IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-08-2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3567 of 2019

1.Saritha
2.Minor Surendhar
3.Minor Raghul
(Appellants 2 and 3 are minors rep. by their mother next friend Guardian Tmt.Saritha/ first appellant)

4.Ambujam Ammal

.. Appellants/Petitioners

vs.

1. Siva

2. The Divisional Manager,
United India Insurance Company Ltd.,
No.46, Katpadi Road,
Vellore.

.. Respondents/Respondents

Prayer:-

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.08.2017 passed in M.C.O.P.No.355 of 2016 on the file of the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Tiruvannamalai.

For Appellants : Mr.F.Terry Chella Raja

For Respondent No.1 : Ex-Parte

For Respondent No.2 : Mr.D.Bhaskaran



J U D G M E N T

The present Civil Miscellaneous Appeal is preferred against the judgment and decree dated 11.08.2017 passed in M.C.O.P. No.355 of 2016 on the file of the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Tiruvannamalai.

2. The accident occurred on 09.01.2015 at about 02.30 P.M., at Tiruvannamalai Manalurpettai Main Road near Katchirapattu Koot Road, Tiruvannamalai District. Thatchampattu Police Station registered a case in Crime No.3 of 2015 under Section 304(A) IPC.

3. The deceased one Mr.Govindhasamy was aged about 40 years at the time of accident and was working as Building Mason. His wife, two children and the mother of the deceased are the claimants.

4. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties.

5. The second respondent-Insurance Company also contested the case. The deceased Mr.Govindhasamy was travelling in the Bajaj Motorcycle bearing Registration No.TN-25-H-0745 and one Mr.Sekar was a pillion rider. At that time, the rider of the TVS Apache Motorcycle bearing Registration No.TN-25-AJ-7687 came in the same direction in a rash and negligent manner and dashed against the two wheeler in which the deceased was travelling. The pillion rider Mr.Sekar fell down and sustained injuries and the deceased was taken to JIPMER Hospiral, Pondicherry for treatment. Despite the treatment given in the Hospital, Mr.Govindhasamy died on 11.01.2015.

6. The owner of the first respondent-TVS Apache Motorcycle bearing Registration No.TN-25-AJ-7687 remained ex parte even before the Tribunal. The insurer of the said Motorcycle contested the case before the Tribunal. PW-2, in support of the second respondent-Insurance Company, deposed that the rider of the Bajaj Motorcycle, in which the deceased was travelling, suddenly came to the right side of the road, which caused the accident. Thus, the deceased was responsible for the accident and therefore, the second respondent-Insurance Company is to be exonerated. However, the Tribunal considered the altered Final Report submitted by the police in the criminal case, which reveals that the rider of the TVS Apache Motorcycle was responsible. Both Exs.P-1 and P-5 unambiguously clarified that the accident has occurred due to the rash and negligent driving of the rider of the TVS Apache Motorcycle belongs to the first respondent. As the Tribunal has considered the evidence of PW-2, Exs.P-1, P-2 and P-5 and other facts and circumstances of the case, accordingly, arrived a conclusion that the rider of TVS Apache Motorcycle belongs to the first respondent is responsible for the accident and committed the act of negligence by driving the Motorcycle in a rash and negligent manner. In view of the fact that the first respondent has committed an act of

negligence, the liability was fixed on the insurer second respondent to pay compensation to the claimants.

7. The Tribunal fixed the quantum of compensation granted to the claimants. It is pertinent to note that the Tribunal has fixed the monthly income of the deceased as Rs.6,000/- and applied 15 multiplier and accordingly, granted a sum of Rs.10,53,000/- towards loss of income.

8. The learned counsel appearing on behalf of the appellants-claimants strenuously disputed the manner in which the monthly income of the deceased was fixed by the Tribunal. It is contended that the Mason is a skilled worker and the deceased was aged about 40 years at the time of accident and the claimants are wife, two minor children and the aged mother of the deceased. Therefore, fixation of monthly income of Rs.6,000/- is highly inadequate and inappropriate.

9. It is contended that the Tribunal has not taken into consideration regarding the nature of the job of the Mason and erroneously fixed the notional income as Rs.6,000/- per month. This apart, the Tribunal has not granted 40% income of the deceased as future prospects. As per the judgment of the Apex Court and High Courts, the claimants are entitled for future prospects and in this case, the claimants are entitled for future prospects of 40% of the income. Therefore, the appellants-claimants are entitled for enhancement of compensation. Even under the other heads, the compensation is to be enhanced and the transportation charges are also to be granted.

10. The learned counsel appearing on behalf of the second respondent-Insurance Company disputed the arguments as advanced by the learned counsel for the appellants-claimants and contended that the deceased was aged about 40 years at the time of accident. The deceased born during the year 1974 and therefore, he has completed 40 years of age. With reference to persons, who have crossed 40 years of age, 25% future prospects alone is to be granted and not 40% future prospects as contended by the learned counsel for the appellants-claimants.



11. This apart, the Tribunal has considered the documents and fixed the notional monthly income. The claimants have not established nor produced any documents regarding the income of the deceased person. In the absence of any proof to establish the monthly income of the deceased, the Tribunal has fixed the notional income as Rs.6,000/- per month and therefore, there is no perversity or error in the matter of fixation of monthly income of the deceased. The learned counsel for the second respondent-Insurance Company contended that multiplier 14 is to

be applied as the deceased completed his 40 years of age at the time of accident.

12. Considering the arguments, this Court is of the opinion that there is no dispute regarding the accident. The findings of the Tribunal unambiguously reveal that accident occurred due to the negligent act on the part of the driver of the TVS Apache Motorcycle-first respondent. There is no material available on record to repudiate the said findings of the Tribunal in this regard. Thus, the first respondent has committed the act of negligence and consequently the accident occurred, resulted in death of the deceased person Mr.Govindhasamy.

13. While calculating the quantum of compensation, this Court has to consider whether fixation of notional income is appropriate or inappropriate.

14. Admittedly, the deceased was working as a Building Mason and he has completed 40 years of age at the time of accident and he died leaving behind his wife, two children and his aged mother. The mitigating circumstances are also to be taken into consideration while fixing the notional income. Alterations may not be possible in view of certain facts and circumstances. For example, in a Building Mason working in remote rural areas, municipalities and in metropolitan cities, various factors are available and those factors are vital for the consideration as for as the fixation of notional income is concerned.

15. With reference to the case on hand, the deceased was residing in a rural area. Even in a rural area, fixation of notional income of Rs.6,000/- per month is undoubtedly lesser and therefore, this Court has no hesitation to arrive a conclusion that the Tribunal has committed an error in fixing the notional income of the deceased. For instance, per day wages for a Mason in a rural area may be Rs.400/- to Rs.500/- and in a semi urban areas, it may be Rs.600/- to Rs.700/- and in urban areas, it may be Rs.800/- to Rs.900/- or even Rs.1,000/-. In Cities like Chennai, even it may be Rs.1,100/- or Rs.1,200/-. However, a pragmatic approach is required while fixing the notional income of the persons. The pragmatic approach here is that what would be the prevailing wages for a particular category of the employee or the worker in the particular area in which that persons are working. Thus, place of working, nature of job whether skilled or unskilled, age of the person as well as the other mitigating factors form part of consideration for the purpose of fixation of notional monthly income for grant of compensation under the Motor Vehicles Act, 1988.

16. Therefore, it may not be possible on some occasions to follow the particular judgment delivered by the High Courts or

the Supreme Court. Judgments may be outdated or delivered some years back or the facts and circumstances in that particular judgment may not be much applicable to the facts and circumstances of the case on hand. Therefore, the Courts are bound to consider the judgments with reference to the facts and circumstances as well as the prevailing situation. Mechanical approach in application of judgments are also not proper. Thus, for grant of compensation under the Motor Vehicles Act, 1988, a particular amount fixed in a particular case need not be passed in a routine manner. Once the facts and circumstances are different, then the yardstick to be adopted also to be different.

17. Applying the above yardsticks and the principles, this Court is of the opinion that fixation of notional monthly income of Rs.6,000/- in the present case is certainly inadequate, warranting enhancement. The Tribunal has further committed an error in not granting future prospects, which is already approved by the Supreme Court. Thus, the notional monthly income of the deceased is to be enhanced and future prospects are to be added.

18. As far as the grant of future prospects are concerned, the learned counsel for the appellants-claimants contended that it would be 40%. However, the learned counsel for the second respondent-Insurance Company stated that it must be 25%.

19. Now the Court has to consider whether it is 25% or 40% and which is to be appropriate.

20. Applying the principles for grant of future prospects in the case of National Insurance Co. Ltd. vs. Pranay Sethi [(2017) 16 SCC 680], it is stated by the Constitutional Bench of the Hon'ble Supreme Court of India on 31st October 2017. In paragraph-57, the Apex Court made an observation "taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."



21. Based on the abovesaid observation, the Apex Court proceeded to record the conclusion. The Constitutional Bench in the concluding paragraph 59.4 of the Pranay Sethi case (cited supra), stated as follows in clear terms:-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the

warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

22. Therefore, this Court has to follow the said concluding paragraph of the judgment of the Hon'ble Supreme Court (cited supra), for the purpose of grant of future prospects. The Constitution Bench judgment would be the binding judgment and Law of the Court. Therefore, the grant of 40% future prospects is with reference to the persons between the age group of 40 to 50 years is impermissible and 25% alone is permissible.

23. In the present case on hand, admittedly, the deceased was born during the year 1974 and at the time of accident, he had crossed 40 years of age. When he had crossed 40 years of age, then he comes within the age group of 40 years to 50 years and therefore, 25% future prospects are permissible and the same is to be granted. Accordingly, the monthly income of the deceased is to be enhanced to Rs.12,000/-. Taking into consideration, the deceased was working as a Building Mason in the rural area and 25% of future prospects is to be added towards the loss of income and another Rs.10,000/- is to be granted towards transportation charges. The compensation granted under the other heads are also be modified with reference to the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India in the case of Pranay Sethi case (cited supra). Accordingly, the total compensation of Rs.14,03,000/- awarded by the Tribunal is modified as detailed hereunder:-

| | Rs. |
|---|---|
| Loss of dependency (Rs.12,000/-+25%-1/4x12x15) | 20,25,000/- |
| Loss of Consortium | 40,000/- |
| Loss of Love and Affection (Rs.40,000/- x 2) | 80,000/- |
| Loss of Love and Affection (for mother) | 40,000/- |
| Funeral Expenses | 15,000/- |
| Loss of Estate | 15,000/- |
| Transportation Expenses | 10,000/- |
| Total | Rs.22,25,000/- |

24. The total compensation of Rs.14,03,000/- granted by the Tribunal is enhanced to Rs.22,25,000/- along with interest at the rate of 7.5% per annum. However, there is a delay of 514 days in filing the appeal by the appellant-claimants. Thus, the appellants-claimants are not entitled to get interest for 514 days delay, which was condoned by this Court on 12.09.2019 for entertaining the appeal in CMP No.14055 of 2019.

25. The second respondent-Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum, excluding the interest for 514 days, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellants-claimants (major) are permitted to withdraw their respective portion by filing appropriate applications before the Tribunal. As far as the minor shares are concerned, the said amount is directed to be deposited in any one of the Nationalised Bank under the Interest Bearing Deposit Scheme and the same is to be renewed periodically till the minor attains the age of majority.

26. The apportionment is to be made in accordance with the ratio ordered by the Tribunal. The appellants-claimants are directed to pay the additional Court Fee, if any, in view of the fact that the quantum of compensation is enhanced in the present appeal and the same is to be paid, within a period of four weeks from the date of receipt of a copy of this judgment. All the payments are to be made through RTGS.

27. Accordingly, the judgment and decree dated 11.08.2017 passed in M.C.O.P. No.355 of 2016 on the file of the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Tiruvannamalai stands modified to the above extent and consequently, the C.M.A.No.3567 of 2019 stands allowed in part. However, there shall be no order as to costs.



Sd/-
Assistant Registrar(CS IX)

//True Copy//



Sub Assistant Registrar

svn

To

1. The Special Sub Judge,
Special Sub Court-cum-Motor Accidents Claims Tribunal,
Tiruvannamalai.

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

+1cc to M/s.M.Malar, Advocate, S.R.No.27939



NMI(CO)
CS/05/05/2021