IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2021

Pronounced on : 27.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3598 of 2011

1. Mani
   W/o.Rathinam

2. Shanthi
   D/o.Rathinam

3. Ammakannu
   W/o.Kannupaiyan .. Appellants/Claimants

Vs.

1. Kathirvel

2. National Insurance Company Limited,
   74-A, Paramathy Road,
   Namakkal - 637 001.
   .. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.06.2011 in M.C.O.P.No.1540 of 2009 on the file of the Motor Accident Claims Tribunal, the Additional District Judge and Special Judge for Essential Commodities Act, Salem.

For Appellants : Mr.R.Syed Mustafa

For R2 : Mr.S.Vadivel

JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the impugned award passed by the learned Motor Accident Claims Tribunal, the Additional District Judge and Special Judge for Essential Commodities Act, Salem in M.C.O.P.No.1540 of 2009 dated 15.06.2011 awarding a sum of Rs.3,89,000/- as against the claim of Rs.15,00,000/- for the loss of life of the deceased aged about 37 years at the time of accident on 19.08.2009. Being not satisfied with the quantum of the award granted by the learned Tribunal, the claimants who are the wife, daughter and mother of the deceased have come forward with the present appeal.

2.The learned counsel for the appellants/claimants claimed that the award granted by the learned Tribunal is meagre. He would contend that the Tribunal having observed that the deceased aged about 37 years had died in the accident on 19.08.2009 at about 17.30 hours while he was riding the motorcycle. Due to rash and negligent driving of the offending vehicle by the driver of the trailer lorry which was insured with the 2nd respondent/Insurance Company, has assessed the award amount only by considering the income of the deceased who was working as a Mason only at Rs.100/- and after deducting Rs.1,000/- towards his personal expenses, arrived at Rs.3,84,000/- towards loss of dependency and added only a sum of Rs.5,000/- towards funeral expenses. He would further contend that the Tribunal has not awarded any amount towards loss of love and affection, towards loss of consortium, and towards 40% of future prospects. Therefore, the learned counsel would contend that the Tribunal has not dealt with the matter in proper perspective and awarded a very meagre amount as compensation which requires to be enhanced. He would further contend that the deceased was aged about 37 years at the time of his death and he was the only bread winner on whom the appellants herein were dependent. The Tribunal taking into account that no documentary evidence in regard to income and occupation, it has notionally fixed a sum of Rs.3,000/- towards monthly income (Rs.100/- per day) of the deceased which has no logical reasoning.

3.On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company would submit that the Tribunal has considered the entire case of the claimants as well as the evidence on record and come to the right conclusion by awarding just compensation of Rs.3,89,000/- which requires no interference. Hence, he seeks dismissal of the appeal.

4.Heard the learned counsels appearing for both sides and perused the entire materials placed on record and the award passed by the learned Tribunal.

Point for Consideration:

Whether the Tribunal has awarded a meagre award as compensation and which requires modification by enhancing the same.

5.This Court finds merits in the submissions made by the learned counsel for the appellants/claimants. It is not in dispute that the deceased died at the age of 37 years. On the fateful day i.e., on 19.08.2009 at about 17.30 hours, while he was riding his motorcycle and died due to rash and negligent driving of the offending vehicle. It is also not in dispute that he died leaving behind the young wife and his daughter and his mother, the 1st appellant/claimant has categorically deposed that her husband was working as Mason and was earning monthly income at Rs.12,000/-. Of course she had not filed any document to prove the same. However since the deceased was working as a Mason, this Court can take judicial notice of the fact regarding the notional income attributed to skilled workers such as Mason would be in the range of of Rs.6,000/- to Rs.8,000/- in the year 2009. It would be just and fair for this Court to fix Rs.7,500/- as notional income of the deceased. The deceased died at the age of 37, the correct multiplier is '15'. Accordingly, the loss of dependency can be arrived at after deducting 1/3rd of his monthly income towards personal and living expenses and thereby a sum of Rs.12,60,000/- {Rs.7,500/- + Rs.3,000/- (40% of Rs.7,500/-) X 12 X 15 X 2/3} can be awarded.

6.It is pertinent to note that the Tribunal had miserably failed to award the compensation towards loss of love and affection and towards loss of consortium, towards transportation and also towards future prospects which are the basic heads under which the bereaved family is entitled to. The Hon'ble Apex Court in the case of Rajesh vs. Rajbir Singh reported in 2013 (9) SCC 54 at paragraph No.17, it has been categorically held that atleast a sum of Rs.1,00,000/- should be given towards loss of consortium. By awarding such amount towards loss of consortium, it has been held by the Hon'ble Apex Court that the Courts have to make an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. For better clarity, paragraph No.17 is extracted hereunder:-

> "17.The ratio of a decision of this Court, on a legal issue is precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be and in fact ought to be periodically revisited, as observed in Santosh Devi case reported in 2012 (6) SCC 421. We may therefore, revisit the practice of awarding compensation under conventional heads:loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be

increased. In Sarla Verma case reported in (2009) 6 SCC 121, it was held that compensation for loss of consortium should be in the range of Rs.5,000 to Rs.10,000. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of the spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts awarded atleast Rupees One Lakh for loss of consortium."

7.Therefore, having regard in the above dictum of the Hon'ble Apex Court, this Court is of the view that it would only be just and reasonable to award a sum of Rs.1,00,000/- towards loss of consortium. As regards the funeral expenses is concerned, the Tribunal has ordered only a sum of Rs.5,000/- which in the opinion of this Court is very low and accordingly, it is enhanced to Rs.15,000/- and also towards transportation no amount was awarded. It is apt to award a sum of Rs.10,000/-. The Tribunal has not awarded any amount under the head 'loss of love and affection'. This Court granted a sum of Rs.15,000/- each towards loss of love and affection to the appellants 2 and 3.

8.As held by the larger bench of the Hon'ble Apex Court in National Insurance Company Ltd., vs. Pranay Sethi and Others reported in 2017 16 SCC 680 the appellants/claimants are entitled to 40% income towards loss of future prospects and accordingly the claimants are entitled to a sum of Rs.14,15,000/-.

9.It is well settled that the Tribunals and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	3,84,000	12,60,000	Enhanced
2.	Loss of love & affection to the appellants 2 & 3	-	30000	Granted
3.	Loss of consortium to the 1st appellant	-	1,00,000	Granted
4.	Transportation	-	10000	Granted
5.	Funeral expenses	5000	15000	Enhanced
	Total	Rs.3,89,000/-	Rs.14,15,000/-	Enhanced by Rs.10,26,000/-

10.Point for consideration is answered in favour of the appellants/claimants. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,89,000/- is hereby enhanced to Rs.14,15,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.1540 of 2009 on the file of the Motor Accident Claims Tribunal, the Additional District Judge and Special Judge for Essential Commodities Act, Salem, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Additional District Judge and Special Judge for
   Essential Commodities Act,
   Motor Accident Claims Tribunal,
   Salem.

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

+1cc to Mr.M.R.Thangavel, Advocate, S.R.No.26107

+1cc to Mr.S.Vadivel, Advocate, S.R.No.25548

Pre delivery judgment in
C.M.A.No.3598 of 2011

SR-I(CO)
SU(08/10/2021)