insurance and perused the materials available on record.

5. It is an admitted fact that the second respondent / Insurance Company has already preferred an appeal, challenging both the quantum as well as the liability fixed by the Tribunal. The said appeal was dismissed at the stage of admission itself, without any notice to the appellants/claimants. Since no notice was issued, there was no opportunity for the present appellants/claimants to bring to the knowledge of the Court about the future prospects and the error in awarding compensation under the conventional heads, as held by the Hon'ble Supreme Court in **Pranay Sethi** case. The said appeal has been dismissed, without going into the merits of the case and applying the principles laid down by the Hon'ble Supreme Court in in **Pranay Sethi** case and that too it was the appeal filed by the Insurance Company without any notice. Therefore, there is no embargo for the appellants/claimants to file the present appeal.

6. In the present case, the age of the deceased was 35 years. However, no amount was awarded towards future prospects. Therefore, this Court added 40% of the notional income towards future prospects. With respect to the application of the multiplier, the Tribunal has applied the correct multiplier for the age group of 35 years, as per the decision of the Hon'ble Supreme Court in the case of **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another** reported in **2009 (2) TN MAC 1 (SC)**. With regard to the amount awarded under the conventional heads, the Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, which is not as per the decision of the Hon'ble Apex Court and hence, the same is revised to Rs.15,000/- and no amount was awarded towards loss of estate. Therefore, this Court awards a sum of Rs.15,000/- towards loss of estate. The Tribunal has awarded a sum of Rs.25,000/- towards love and affection of the first appellant/first claimant and the first petitioner is the

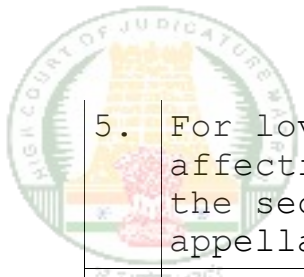
wife of the deceased. Therefore, this Court awards a sum of Rs.40,000/- towards consortium, as held by the Hon'ble Apex Court and the amount awarded towards love and affection of the first appellant/first claimant stands revised from Rs.25,000/- to Rs.40,000/- under the head of consortium. The amount of Rs.15,000/- awarded towards love and affection of the second appellant/second claimant (mother of the deceased) is also too low. Therefore, this Court awards a sum of Rs.40,000/- towards love and affection of the second appellant/second claimant.

7. The Tribunal, in the absence of any income proof, the Tribunal fixed notional income of the deceased as Rs.6,000/-. In the present case, there are two claimants. Therefore, the Tribunal deducted 1/3rd towards personal expenses of the deceased. Therefore, this Court is of the view that both the notional income fixed as well as the deduction made towards personal expenses of the deceased is just and proper and the same requires no interference of this Court. However, the Tribunal failed to pay anything towards future prospects, as the age of the deceased was 35 years in the present case. As held by the Hon'ble Supreme Court, in **National Insurance Co. Ltd. Vs. Pranay Sethi and others** reported in **2017 2 TNMAC 609 (SC)**, 40% requires to be added towards future prospects. The Tribunal applied the multiplier of '16'. Therefore, the loss of income is re-determined by this Court as follows:-

$$\text{Rs.6,000/-} + 40\% \times 1/3^{\text{rd}} = \text{Rs.5,600/-} \times 12 \times 16 = \text{Rs.10,75,200/-}$$

7.1 Therefore, the compensation awarded by the Tribunal towards loss of income at Rs.8,18,000/- is modified and enhanced to **Rs.11,95,200/** in the manner stated below:

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	7,68,000	10,75,200	enhanced
2.	For loss of consortium	-	40,000	granted
3.	For loss of estate	-	15,000	granted
4.	For Funeral expenses	10,000	15,000	enhanced



5.	For love and affection of the second appellant	15,000	40,000	enhanced
6.	For love and affection of the first appellant	25000	-	Set aside
6.	For Transportation	-	10,000	granted
	Total	8,18,000	11,95,200	By enhancing a sum of Rs.3,77,000

8. In view of the above modification, the Civil Miscellaneous Appeal is allowed in part and this Court directs the appellant/Insurance Company to deposit the entire award amount, after deducting the amount if any already 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%. On such deposit being made, the Tribunal is directed to transfer a sum of Rs.8,00,000/- to the account of the first appellant/wife and a sum of Rs.3,95,200/- to the account of the second appellant/mother of the deceased directly by way of RTGS/NEFT system, after getting their Account Details, within a period of three weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.

+1 CC to MR.J.MUNEER KHAN, Advocate (SR-101435[F] dated 26/11/2019)

+1 CC to MR.K. GOKUL, Advocate (SR-101397[F] dated 26/11/2019)

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