IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.07.2020	Pronounced on: 28.07.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.749 of 2016

1.R.Saraswathi,
2.S.Dayalan,
Both are residing at Kunrathur Village and Post,
Thiruttani Taluk,
Thiruvallur District. ...Appellants/Petitioners

/versus/

1. G.Thyagarajan,
S/o.Govindarajalu,
No.1209, C.S.R. Colony,
Trichy Road, Coimbattur - 641 045.

2. The Manager,
The United India Insurance Co.Ltd.,
Now, the 2nd respondent having office at
No.134, Greams Road, Silingi Buildings,
HUB, IV - Floor, Chennai - 6.
...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree made in M.C.O.P.No.49 of 2011, dated 29.07.2013, on the file of the Principal District Judge, Thiruvallur/Motor Accident Claims Tribunal, Thiruvallur.

For Appellants : Mr.A.R.Ponnuswamy,
for M/s.Anand & Suriya,

For R2 : Mrs.R.Rathina Thara

For R1 : Exparte

J U D G M E N T
(The case has been heard through video conferencing)

The plaintiffs herein are the parents of D.Nagarajan, who died in the road accident on 29.01.2011. Being his parent and the dependents on the demise D.Nagarajan, who was unmarried at the time of death, the appellants have preferred the claim petition assessing the loss at Rs.15,00,000/- and had restricted the claim to Rs.12,00,000/- for the purpose of Court fee.

2. According to the claim petition, on 29.01.2011, at about 9.50 p.m when the deceased D.Nagarajan, was riding his Bajaj Discover Motor cycle bearing Registration No.TN 20 AC 4531 on the left side of Arakkonam Kancheepuram Road, a tourist bus bearing Registration No.TN 37 AK 9009 owned by the 1st respondent insured with the 2nd respondent driven by its driver in a rash and negligent manner, hit the two wheeler causing death of Nagarajan. Claiming that, the said D.Nagarajan was earning Rs.10,000/- per month and Rs.250/- batta per day as JCB operator cum mechanic in KGP chamber, compensation of Rs.12,00,000/- for the loss of estate, funeral expense, loss of happiness, love and affection, sought.

3. The Motor Accident Claims Tribunal, Tiruvallur, after appreciating the evidence let by the petitioners through P.W.1 to P.W.3 and 13 Exhibits held that the accident was occurred due to rush and negligent driving of the tourist bus driver, therefore, the owner of the vehicle and the insurer are liable to pay compensation for the death of D.Nagarajan.

4. Regarding the quantum of compensation, the deceased being the unmarried son of the claimants, taking the average age of the claimants (father and mother), applied the multiplier 13. Regarding the earning capacity of the deceased person, after considering the evidence of P.W.3, the employer of the deceased Nagarajan and the salary certificate Ex.P.11, the Tribunal fixed the monthly income of the deceased @ Rs.6,500/- per month. A total compensation of Rs.5,29,500/- was awarded which includes loss of income, loss of love and affection and funeral expense. The said award is under challenge in this appeal.

5. The Learned Counsel for the appellants would submit that the Tribunal erred on three scores.

(i). Fixation of monthly income of the deceased at the rate of Rs.6,500/- per month contrary to the income certificate and evidence of P.W.3, which goes to show that the deceased was earning Rs.10,000/- per month, is erroneous. Further, the future prospects of the deceased D.Nagarajan was not taken note by the Tribunal.

(ii). The multiplier ought to have been fixed based on the age of the deceased which was 25 years at the time of accident. Instead, the Tribunal has taken the average age of the parents and fixed the multiplier 13 for computing loss of income.

(iii). The compensation of Rs.20,000/- awarded for loss of love and affection is very low since the appellants have lost the only son in the road accident.

6. The Learned Counsel for the respondents would submit that there is no error in findings of the Tribunal in computing the quantum of compensation. The evidence of P.W.3 and the connected certificates relied by the appellants to prove the income has been properly appreciated. The deceased was employed temporarily as Driver and the same was admitted by the employer of the deceased. Though the salary certificate (Ex.P.11) was filed, there is no document to substantiate that Rs.10,000/- was paid as salary to the deceased. Taking note of the non-production of the documents, like salary register and accounts books, for payment of salary, the monthly income of the deceased was fixed at the rate of Rs.6,500/-. Following the ratio laid down in Smt. Sarla Verma others Vs. Delhi Transport Corporation and another, no award was made in respect of future prospects, since the deceased was self employed temporarily.

7. In respect of multiplier, the Learned Counsel for the respondent/insurance company would fairly concede that in view of the clarification by the Constitutional Bench of the Hon'ble Supreme Court in National Insurance Co.Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) in case of unmarried son, the age of the deceased should be the basis for applying the multiplier and not the average age of the parents. Hence, the learned counsel would submit that except the error in applying the multiplier, the award of the Tribunal is unassailable.

8. Heard the Learned Counsel for the appellants and the Learned Counsel for the respondents.

9. The award of the Tribunal and the reasoning are appreciated in the light of the evidence and the arguments submitted by the Learned Counsels.

10. The Learned Counsel for the appellants would submit that the appropriate multiplier in this case is 18. While fixing the multiplier, completed age should be taken note of and not the running age. This contention of the appellants is controverted by the learned counsel for the Insurance Company. According to her, at the time of death, the deceased D.Nagarajan has completed 25 years and he was running 26 years. As per the tabulation given in Sarla Verma case, if the deceased age fall between the age of 21 and 25, multiplier 18 has to be applied. If he falls between the age of 26 and 30, multiplier 17 has to be applied.

11. The Transfer certificate of the deceased marked as Ex.P.6, indicates the son of the appellants was born on 16.10.1985. The death certificate dated 29.01.2011 of the deceased D.Nagarajan is marked as Ex.P.4. It proves that at the

time of death, he crossed 25 years (25 years 3 months and 13 days). As per the dictum laid down in Sarla Verma case, the table for multiplier says upto 25 years, the multiplier 18 has to be applied and from 26 to 30 years, multiplier 17 has to be applied. In this case, the deceased has crossed 25 years. Therefore, the correct multiplier to be applied is 17.

(Emphasis applied)

12.Regarding the income of the deceased, though the Learned Counsel for the appellants would submit that the driving license, salary certificate and ocular evidence of P.W.3, proves the income of deceased as Rs.10,000/- per month but as rightly pointed out by the Tribunal, the driving licence is not a proof for employment, it is only an indication to show his earning capacity.

13. As far as P.W.3 deposition is concerned, it is clear and simple. According to P.W.3, the deceased was only a temporary employee under him P.W.3 was running Brick Kiln, in which the roll of JCB is only an occasional and seasonal. Therefore, taking note of these facts and considering absence of document to corroborate the ocular evidence of P.W.3, regarding the salary paid to the deceased, the Tribunal has reasonably fixed the income of the deceased at the rate of Rs.6,500/- per month.

14. As far as future prospects is concerned, till the decision of the Full Bench in National Insurance Co. Ltd Vs. Pranay Sethi reported in 2017 (2) TN MAC 609 (SC), there was uncertainty whether to consider the future prospects of self employed and fixed salary persons. Divergent opinion expressed by different Benches of coordinate strength has been put to rest by the Constitutional Bench of Hon'ble Supreme Court in Pranay Sethi case cited (supra) by standardising the quantum of compensation under the future prospects in respect of the persons self employed and fixed salary. As per the said guidelines, the deceased D.Nagarajan who was below 40 years, at the time of his death, had prospect in future to earn more. Therefore, 40% has to be added under the head of future prospects.

15. Regarding the compensation award under other heads, this Courts holds that the fixation of compensation by the Tribunal is just and reasonable, hence, it needs no interference.

16. The fixation of monthly income of the deceased by the Tribunal @ Rs.6,500/- per month is upheld. The loss of income, being a unmarried person, after deduction 50% towards the personal and living expenses, is fixed @ Rs.3,250/- per month. The multiplier 17 is applied instead of 13 applied by the Tribunal for the reasons explained earlier. The total loss of income is thus estimated as (Rs.3,250/- x 12 x 17)

Rs.6,63,000/- and Rs.2,65,200/- being 40% towards the future prospects, as per the Constitutional Bench of the Hon'ble Supreme Court. Thus, under the heads of loss of income and future prospects, put together the Appellants are entitled for a sum of Rs.9,28,200/-. Whereas, the Tribunal has awarded a sum of Rs.5,07,000/-.

17.The difference amount of Rs.4,21,200/- is awarded as additional compensation to the appellants. The said amount (Rs.4,21,200/-) shall be paid with interest at the rate of 7.5% p.a, from date of filing the petition till the date of deposit. Since the appeal is preferred with delay of 406 days, the appellant shall not be entitled for interest for the period of delay caused and the said period shall stand excluded from calculating interest. 1/3rd of the enhanced amount shall be paid to the 2nd Appellant who is the father of the deceased. Remaining 2/3rd amount shall be paid to the 1st Appellant who is the mother of the deceased. The second respondent Insurance Company is directed to deposit the enhanced compensation amount within a period of two months from the date of receipt of a copy of this judgement.

18. As a result, the Civil Miscellaneous Appeal is Allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm/jbm

To

The Principal District Judge,
Thiruvallur/Motor Accident Claims Tribunal,
Thiruvallur.

Copy To

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.Anand and Suryas, Advocate, S.R.No. 25362

C.M.A.No.749 of 2016

AD(CO)
GN(05/01/2021)