IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2020

PRONOUNCED ON : 29.07.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.2031 of 2015
(Heard through video conferencing)

1.Suguna
W/o Late Raja

2.Praveen Raj (Minor)
S/o Late Raja

3.Kannan
F/o Late Raja

4.Vasantha
M/o Late Raja
(Minor 2nd Petitioner rep. By his mother and N.F.Suguna)
Periyakuppam Post,
Ulunderpet Taluk,
Villupuram District. ... Appellants/Petitioners

Vs

1.Prasath (Owner cum Driver)
S/o Dharmarajan,
No.!-241, Annanagar,
West Extension, Chennai ? 101.

2.Reliance General Insurance Company Ltd.,
No.6, Haddows Road,
6th Floor,
Chennai ? 6. ... Respondents/Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.10.2012 and made in M.A.C.T.O.P.No.4651 of 2009 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

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For Appellants :Mr.F.Terry Chella Raj

For 1st Respondent : Set exparte before Tribunal
For 2nd Respondent : Mr.M.B.Raghavan

JUDGMENT

The appellants herein are the claimants before the Motor Accident Claims Tribunal. Not satisfied with the compensation of Rs.9,45,050/- awarded by the Motor Accident Claims Tribunal for the death of Raja in the road accident on 15/10/2009, this appeal under section 173 of the Motor Vehicles Act, 1988 is preferred by them.

2.The facts of the case as narrated in the claim petition is that, on 15/10/2009 at about 16.00 hrs when the said Raja was riding his motor cycle bearing registration No. TN 32 D 6981, at Villupuram to Ulundurpet Main Road, near Vandipalayam Bus Stop, he was hit by the car bearing Registration No. TN 02 AD 5063 driven rash and negligently by the first respondent. The said Raja died instantly. At the time of his death, he was 25 years old earning about Rs.400/- per day as Mason. His wife, a minor son aged 3 years and parents were dependents on him. Assessing the loss at Rs.10 lakhs, but restricting the claim to rupees Seven lakhs for the purpose of Court Fees, the dependents joined together and filed the claim petition before the Motor Accident Claims Tribunal III, Court of Small Causes at Chennai.

3.The owner cum Driver of the offending vehicle and the insurance company with which the offending vehicle was insured were arrayed as respondents in the claim petition.

4.Before the Tribunal, the claimants examined two witnesses and marked six exhibits.

5.The Tribunal on relying upon the ocular evidence of PW-2- Thiru. Suresh; the narration of facts as found in the FIR Ex P-1 and the pleadings held that the accident occurred due to the rash and negligent driving of the first respondent. The offending vehicle being insured under the second respondent, the Tribunal held that the insurance company is liable to pay the claim amount. Relying the record - Ex P-5, the Tribunal held the age of the victim as 24 years. As per the legal heir certificate - EX P-4, the claimants were the legal heirs of the deceased Raja. Though the claimants asserted that the deceased was earning Rs.400/- per day as Mason, since, no document was filed in support of their claim, the Tribunal fixed Rs.4,500/- per month as income of the deceased with future prospects of 30 % since the deceased was self exployed temporarily, following the ratio laid down in Smt. Sarla Verma others Vs. Delhi Transport Corporation and another, no award was made in respect of future

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prospects. After deducting 1/4th for personal expenditure, the Tribunal adopted the multipler 17 and a sum of Rs.8,95,050/- (4,387.50 x 12 x 17) was awarded under the heading 'loss of income'. Besides, a sum of Rs.10,000/- towards loss of consortium to the first claimant/wife of the deceased; Rs.10,000/- towards funeral expenses; Rs.10,000/- each of the claimants 2 to 4 (totally Rs.30,000) for love and affection. In toto, the Tribunal has awarded Rs.9,45,050/- as compensation to the claimants. Seeking to enhance the said compensation, the claimants are before this Court with this Appeal.

6.The learned counsel for the appellant submitted that the Tribunal erred in fixing the monthly income of the deceased victim @ Rs.4,500/- per month, who was working as a Mason and earning Rs.400/-per day. In the absence of evidence contrary to the claimants' plea, fixation of income of the deceased @ Rs.4,500/- per month is very low and erroneous. Pointing out that the victim died at the age of 23 years, he submitted the percentage of future prospects ought to have been fixed at 40% instead of 30%. Likewise, taking into consideration the age of the victim, the multipler should have been fixed at 18 instead of 17. Similarly, a sum of Rs.10,000/- as compensation for the loss of consortium in favour of first appellant/1st claimant needs enhancement in view of the fact that the first claimant lost her husband at the age of 23 years. The learned counsel would further submit that pending appeal, the application to amend the claim amount from rupees seven lakhs to twelve lakhs was allowed by this Court vide order dated 16/02/2015 in M.P.No.1 of 2015 in C.M.A.No.2031 of 2015 and the same may be taken into consideration while disposing the present Appeal.

7.The learned counsel for the second respondent Insurance company would submit that, the claimants failed to prove that the victim was working as Mason and was earning Rs.400/- per day. In the absence of document and proof, the Tribunal has notionally fixed the monthly income of the deceased @ Rs.4,500/- with future prospects of 30% being a self employed. The Tribunal has fixed the loss of income of the deceased and the future prospects based on the judicial pronouncements prevailing at the time of award. The appellants/claimants appeal for enhanced compensation based on the present wages and cost of living is not legally sustainable.

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8.The learned counsel for the second respondent Insurance Company however would admit that, the Constitutional Bench of the Hon'ble Supreme Court in National Insurance Co.Ltd., Vs. Pranay Sethi and others (2017 (2) TN MAC 609 (SC)) has held that self employed and fixed salary income victims are also entitled for future prospects and as far as self employed victims below 40 years, the future prospects has to be taken at

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40% and the multipler between the age of 21 and 25 years shall be 18. In this case, the Tribunal has fixed the future prospects at 30% instead of 40% and had fixed the multiplier as 17 instead of 18. As far as the fixation of compensation under the other heads like loss of consortium, love and offection, funeral expenses, the learned counsel for the second respondent Insurance Company would state that the Tribunal has rightly assessed the loss and has awarded fair compensation which need no interference.

9.The learned counsel appearing for the appellants and the learned counsel appearing for the second respondent Insurance Company were heard. The records perused.

10.Regarding the earning capacity of the deceased, it is to be borne in mind that the claimants have not produced any evidence to substantiate the fact that the deceased was working as Mason and he was earning Rs.400/- per day. At the time of his death, the deceased was 24 years 5 months and 5 days old (The deceased date of birth : 10/05/1985 as per Ex P-5 and the Date of death: 15/10/2009 as per the death certificate Ex P-3). The legal heir certificate Ex P-4 indicates that the deceased was permanently residing in the V.Periyankuppam Village, Senthamangalam, Ulundurpet Taluk at Villupuram District. In the absence of any evidence to prove the ?calling / avocation? and the ?income? of the deceased, the Tribunal has rightly taken into consideration the age and place of living of the deceased and has fixed the earning capacity of the victim @ Rs.4,500/- per month. This court finds no error in it.

11.The appellants/claimants grievance regarding fixation of future prospects and the multiplier has been fairly conceded by the learned counsel for the second respondent Insurance company in view of the dictum laid down by the Constitutional Bench of the Hon'ble Supreme Court in Pranay Sethi's case (cited supra) and by the Hon'ble Supreme Court in Smt. Sarla Verma others Vs. Delhi Transport Corporation and another ? 2009 (2) TN MAC 1 (SC).

12.At the time of the accident, the victim was running 25 years, his exact age was 24 years , 5 months and 5 days. As per the table given in Sarla Verma?s case (cited supra), upto 25 years multiplier 18 has to be applied (emphasis added). Since, in this case, the victim did not complete the age of 25 years, the multiplier to be applied is 18. The Tribunal has wrongly applied multiplier 17. This need modification. Similarly, in Pranay Sethi?s case (cited supra), the Constitutional Bench of the Hon'ble Supreme Court has set at rest the difference of opinion between Three Judges Bench judgment in Reshma Kumari vs. Madan Mohan (2013 (1) TN MAC 481 (SC)) and the judgment in

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Rajesh and others v. Rajbir Singh and others (2013 (9) SCC 54) in respect of addition of future prospects for person self-employed or on fixed salary. As per the Pranay Sethi case (cited supra), if the age of the self employed/ fixed income victim is below 40 years, 40% more to the present income has to be added. The Constitutional Bench of the Hon'ble Supreme Court judgment is dated 31/10/2017 whereas, the Tribunal award which is impugned in this appeal is dated 30/10/2012. The Tribunal relying upon the precedents prevailing at that point of time has added loss of future prospects at 30%. When the Tribunal passed the award under challenge, It did not have the advantage of the authoritative pronouncement of the Constititution Bench. Now, we have the advantage of the guidelines laid by the Hon'ble Supreme Court. As per the said guidelines, the compensation awarded by the Tribunal requires enhancement under the head of loss of Income by adding one more multiplier and 10% more under future prospect.

13.As far as the compensation under the conventional heads is concerned, the Tribunal has awarded a total sum of Rs.50,000/- for the accident held in the year 2009. Later, while standardizing the quantum under the conventional heads the Constitutional Bench of the Hon'ble Supreme Court in the year 2017 has fixed maximum of Rs.70,000/- with increase of 10% every 3 years. Therefore, in the considered view of this Court, a sum of Rs.50,000/- under the conventional heads for the accident occurred in the year 2009, is fair and reasonable.

14.As a result, for the death of Raja aged 24 years, 5 months and 5 days, whose earning determined @ Rs.4,500/- per month and caring 4 dependents is fixed as below:-

?Pecuniary loss / loss of income : Rs.4500 + 1800 (40% of 4500) x 12 x 18 x 3/4 = Rs.10,20,600/- and Non pecuniary loss under conventional heads : Rs 50,000/- = Total sum of Rs.10,70,600/-?

15.The total compensation amount awarded by the Tribunal is Rs.9,45,050/-. The compensation as enhanced in this appeal is Rs.10,70,600/-. The second respondent Insurance company is directed to deposit the difference amount of Rs.1,25,550/- (enhanced award amount) with interest @7.5% per annum from the date of filing of the claim petition (18/12/2009) till the date of deposit in the name of second appellant - Praveen Raj / the minor son of the deceased, within a period of six weeks from the date of receipt of a copy of this judgment. The said enhanced amount shall be withdrawn by the second appellant/minor claimant, on attaining his majority. The first appellant - Tmt.Suguna who is the mother and natural guardian of the minor Praveen Raj shall be entitled to withdraw the interest amount once in every six months for the maintenance

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of the minor boy. The learned counsel appearing for the appellants is directed to pay necessary court fee on the enhanced award amount, i.e. Rs.1,25,550/-.

16.This Civil Miscellaneous Appeal was filed with a delay of 594 days. While condoning the delay in M.P.No.2 of 2015 in C.M.A.No.2031 of 2015 on 22/09/2015, this Court has ordered that if the appellants succeed, they will not be entitled to receive interest for the said delay period. Therefore, the second respondent Insurance Company shall not be liable to pay interest for the delay period of 594 days. While depositing the said enhanced amount, the Tribunal shall calculate the interest amount by excluding the interest for the said period of 594 days.

17.Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

jbm

To

1.The Motor Accident Claims Tribunal,
III Judge, Small Causes Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

सत्यमेव जयते

C.M.A.No.2031 of 2015

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