IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.03.2023**

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.M.A.No.174 of 2022

1. Amirtham
2. K. Chandran
3. Yuvarani
4. Minor Harimithran
5. Minor Mohith
6. C. Loganathan
7. C. Vinoth Kannan
8. C. Uythayakumar
9. C. Jansirani ... Appellants

Vs.

1. Srinivasan
2. M/s. The Oriental Insurance Company Limited,
   Siva Complex, College Main Road,
   Salem – 636 016 ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 02.11.2021 made in M.C.O.P.No.1759 of 2019, on the file of the Special District Judge, Motor Accidents Claims Tribunal, Salem.

For Appellants : Mr. C. Prabakaran

For Respondents : No appearance for R1
Mr. D. Bhaskaran
for R2

JUDGMENT

[Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*]

Challenging the award passed by the Special District Judge, Motor Accidents Claims Tribunal, Salem, the appellants have preferred this appeal.

2. The respondents/claimants have filed the MCOP No. 1759 of 2019 claiming the compensation amount of Rs. 1 Crore 50 Lakhs as against the respondent insurance company.

3. According to the claimants, they had placed all the relevant documents before the Court below to establish that due to the negligence on the part of the driver of the second respondent, the said accident had occurred on 31.03.2019 while the deceased Yuvaraj was travelling as a pillon rider in the two wheeler bearing Registration No. TN 30-BJ- 1689. When the said vehicle had been driven from Mecheri to Salem main road near Chinthamaniyur branch road, the vehicle had lost its control and hit against the two wheeler in which the deceased was driving as a pillion rider, due to which, the deceased Yuvaraj was thrown out and sustained injury and he died. Therefore, the claimants have filed the aforesaid claim petition before the Motor Accident Claims Tribunal, Salam for claiming the compensation amount of Rs. 1 Crore and 50 Lakhs.

4. According to the claimants, at the time of the death of the

deceased, he was aged about 36 years and he was working as Branch Receivable Manager, in Cholamandalam Finance and Investment (P) Ltd., Salem and earning a sum of Rs. 50,853/- per month. Due to the said death of the deceased Yuvaraj, the entire family has suffered financially and lost the love and affection of the deceased. Thus they are entitled for enhancement in the compensation amount awarded by the Tribunal. The Tribunal without taking note the above facts in a proper prospective, has awarded a sum of Rs. 44,30,267/-, which according to the appellants, the said compensation is only meagre. Therefore, they have filed the instant appeal for additional compensation amount of Rs. 40 lakhs by way of enhancement of compensation to the appellants.

5. At the time of advancing arguments in the appeal, the learned counsel for the appellants/claimants has stated that the Court below according to the appellants, had not considered the income tax assessment for the year 2018-2019, Ex. P12.

6. The learned counsel appellants has drew our attention by placing the said income tax returns and stated that the gross total income of the deceased is Rs.5,38,439/-. But, the Tribunal has wrongly come to the conclusion and fixed the annual income of the deceased as Rs. 4,24,260/. Therefore, the Tribunal ought to have considered Ex.P.12 and taken the gross total annual income of the deceased as Rs.5,38,439/- .

7. The second contention of the appellants is that the Court below

has wrongly deducted 1/3rd from the income of the deceased for personal and living expenses. According to them, the claimants are the wife, two sons, mother and father. Therefore, in the light of the decision of the Hon'ble Supreme Court, ***National Insurance Company Limited vs Pranay Sethi, reported in (2017) 16 SCC 680,*** reasonable deduction for the personal and living expenses is 1/4th and not 1/3rd. Thus requests for the modification of the award passed by the Tribunal.

8. The third contention of the appellants is that the Tribunal has not considered for awarding for the future prospectus in the light of the decision rendered in ***Pranay Sethi's Case***. Therefore, since the age of the deceased was 36 at the time of the accident, he is entitled for the 40% future prospectus and the same has not been considered.

9. Learned counsel for the appellants has also stated that the above said grounds raised by the appellants had not been considered and granted compensation amount to the appellants.

10. Learned counsel for the respondent has stated that in the light of the decision of the Supreme Court referred supra, the claimants are entitled for the aforesaid benefits as contended by learned counsel appearing for the appellants.

11. Therefore, in view of the submissions made by the parties and

perusal of the material placed on record, we are of the view that the Tribunal, without considering Ex.P12, the income tax assessment for the year 2018-19 and without adding the 40% future prospects as per the ***Pranay Sethi' case,*** has awarded the compensation amount to the claimants.

12. Further, in the light of the ***National Insurance Company Limited vs Pranay Sethi, reported in (2017) 16 SCC 680,*** the deceased Yuvaraj is entitled for deduction of 1/4th from the fixed annual income for personal and living expenses. Hence, we are satisfied and therefore the appellants are entitled for the enhancement of compensation by modifying the award passed by the Tribunal. Therefore, the annual salary of the deceased is fixed at Rs, 5,38,439/- after taking into account the income tax assessment for the year 2018-19.

13. In the light of the judgment referred supra, Loss of income is modified and the calculation is as follows:

The annual income of the deceased is fixed at Rs. 5,38,439/-, plus 40 % (Rs.2,15,376/-) towards future prospectus, which comes to Rs. 7,53,815/- and after deducting income tax as per slab Rs.63,263/-, it comes to Rs. 6,90,552/-. Out of the said amount, as per the decision of the ***Pranay Sethi's case***, 1/4th (Rs.1,72,638/-) amount is deducted for personal expenses of the deceased, which comes to Rs. 5,17,914/-. Based on the decision of the ***Sarala Varma's case,*** since the age of the deceased was 36 at the time of the accident, Multiplier 15 was adopted by the Tribunal, therefore, towards Loss of Dependency, it comes to Rs. 77,68,710/- (Rs.5,17,914*15).

14. The other heads, towards Loss of consortium for the wife/third appellant Rs. 40,000/- awarded by the Tribunal is confirmed and towards Loss of Love and affection for the first appellant/first claimant and second appellant/second claimant was awarded Rs.20,000/- each by the Tribunal and the same is increased to Rs.40,000/- each, which comes to Rs. 80,000/-, towards Loss of parental consortium, for the fourth appellant/fourth claimant and fifth appellant/fifth claimant, was awarded Rs. 20,000/- each by the Tribunal and the same is increased to Rs. 40,000/- each, which comes to Rs. 80,000/-, Medical expenses of Rs. 22,667/- awarded by the Tribunal is confirmed, Funeral expenses awarded by the Tribunal is reduced from Rs.25,000 to Rs. 15,000/-, towards Loss of Estate, 15,000/- is granted. Therefore the appellants are entitled for enhancement of compensation of Rs. 81,21,377/-. The Tribunal had already awarded the compensation amount of Rs. 44,30,267/-. Therefore, the appellants are entitled for the remaining amount at 7.5 % per annum. Thus, the compensation under various heads awarded by the Tribunal is modified by this Court is as follows:

Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
1	Loss of income	42,42,600/-	77,68,710/-
2	Loss of Love and Affection first claimant (father) and second claimant(mother) Rs.40,000/- each	40,000/-	80,000/-
3	Loss of Consortium for P3 (Wife)	40,000/-	40,000/-
4	Loss of Parental Consortium fourth appellant (son) and fifth appellant (son) Rs. 40,000/- each	40,000/-	Rs. 80,000/-
5	Medical Bills	22,667/-	22,667/-
6	Funeral Expenses	25,000/-	15,000/-
7	Loss of Estate	....	15,000/-
	Total	**44,30,267/-**	**80,21,377/-**

15. In view of the above, compensation amount awarded by the Tribunal is enhanced from Rs. 44,30,267 to Rs. 80,21,377/-. Thus the award passed by the Tribunal is modified and consequently, Civil Miscellaneous Appeal partly allowed. The respondent insurance company is directed to deposit the entire compensation amount at the rate of 7.5% interest per annum within a period of eights weeks from the date of receipt of a copy of this Judgment, less if any amount already deposited. On such amount being deposited, the appellants 1 to 3 are permitted to

withdraw the amount as modified by this Court as per this proportionate share as apportioned by the tribunal along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Insofar as minors are concerned, the said amount shall be deposited in any of the Nationalized Bank, Salem and the third appellant is directed to withdraw the interest every six moths for the minors' shares which has been deposited in the Nationalized Bank.

16. With the above, the Award of the Tribunal is modified. Consequently, the Civil Miscellaneous Appeal is partly allowed. No costs.

(D.K.K., J.) (K.G.T., J.)
16.03.2023

Intex : Yes/No
Internet : Yes/No
mrn

To

1.The Special District Judge,
Motor Accidents Claims Tribunal, Salem.

2.V.R.Section,
Madras High Court,
Chennai.

D.KRISHNAKUMAR, J.
and

K.GOVINDARAJAN THILAKAVADI , J.

(mrn)

JUDGMENT MADE IN
C.M.A.No.174 of 2022

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