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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1314 of 2020

and

C.M.P.No.9457 of 2020

HDFC ERGO General Insurance
Company Limited,
New No.528, Old No.559,
Anna Salai,
Chennai - 600 018.

..Appellant/2nd Respondent

VS.

1.P.Veerammal
2.P.Mayavan
3.P.Sakthivel
4.P.Sarathkumar
5.B.Mookkayee

...Respondents 1 to 5 / Petitioners 1 to 5

All are residing at
21/26, Piriveri Salai,
Anna Nagar,
Chennai - 600 040

6.T.Palanivel
No.524/12, Periyar E.V.R.High Road,
Arumbakkam, Chennai - 600 106.
(the respondent No.6/Respondent No.1
above named has been set-exparte in
the above MCOP)

..6th Respondent / Ist Respondent / Respondents



The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 04.11.2019 made in M.C.O.P.No.424 of 2017 on the file of the Small Causes Court cum M.A.C.T.(Special Subordinate Judge Court-2), Chennai.

For Appellant : Mr.Somasundar N.

For Respondents : M/s.Richard Suresh Kumar
[For R1 to R5]

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the award and decree dated 04.11.2019, made in M.C.O.P.No.424 of 2017 on the file of the Small Causes Court cum M.A.C.T.(Special Subordinate Judge Court - 2), Chennai.

2. The HDFC ERGO General Insurance Company Limited is the appellant, filed the appeal, questioning the quantum of compensation awarded by the Tribunal.

3. The accident occurred on 23.10.2016 at about 10.00 hours at Anna Nagar 8th Main Road, AH Block 3rd Street Junction. Anna Nagar Police Station registered a case in Crime No.298/2016. Due to the accident, Mr.B.Paramasivam, S/o.Balan died on 30.10.2016 as he sustained grievous multiple fractures and grievous head injuries. The Claim Petition was filed by the wife, three children and the aged mother of the deceased person. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties. As far as the negligence is concerned, based on the FIR and based on the oral evidence of PW1, the Tribunal arrived a conclusion that the driver of the Motor Cycle bearing Registration No.TN-13-4718, has driven his vehicle in a rash and negligent manner and caused the accident. Accordingly, the Insurance company is liable to pay compensation. Regarding the quantum of compensation, the Tribunal fixed the notional income of the deceased as Rs.6,500/-. The age of the deceased was 47 years and accordingly, 25% of the future prospectus are added.



4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the Tribunal has committed an error in granting excess compensation under the heads of Love and Affection of Rs.1,50,000/- and penal and parental consortium of Rs.1,60,000/-.

5. The learned counsel for the appellant/Insurance company contended that the Hon'ble Supreme Court of India in the case of National Insurance Co. Ltd vs Pranay Sethi and Others, reported in 2017 (2) TNMAC 609(SC) reiterated that once the multiplier is applied and compensation is fixed, thereafter, the no compensation can be granted towards Love and Affection and further, Penal compensation also cannot be granted. In the present case, the compensation granted under these two heads are excess and therefore, the learned counsel, relying on the said judgment, contended that the two heads are to be cancelled.

6. The learned counsel appearing on behalf of the respondents/claimants disputed the contentions by stating that the Tribunal considered all the aspects in a right perspective and accordingly, awarded the compensation and there is no excessiveness in awarding compensation and therefore, the appeal is liable to be dismissed. It is contended that the compensation under the head of Love and Affection has been granted in many cases and therefore, the Tribunal has not committed any error in granting such compensation.

7. Considering the contentions, this Court is of the considered opinion that there is no dispute regarding the factum of accident. The accident was established. The driver of the two wheeler was held responsible and consequently, the appellant/Insurance company has to pay the compensation. Regarding the quantum of compensation, the Multiplier applied as well as the monthly income fixed is in accordance with the principles and there is no irregularity or perversity as such. However, a sum of Rs.1,50,000/- is granted towards Love and Affection and further, a sum of Rs.1,60,000/- is granted towards Penial and Parental Consortium. Thus, the two heads appears to be excess and the Apex Court of India in the case of Pranay Sethi (cited supra), unambiguously held that such an award of compensation is impermissible. It is relevant to extract Paragraph 54 of the judgment, which reads as under:



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"54.As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs.25,000 towards Funeral Expenses, Rs.1,00,000 Loss of Consortium and Rs.1,00,000 towards Loss of Care and Guidance for Minor Children. The head relating to Loss of Care and Guidance for Minor Children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The Conventional and Traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in Bank interest, escalation of rates in many a field have to be noticed. The Court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the Orders passed by the Tribunals and Courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and Funeral Expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fast-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

8. The Apex Court Full Bench judgment rendered in the case of Kishan Devi and others Vs. Oriental Insurance Company Limited and others, reported in 2019 (1) TNMAC 173(SC) held as follows:

"9. So far as the Loss of Estate, Loss of Consortium



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and Funeral Expenses are concerned, the Constitution Bench of this Court in paragraph 59.8 in Pranay Sethi(supra) has held that the appropriate amount under the said heads would be Rs.15,000(Rupees Fifteen Thousand), Rs.40,000(Rupees Forty Thousand), and Rs.15,000(Rupees Fifteen Thousand) respectively, totaling Rs.70,000 (Rupees Seventy Thousand) in all.

10. Consequently, so far as the Loss of Estate, Loss of Love & Affection and Funeral Expenses are concerned, following the decision of the Constitution Bench in Pranay Sethi(Supra) a total of Rs.70,000/-(Rupees Seventy Thousand) is awarded. Calculated thus, the total entitlement of the Claimants-Appellants would work out to Rs.8,82,520 [Rs.4,515 (monthly Loss of Dependency taking into account the Future Prospects and after deducting 50%)X12X15(Multiplier)=8,12,520+Rs.70,000 on account of Loss of Love & Affection, Loss of Estate and Funeral Expenses].

9. In view of the judgments cited supra and in view of the facts and circumstances, this Court is inclined to modify the award as detailed hereunder:

1.Loss of Income	:	19,01,250/-
2.Loss of Consortium to Wife	:	40,000/-
3.Loss of Estate	:	15,000/-
4.Funeral Expenses	:	15,000/-

TOTAL	:	19,71,250/-

10. Thus, the respondents/claimants are entitled for a total compensation of a sum of Rs.19,71,250/-(Rupees Nineteen Lakh Seventy One Thousand Two Hundred and Fifty only) along with the interest at the rate of 7.5% per annum.

11. Accordingly, the appellant/Insurance company is directed to deposit the entire award amount along with the accrued interest within a period of twelve(12) weeks from the date of receipt of a copy of this judgment and on such deposit, the respondents/claimants are permitted to withdraw their respective



portion of the compensation amount as apportioned by the Tribunal in its award along with accrued interest by filing an appropriate application before the Tribunal and the payments are to be made through RTGS.

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12. Accordingly, the award and the decree dated 04.11.2019 passed in M.C.O.P.No.424 of 2017 stands modified and consequently, the Civil Miscellaneous Appeal in C.M.A.No.1314 of 2020 is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
Small Causes Court cum
M.A.C.T.(Special Subordinate Judge Court-2),
Chennai.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.N.Somasundar, Advocate, S.R.No.31095

CMA No.1314 of 2020

AD(CO)

RLP(13/09/2021)