IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.12.2023

Judgment Pronounced on : 21.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

And

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

C.M.A.No. 986 of 2023
and
CMP.No. 9091 of 2023

Royal Sundaram Alliance
Insurance Company Limited
No.1, Club House Road, 2nd Floor,
Subramaniam Building,
Anna Salai,
Chennai – 600 002. …Appellant

versus

1. S.K. Vijayakumar
2.V. Viji
3.K.V. Pushparaj
4.The Chancellor,
 VIT University
 Vellore – 632 014. …Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the judgment and decree in MCOP.No. 1613 of 2014, dated 27.09.2018 on the file of the Motor Accidents Claims

Tribunal, II Judge Court of Small Causes, Chennai.

Cross Objection No. 84 of 2023

1. S.K. Vijayakumar
2. V. Viji
3. K.V. Pushparaj …Cross Objectors

-versus-

1.Royal Sundaram Alliance Insurance Company Limited
2.The Chancellor
VIT University
Vellore – 632 014 …Respondents

For Appellant in CMA No.986 of 2023 & R1 in Cross Objection No.84 of 2023 : Mr. M. Krishnamoorthy

For RR1 to 3 in CMA No.986 of 2023 & Cross Objectors in Cross Objection No.84 of 2023 : Mr. S. Angamuthu

R4 in CMA No.986 of 2023,
R2 in Cross Objection No.84 of 2023
were remained ex-parte before the Tribunal

COMMON JUDGMENT

N. SENTHILKUMAR, J.

The above Civil Miscellaneous Appeal has been filed by the Appellant

Insurance Company challenging the award passed in MCOP.No. 1613 of 2014, dated 27.09.2018 by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. The Claimants before the Tribunal, have filed a cross objection before this Court, seeking for enhancement of compensation awarded.

2. On 26.08.2013 at about 05.50 p.m., while the second Respondent herein was riding as the pillion rider in the Scooty Pep bearing Registration No. TN-22-AY-8752 being driven by the deceased Nagalakshmi, the VIT College bus bearing Registration No. TN-23-AK-3435 came in the opposite direction in a rash and negligent manner without following any traffic rules and regulations, hit and caused the accident of deceased Nagalakshmi, the daughter of the first and Second Respondents herein. The said deceased Nagalakshmi was studying in Agni College of Technology and was aged about 20 years when she met with the accident. Due to the impact, the deceased had sustained grievous injuries and was hospitalized in Pallikaranai Kamachi Hospital and thereafter hospitalized in Miot. The said accident had taken place on the Velachery main road near Pallikaranai Oil Mill, opposite to Saint Peter Metric School.

3. The accident had amputated the one leg of the deceased, who after undergoing 40 days of medical treatment in the said hospitals met with an untimely death. Based on the complaint given by the father of the deceased, a criminal case was registered in Crime No. 200 of 2013 by the Chrompet Traffic Investigation Wing, Tambaram, Police Station.

4. The father, mother and the brother of the deceased, who are the 1st, 2nd and 3rd Respondents herein, had filed a claim petition before the Tribunal for a sum of Rs.1,00,00,000/- which was resisted by the Appellant Insurance Company. The fourth respondent herein remained *ex-parte* before the Tribunal. After perusing the records, the Tribunal awarded a sum of Rs.62,61,000/- to the claimants. Challenging the impugned Award passed by the Tribunal, the Insurance Company has come forward with the present appeal.

5. The Tribunal had fixed the notional income of the deceased at **Rs.20,000/-** per month, and as per the judgment of the Hon'ble Supreme Court in *Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121*, adopted a multiplier of 18. The Tribunal after arriving at **Rs.43,20,000/-** as the total notional income (**Rs. 20,000 x 12 x 18**) and added **40%** of the said amount as future prospects (**Rs.17,28,000/-**), deducted **1/3rd** towards personal expenses (**Rs.20,16,000/-**), **Rs.15,000/-** towards loss of estate and **Rs.15,000/-** towards funeral expenses. The Tribunal, therefore, awarded a total sum of

Rs.40,62,000/- (Rupees Forty Lakhs Sixty-Two Thousand).

6. The learned counsel for the appellant, through Ex. P7 (A copy of the College Transfer Certificate of the deceased), contended that there is no dispute with regard to the fact that the deceased Nagalakshmi was aged about 20 years and was in the III year of pursuing her B.E. (Bachelor of Engineering) degree in Agni College of Technology.

7. The learned counsel appearing for the appellant vehemently contended that the notional income fixed as Rs.20,000/- for the deceased is on the higher side and further contended that the Tribunal has miserably erred by deducting $1/3^{rd}$ towards personal expenses, as against *Pranay Sethi's* dictum (***National Insurance Company Ltd. v. Pranay Sethi and others, (2017) 16 SCC 680***). Whereas, it is the submission placed that the Tribunal ought to have deducted 50% towards personal expenses.

8. The learned counsel for the appellant has relied on a portion of **K. Bannarisamy and Ors** v. **Anbalagan and Ors**, **2018 (2) TNMAC 407 (DB),** which reads as follows:-

*"**10**. However, it was proved before the Tribunal through Ex.P12, the Degree Certificate that the deceased already completed the Bachelor of Science Degree of Computer Science with First Class and subsequently joined the Engineering College as a lateral entry student and was pursuing his Third year course at the time of accident, as proved by Ex.P13, the Transfer and Conduct Certificate issued by the College. Since the deceased was a Student, only National Income can be fixed. A Division Bench of this Court in Royal Sundaram Alliance Insurance Co. v. Chinthamani and two Others, in CMA.Nos. 2655 and 2844 of 2015, dated 24.04.2018, following the earlier judgment of the Division Bench in Royal Sundaram Alliance Insurance Co. Ltd., v. S. Lakshmi and two others, 2016 (1) TN MAC 490, determined the income at Rs.15,000/- per month, as the deceased was a First year B.E., student in that case. Though in this case, the monthly income of Rs.15,000/- is opposed by Mr. S. Manohar, learned Counsel for the Insurance Company, this Court is bound to follow the earlier judgments. Therefore, the monthly income of the deceased is determined at Rs.15,000/-."*

9. The learned counsel has further relied on a judgment rendered by one of us *[R.Subramanian, J]* in **M/s. Royal Sundaram General Insurance Company Limited v. R. Kavitha and Ors,** in **CMA.No. 1576 of 2020, dated**

03.12.2021, which reads as follows:-

> *"**10.** Admittedly, the claimant was an Engineering Graduate, he was pursuing Post Graduate Engineering Course at the time of the accident and he was only aged about 24 years. His parents have been deprived of their only son because of the accident. May be, he had contributed to the accident, but considering the pain of the parents and the fact that the deceased was aged about 24 years old at the time of the accident. I do not think that the Tribunal could be faulted for taking the monthly income at Rs.20,000/- per month. There was every chance of the deceased earning more than that also. Therefore, considering the uncertainities involved, I do not think that the fixation of Rs.20,000/- as monthly income could be said to be on the higher side."*

10. The Learned counsel submitted that though the above judgment is also a case of an Engineering student where the notional income was fixed at Rs. 20,000/-, the deceased therein was a post-graduate student and the same analogy should not be adopted in the present case, as the facts of the present case differ. The Tribunal therefore, as per the learned counsel, has erred in fixing Rs. 20,000/- as the notional income.

11. Per Contra, the learned counsel appearing for the Respondents 1-3, contended that the deceased, having already spent three years into forming a reputable educational background in Engineering, a huge considerable amount of money would have been spent for her future and education. It is the submission of the learned counsel that the deceased person could have earned much more based on her educational qualification and therefore a higher amount ought to have been considered as the notional income.

12. To this effect, the Respondents 1-3 have also filed an appeal against the award of the Tribunal, in Cross Objection No. 84 of 2023. The Learned Counsel further points out Ex.P1, i.e. the First Information Report, to contend that the accident had taken place only because of the rash and negligent driving of the bus.

13. The learned counsel for the respondent has relied upon a judgment reported in **Balamanohari, represented by Power Agent, Rajalingam and Ors** v. **Sri Venkateswara College of Engineering, represented by its Chairman and Ors,** reported in **2018 (2) TNMAC 81 (DB),** wherein it has been held in Paragraph Nos.42, 44 & 46 as follows:-

42. The learned counsel appearing for the claimants would contend that the deceased was 20 years at the time of accident. He was a student pursuing his III year Engineering Degree. On the fateful day on 09.03.2006, while the deceased was returning home, he was hit by the offending Bus, which was owned by the first respondent and is in possession and control of the second respondent. The Tribunal, on analysing the oral and documentary evidence, rendered a specific finding that due to the rash and negligent driving of the Driver of the Bus, the accident had occurred. This finding of the Tribunal has reached a finality as it was not assailed by any of the respondents.

44. The main contention urged on behalf of the claimants is that the deceased was a young, vibrant and bright student and even during the course of his studies, he was offered employment in an United States based company namely, M/s. Butler International with an Annual Salary of Rs.96,000/- US Dollars. In order to fortify this submission, the Claimants have marked Ex.P17, Visa issued to the deceased, Ex.P20, Job Offer Letter issued by M/s. Butler International. Apart from these documents, the passport of the deceased was marked as Ex.P18, the testimonials of the deceased were also marked as Exs.P13 and P14. On the basis of these documentary evidence, it is contended that the Tribunal *failed to award reasonable and fair compensation to the claimants. It was also urged before us that the Tribunal, while determining the compensation amount, erred in taking the age of the mother of the deceased instead of taking the age of the deceased.*

46. At the same time, it is universally accepted principle that half of the earning capacity or expected earning capacity can be taken into account for the purpose of determining compensation under the head "Future Prospects". Applying this principle, we feel that the Tribunal ought to have awarded atleast 40% of the Notional income assessed in favour of the deceased towards future prospects especially when it was proved that the deceased was offered an employment in a foreign country. In such view of the matter, we are inclined to Award 40% of the notional amount fixed by the Tribunal towards future prospects which would work out to Rs.8,000/- per month. Thus, the total notional income of the deceased can be fixed at Rs.28,000/- out of which 50% deduction can be given towards personal expenses of the deceased, who died as a bachelor. In that event, the loss of income to be determined will be Rs.30,24,000 (Rs.14000x12x18) which will be the just and fair compensation payable to the claimants.

14. The learned counsel for the Respondent has relied upon **Basanti Devi v. Divisional Manager, New India Assurance Co. Ltd. & others, 2022 (1) TNMAC 148**, wherein the deceased at the time of the accident was aged about 25 years and was a Bachelor of Engineering in Computer Technology. Based on the facts of the said case, the Tribunal had fixed the notional income at Rs. 20,000.

15. It is argued by the learned counsel for the Respondents 1-3 that in ***Balamanohari's*** case, the sum awarded by the Tribunal was in fact increased to Rs.20,000/-. It is further argued by the learned counsel that the Hon'ble Apex Court in ***Basanti Devi*** upheld the award of the Tribunal fixing an amount of Rs.20,000/- as notional income and set aside the judgment of the High Court therein which had reduced the amount. It is further pointed out that the deceased persons pursued engineering in both the above cases. Owing to similar facts in both the cited judgments and the present appeal, it is learned counsel's argument that the fixation of Rs.20,000/- in the present case does not warrant any reduction.

16. We find a substantial force in the contention of the Appellant that there is no data or scientific method for the fixation of Rs. 20,000/- as notional income. We are unable to lean towards the contention of the Respondents/Cross-Objectioners that the notional income ought to have been increased. The judgment in ***Basanti Devi*** cited on behalf of the Respondents was a case where the Hon'ble Supreme Court affirmed the value fixed by the Tribunal at Rs.20,000/-. In fact, in the said case, the deceased was a graduate having been assessed of an income of Rs.20,000/- by the Tribunal. Bearing in mind that the deceased in the present case was a student pursuing Engineering and could have been a successful professional, we fix the notional income as Rs.18,000/- and future prospects at 40%. Considering the age of the deceased, the multiplier method is 18 as per ***Sarla Verma***. The Tribunal had deducted only 1/3rd towards personal expenditure, which deduction ought to have been 50% as per the judgment of the Hon'ble Supreme Court in ***Pranay Sethi***.

17. While the above being so, the Tribunal has also not considered any amounts towards loss of consortium for the survivors of the deceased which it ought to have awarded in favour of the Cross-Objectioners. Loss of consortium is fixed at Rs. 40,000/- per claimant.

18. We therefore, re-fix the compensation as follows:

HEAD	AMOUNT (in Rs.)

Notional Income	18,000
(Add) Future Prospects @ 40%	7,200
Sub-total	25,200
(Less) Personal Expenditure @ 50%	12,600
Therefore, Loss of Dependency (12,600 x 12 x 18)	27,21,600
Medical Expenses	21,63,314
Loss of Consortium (Rs.40,000 x 3)	1,20,000
Funeral Expenses	16,500
Loss of Estate	16,500
Total	**50,37,914**

19. The first respondent, the father of the deceased, is entitled to a sum of Rs.25,00,000/- and the second respondent, the mother of the deceased, is entitled to a sum of Rs.25,37,914/-. The third respondent, being the brother of the deceased, is not a dependent on the deceased. Therefore, the third respondent is not entitled to a share in the compensation. The parents of the deceased are entitled for an interest at the rate of 7.5% p.a from the date of filing of the claim petition till the date of deposit. Further, the Appellant Insurance Company is directed to deposit the award amount within a period of 8 weeks from the date of receipt of a copy of this judgment after deducting the compensation already deposited before the Tribunal.

20. With the above observations, the Civil Miscellaneous Appeal is partly allowed. The Cross-Objection is dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

[R.S.M., J] [N.S., J]
21.12.2023

Index:Yes
Speaking order: Yes
Neutral Citation: Yes
MSM
To

1. The II Judge Court of Small Causes,
   Motor Accidents Claims Tribunal, Chennai.

2. Royal Sundaram Alliance
   Insurance Company Limited
   No.1, Club House Road, 2nd Floor,
   Subramaniam Building,
   Anna Salai, Chennai – 600 002.

R. SUBRAMANIAN, J
and
N. SENTHILKUMAR, J

MSM

Pre-Delivery Judgment in
CMA.No.986 of 2023
& Cros. Obj. 84 of 2023

Delivered on
21.12.2023