IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

C O R A M
The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.1957 of 2018
and
C.M.P.No.15186 of 2018

1. The Joint Excise Commissioner,
Commissionerate of Excise,
Thiruvanathapuram.

2. The District Insurance Officer,
Kerala State,
Insurance Department,
Palakkad. ..Appellants/Respondents 2 & 3

Vs.

1.S.Jayalakshmi

2.Minor Sai Murali Krishna
(Minor rep. by next friend and
guardian mother S.Jayalakshmi)

3. S.Natarajan
4. Lakshmi ..Respondents 1 to 4/Petitioners
5. Santhosh

6. The National Insurance Company Ltd.,
Registered Office New Delhi and Branch
Agency,
C/o. Suguna Automobiles, Peelamedu,
Coimbatore - 641 004. ...Respondents 5 & 6/
Respondents 1 & 4

PRAYER:

Civil Miscellaneous Appeal filed against the judgment and decree, dated 04.10.2017, passed in M.C.O.P.No.1490 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Coimbatore.

For Appellants : Mr.T.Mohan, for M/s.M.Murali

For Respondents 1-4 : Mr.V.Ramamoorthy

Respondent-5 : Mr.K.Surendar, No appearance

JUDGMENT

Judgement of the Court was delivered by Krishnan Ramasamy,J.

Challenging both the liability as well as the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (Special Sub Judge) Coimbatore, in and by its award, dated 04.10.2017, passed in M.C.O.P.No.1490 of 2014, the present Civil Miscellaneous Appeal is preferred by the appellants.

2. The respondents 1 to 4 herein are the petitioners/claimants before the Tribunal. It is the case of the claimants that on 09.05.2012, when Senthil Murugan (deceased) was riding an Hero Honda Karushima Motor Cycle, bearing Registration No.TN 66 E 353 from KMCH towards his residence, and while he was proceeding from east to west at PSGR Krishnamal Junction, at that time, the Jeep, bearing Regn No.KL 01 S1270, driven by the first respondent came in a rash and negligent manner and dashed against the deceased's Vehicle. Due to the accident, the said Senthil Kumar sustained injuries and succumbed to death. Since the accident occurred only due to the rash and negligent driving of the Jeep, the legal heirs of the deceased, who are wife, minor son and parents filed a Claim Petition against the insured as well as the insurer, claiming a sum of Rs.4,00,00,000/- as compensation.

3. The third respondent before the Tribunal resisted the Claim Petition by filing a Counter Statement, stating that the accident occurred only due to the negligence on the part of the deceased, as he rode the motor bike carelessly, without watching the Jeep taking U turn and also failed to slow down his bike, and thus, his contribution to the accident is 100%, and therefore, they cannot be made liable to pay any compensation. Apart from denying the liability, the third respondent also denied the age, avocation and income of the deceased and prayed for dismissal of the Claim Petition.

4. Before the Tribunal, in order to prove the claim, first claimant examined herself as P.W.1, besides examining one four witnesses as P.W.2 to P.W.5 and marked twenty two documents as Exs.P.1 to P.22. On behalf of the Insurance Company, one witness was examined as R.W.1 and one document was marked as Ex.R.1.

5. The Tribunal, on the basis of both oral and documentary evidence held that the accident was on account of rash and negligent driving of the driver of the Jeep and fixed entire liability on the owner of the offending vehicle as well as its insurer to pay the compensation. By arriving at such conclusion, the Tribunal made calculation under different heads and passed an award for a total sum of Rs.2,07,82,000/- with interest at the rate of 7.5% per annum from the date of Petition till the date of realization as compensation to the claimants and directed the second and third respondent therein to pay the award amount. The break up details of the compensation amount awarded by the Tribunal are as follows ;-

Sl.No	Head	Award
1	Loss of Dependency	Rs.1,82,52,000/-
2	Loss of Consortium	Rs. 10,00,000/-
3	Loss of Love and Affection	Rs. 15,00,000/-
4	Funeral Expenses	Rs. 25,000/-
5	Loss of Estate	Rs. 5,000/-
	Total	Rs. 2,07,82,000

Aggrieved by the quantum of compensation awarded by the Tribunal as well as the liability fastened on them, the Insurance Company has filed the present Appeal, as already stated above.

6. We have heard the submissions made by the parties and have carefully gone through the entire materials available on record .

7. Now, the issue to be determined by this Court are as follows:-

i) Whether the negligence and liability fixed by the Tribunal is correct?

ii) Whether the quantum of compensation awarded by the Tribunal is correct?

I) Negligence and Liability :-

8. The learned counsel appearing for the appellants would contend that R.W.1/Driver was examined and he clearly deposed that the accident was due to the rash and negligent driving on the part of the two wheeler. However, the Tribunal, without providing any weightage to R.W.1's deposition, by relying upon Ex.P.1/F.I.R and Ex.P.2, chargesheet came to the wrong conclusion that the accident occurred on account of rash and negligent driving of the driver of the Jeep by holding that the evidence of R.W.1 cannot be believed as it is against the contents of Ex.P.1/FIR, Ex.P.2/Chargesheet. Therefore, the learned counsel prayed for setting aside the findings of the Tribunal with regard to the negligence aspect and thereby, fastening liability on the second respondent herein.

9. On the other hand, the learned counsel for the claimants would contend that the Tribunal has given weightage to the evidence of R.W.1, at the same time, the Tribunal also taken into consideration of Ex.P.1/FIR and Ex.P.2, chargesheet, wherein, it was clearly stated that the accident occurred due to the rash and negligent driving on the part of the driver of the Jeep, bearing Regn.No.KL 01 S1270. Further, on the part of the claimants, Ex.P.W.2, an eyewitness was also examined, who has clearly deposed that the accident occurred due to the rash and negligent driving of the driver of the first respondent, owner of the Jeep. Therefore, he would contend that the Tribunal only after considering Ex.P.1/FIR, Ex.P.2/Chargesheet, and Ex.P.11, which corroborates the evidence of P.W.2, came to the conclusion that the accident occurred on account of rash and negligent driving of the driver of the first respondent and consequently, fixed the entire liability on insurer to pay the compensation.

10. We have also perused Ex.P.1/FIR, Ex.P.2/Chargesheet and Ex.P.3/Rough Sketch, Ex.P.4/MVI Report, and deposition of P.W.2. On perusal of all those documents and evidence, it is clearly stated that the accident had occurred on account of rash and negligent driving of the Jeep and based on those evidence, the Tribunal rightly came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the Jeep, and therefore, fixed the negligence on the part of the owner of the Jeep and fastened liability on the insurer of the vehicle and since the evidence of R.W.1 is quite controvertible to the Ex.P1, Ex.P2, Ex.P.3, and Ex.P.4 the Tribunal has rightly brushed aside the evidence of R.W.1. Therefore, we do find any infirmity in the findings of the Tribunal with respect to negligence aspect, and the fixation of liability as well, and accordingly, we confirm the same.

II). Quantum :-

11. The learned counsel for the appellants would contend that, the Tribunal, while determining compensation towards Loss of Dependency, has wrongly taken the monthly income of the deceased at Rs.1,20,000/-. Though the claimants at the time of filing the Claim Petition stated that, at the time of the accident, the deceased was aged about 46 years and was employed as Doctor at KMCH Hospital and TCL Coimbatore, and was earning a monthly income of Rs.80,000/-, subsequently, P.W.1, wife of the deceased, in her cross-examination, deposed that her husband was earning Rs.30,000/- per month as salary from KMCH Hospital and Rs.20,000/- per month as salary from TCL Coimbatore, and apart from that, the deceased was also earning a sum of Rs.70,000/- per month as income by running a Private Clinic at Home. But, to substantiate these income, the claimants have not filed any income proof, except, Ex.P11/ITR for the year 2011-12, and since the said return was filed by the claimants on behalf of the deceased after his death, the same was not taken into consideration by the Tribunal. However, the Tribunal, in the absence of any income proof filed by the claimants, wrongly fixed the notional income of the deceased as Rs.1,20,000/- per month.

12. The learned counsel further submitted that, apart from fixing the notional income of the deceased as Rs.1,20,000/-, the Tribunal has also wrongly added 30% towards future prospects. The Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 2 TNMAC 609 (SC), standardised that, only 25% of the monthly income has to be added towards future prospects for the age group of 46 years old. But, in the present case, the Tribunal has wrongly added 30% towards future prospects. Therefore, he would contend that the monthly income fixed by the Tribunal at Rs.1,20,000/- and the addition of 30% towards future prospect, resulted in awarding excessive compensation towards loss of dependency and same requires appropriate reduction.

12.1 Further, the learned counsel contended that the Tribunal has awarded 10,00,000/- towards loss of consortium to the wife, which is too high. As held by the Hon'ble Supreme Court, the maximum amount that can be awarded towards loss of consortium to the wife of the deceased is Rs.40,000/- Therefore, the consortium awarded by the Tribunal is without any application of law. In the similar fashion, the Tribunal has awarded Rs.15,00,000/- to the claimants 2 to 4, towards Love and Affection, which is too high and without application of mind. Therefore, the compensation awarded by the Tribunal towards Consortium and Love and Affection are too high and requires appropriate reduction. However, he fairly submitted that Rs.40,000/- may be awarded to the wife of the deceased towards

Loss of Consortium and Rs.40,000/- may be awarded towards parental consortium to the children of the deceased and Rs.40,000/- each may be awarded to the claimants and 3 and 4, who are parents of the deceased in the form of filial consortium. The Tribunal awarded Rs.25,000/- towards Funeral Expenses. As per the ratio laid down by the Hon'ble Supreme Court, in Pranay Sethi's case (supra), only a sum of Rs.15,000/- can be awarded under the head funeral expenses. The learned counsel also fairly submitted that as held by the Hon'ble Supreme Court, in Pranay Sethi's case (supra), a sum of Rs.15,000/- may be awarded towards Loss of Estate. Therefore, he prayed before us to interfere with the award passed by the Tribunal and to fix just and reasonable compensation to the claimants.

13. On the other hand, the learned counsel for the respondents 1 to 4/claimants would contend that the award passed by the Tribunal under various heads is just and fair. Insofar as the compensation awarded by the Tribunal towards Loss of Dependency at Rs.1,82,52,000/- is concerned, since the deceased was a Doctor, by profession, working in KMCH Hospital and TCL Coimbatore, and he was earning a sum of Rs.80,000/- per month and apart from that, he was earning Rs.70,000/- from a Private Clinic run by at Home, the Tribunal, after taking into consideration of the fact that the deceased was employed in two reputed Hospitals and also had Private Clinic in a busy locality, and further taking into account of Ex.P.5 to P.22, fixed the monthly income of the deceased at Rs.1,20,000/- and added 30% towards future prospects. Further, the learned counsel contended that since the wife of the deceased has lost her husband, who is a reputed Doctor, the Tribunal awarded such higher compensation of Rs.10,00,000/- towards Loss of Consortium. The learned counsel further submitted that similarly,by taking into account the status of the deceased, the Tribunal awarded Rs.15,00,000/- towards Love and Affection to claimants 2 to 4. Therefore, he contended that there is no necessity to interfere with the award passed by the Tribunal. Further, he fairly submitted that compensation awarded by the Tribunal towards Funeral Expenses at Rs.25,000/- may be modified and reduced to Rs.15,000/- as per the ratio laid down by the Hon'ble Supreme Court in Praney Sethi's case.

14. Originally, the claim was filed stating that the deceased was earning a sum of Rs.50,000/- per month from his employers and Rs.30,000/- from his Private Clinic. At the time of deposition, P.W.1, wife of the deceased deposed that her husband was earning Rs.30,000/- per month as salary from KMCH Hospital and Rs.20,000/- per month as salary from TCL Coimbatore, and apart from that, a sum of Rs.70,000/- per month as income by running a Private Clinic at home. The deposition

of P.W.1 with regard to the monthly income of the deceased is quite contradictory to what was initially stated in the Claim Petition. Further, the claimants to prove either that the deceased was earning Rs.50,000/- from the two Hospital KMCH and TCL or was earning Rs.70,000/- from his Private Clinic, examined only a Doctor from KMCH Hospital as P.W3; a staff nurse from TCL as P.W.4 and one more staff nurse from Private Clinic as P.W.5, but not marked any documents. Atleast, the claimant should have filed the document relating to the professional tax paid by the deceased, as he was a Doctor, he was supposed to have paid professional tax. But, no document in that regard has been marked. The accident occurred in the year, 2012. Admittedly, no ITR was filed by the claimants to show that the deceased was drawing Rs.1,20,000/- per month and the ITR for the AY 2011-12 marked as Ex.P17, cannot be relied upon, as the same was filed by the claimants after the death of the deceased and the Tribunal also rightly refused the same. Now, in the absence of any income proof of the deceased, the income fixed by the Tribunal at Rs.1,20,000/- is excessive and therefore, we are required to determine the notional monthly income of the deceased.

14.1 On perusal of deposition of P.W.1 and other documents marked before the Tribunal, it appears that the deceased was employed at from KMCH Hospital and was earning Rs.30,000/- per month and at TCL Coimbatore, earning Rs.20,000/- per month, and further, the deceased was earning Rs.70,000/- per month from a private clinic run at his Home. However, in the absence of any income certificate or any other document to substantiate the same, we are not in a position to accept the deposition of P.W.1. Even assuming that the deposition of P.W.1 to be genuine, the same can be applicable only with regard to the income earned by the deceased from two Hospitals and insofar as the income earned at Rs.70,000/- from running a Private Clinic is concerned, the same is far from imagination, as there is no possibility for a man to work at three places in a day and after having worked at two Hospitals, his energy would get exhausted and even assuming that, he is a hard worker, first of all, he should find time to work in a Private Clinic, for such long hours to earn such income. Further, we would like to point out that the two Hospitals, where, deceased was employed were Private Hospitals and therefore, the employment is not permanent employment, and his dedication is much required as there is possibility for termination of service at any point of time if the Authorities found his service to be inefficient. Therefore, the deposition of P.W.1 that the deceased was earning Rs.70,000/- at a Private Clinic is not believable and hence, we are of the firm view that the award passed by the Tribunal towards loss of dependency by taking Rs.1,20,000/- as monthly income of the deceased is high and excessive. Therefore, we deem fit, that it would be appropriate to fix a sum of Rs.10,000/- as income earned from the Private Clinic. Thus, by taking the monthly income earned by the deceased from two Hospitals, at Rs.50,000/- and addition of Rs.10,000/- as income earned from Private Cline, we fix a sum of Rs.60,000/- per month as notional monthly income of the deceased.

14.2 As held by the Hon'ble Supreme Court in Praney Sethi's case, for the age group of 46 year, it is just and necessary to add 25% towards future prospects. Therefore, we are of the view that, it would be appropriate to add 25% towards future prospects instead of 30% as ordered by the Tribunal. In the present case, there are four claimants. Therefore, $1/4^{th}$ deduction has to be made towards personal expenses of the deceased, which the Tribunal has rightly done. As held by the Hon'ble Supreme Court, in Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, for the age group of 46 years, the multiplier applicable is '13', and the Tribunal has taken the right multiplier of 13, and therefore, $1/4^{th}$ deduction made by the Tribunal and the multiplier adopted by it stands confirmed. Thus, by fixing the monthly income of the deceased Rs.60,000/- and by adding 25% towards future prospects, the annual of loss of income would be as follows:-

" Rs.60,000/- + 25% (15,000/-) = Rs.75,000/-
Rs.75,000/- x 12 = Rs.9,00,000/-
Rs.9,00,000/- - Rs.1,10,000/- (IT) = Rs.7,90,000/-
Rs.7,90,000/- x ¾ x 13 = Rs.77,02,500/-

14.3 The Tribunal awarded a sum of Rs.10,00,000/- towards loss consortium to the wife. As rightly pointed out by the learned counsel for the appellants the said sum is exorbitant. Therefore, by following the ratio laid down by the Hon'ble Supreme Court in Pranay Sethi's, the award passed by the Tribunal towards Loss of Consortium is modified and reduced to a sum of Rs.40,000/- from Rs.10,00,000/-. Similarly, the compensation awarded by the Tribunal towards Love and Affection at Rs.15,00,000/- is not only high but also crossed the limit, which normally all High Courts in India and Supreme Court used to award, and we could also infer that the intention of the Presiding Officer is to award high and huge compensation to the claimants. Thus, in the light of the law laid down by the Hon'ble Supreme Court, in the case of Magma General Insurance Company Vs. Nanu Ram alias CHUHRU RAM and others reported in [(2018) II SCC 892], we are inclined to award a sum of Rs.40,000/- each under the separate head, Filial Consortium to the father and mother of the deceased and a sum of Rs.40,000/- as parental consortium to the minor claimant.

14.5. Similarly, the compensation awarded by the Tribunal towards Funeral Expenses at Rs.25,000/- is excessive and by following the ratio laid down by the Hon'ble Supreme Court, in Pranay Sethi's case (supra), the same is modified and reduced to a sum of Rs.15,000/-. Insofar as the compensation awarded by the Tribunal towards Loss of Estate at Rs.5,000/- is concerned, we feel the same to be low and the same is modified and enhanced to Rs.15,000/-

15. Therefore, we determine the total compensation awarded by the Tribunal in the following manner:-

Sl. No	Head	Award	High Court Award	Modified/Enhanced/
1	Loss of Dependency	Rs.1,82,52,000/-	Rs.77,02,500/-	Modified
2	Loss of Consortium	Rs.10,00,000/-	Rs.40,000/-	Modified
3	Loss of Love and Affection (minor claimant)	Rs 15,00,000/-	Rs.40,000	Modified
4	Filial Consortium (parents)	Nil	Rs.80,000/-	Modified
4	Funeral Expenses	Rs. 25,000/-	Rs.15,000/-	Modified
5	Loss of Estate	Rs. 5,000/-	Rs.15,000/-	Modified
	Total	Rs.2,07,82,000/-	Rs.78,92,500/-	Reduced

15.1 Consequently, the total compensation amount of Rs.2,07,82,000/- awarded by the Tribunal is hereby modified and reduced to Rs.78,92,500/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered.

16. The said compensation shall be shared by the claimants 1 to 4/respondents 1 to 4 herein as per the following apportionment:-

- the first respondent (wife of the deceased) is entitled to a sum of Rs.40,00,000/-.
- the second respondent (minor son) is entitled to a sum of Rs.20,00,000/-
- the third respondent (father of the deceased) is entitled to a sum of Rs.8,92,500/-
- the Fourth respondent (mother of the deceased) is entitled to a sum of Rs.10,00,000/-.

16.2 So far the share in respect of the minor second claimant is concerned, the same shall be deposited by the Tribunal in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the mother of the minor claimant is permitted to withdraw accrued interest once in three months.

17. Therefore, we direct the second appellant/Insurance Company to deposit the entire compensation amount of Rs. Rs.78,92,500/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. Further, we direct the Tribunal to transfer the entire compensation amount to the respective bank accounts of the claimants by way of RTGS within a period of three weeks from the date of deposit made by the Insurance Company. The claimants is also directed to deposit the deficit Court fee, if any, before receiving the order copy.

18. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

19. Before parting with this order, it would not be out of place to take judicial notice of the Presiding Officer, viz., Mr.R.Venkatasubramanian, Special Sub Judge, Coimbatore, in awarding such huge compensation, without any rhyme or reason under the heads like i) Loss of Consortium at Rs.10,00,000/-, ii) Loss of Love and Affection at Rs.15,00,000/- iii) Loss of Dependency a sum of Rs.1,82,52,000/- without any income proof. In fact, he has crossed the limits, which all High Courts in India and Supreme Court would normally used to award. In fact, we are really shocked by fixation of huge compensation without any application of settled proposition of law by the Honourable Apex Court and, we never come across any motor accident cases, where, the Presiding Officer awarding such huge compensation magnanimously. In the present, the deceased was a Doctor, and aged 46 years and not a young person. Therefore, it really makes us to think not that the Presiding Officer moved by some mercy, has benevolently awarded such compensation, rather, it has affected the credibility bestowed on him.

20. Therefore, we direct the Registrar General, High Court, Madras, to keep this order along with Annual Confidential Report (ACR) of the Presiding Officer, by name Mr.R.Venkatasubramanian, then Special Sub Judge, Coimbatore.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal/
(Special Sub Judge) Coimbatore.

2. The Registrar General,
High Court, Madras.

3. The Section Officer,
B Section, High Court, Madras.

4. The Section Officer,
VR Section,
High Court, Madras-104

C.M.A.No.1957 of 2018

NRL(CO)
GMY(11/06/2020)