BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.173 of 2022

T.Gunasekaran (Deceased)

1.P.Thangaraj :Appellant No.1/Petitioner No.2

2.Vellaiyammal :Appellant No.2/Petitioner No.3

3.Sumadhi :Appellant No.3/Respondent No.3

Vs.

1.R.Rajalakshmi :Respondent No.1/
Respondent No.1

2.The Manager,
Future General India Insurance Co., Ltd.,
180, Sri Ram Centre,
Theni Main Road,
Madurai West. : Respondent No.2/
Respondent No.2

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.1317 of 2012, dated 06.07.2018 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Madurai.

For Appellants : Mr.R.J.Karthick

For R1 : Mr.Karunanithi

For R2 : Mr.S.Srinivasa Raghavan

JUDGMENT

[Judgment of the Court was made **by**
K.K. RAMAKRISHNAN.J.]

The claimants in M.C.O.P.No.1317 of 2012 filed the present Civil Miscellaneous Appeal for enhancement of compensation granted in the claim petition.

2. **Facts of the case:-**

One Gunasekaran, who is the son of the appellants 1 & 2 and brother of the third appellant sustained injury in the road accident on 10.07.2011 at 01.30 a.m. On 10.07.2011 at about 1.30 a.m., the said Gunasekaran and his friends were travelling in the car belonging to the first respondent bearing Registration No.TN-55-X-4005 in Puranagar Bye-pass road. Due to the negligent driving of the driver of the first respondent, the car hit the Central Median of the said bye-pass road and hence, the deceased sustained multiple injuries all over his body, apart from head injury, spinal cord injury, neck bone fracture and brain damage. Therefore, he was admitted in Virudhunagar Government Hospital on 10.07.2011 as inpatient and then shifted to Madurai Meenakshi Mission Hospital on the same day at about 10.30 a.m and thereafter, shifted to Maruthi Hospital, Trichy and took treatment from 10.07.2011 to 19.09.2011 and shifted to Hindu Mission Hospital, Trichy and took treatment from 19.09.2011 to 19.11.2011 and shifted to Maruthi Hospital, Trichy and took treatment from 19.11.2011 to 17.12.2011 and then shifted to Hindu Mission Hospital, Trichy and took treatment from 17.12.2011 to 19.01.2012 and shifted to Maruthi Hospital, Trichy and took treatment from 19.01.2012 to 19.05.2012 and shifted to Hindu Mission Hospital, Trichy and took treatment from 19.05.2012 to 03.11.2013 and then shifted to Maruthi Hospital, Trichy and took treatment from 03.11.2013 to 09.11.2013 and died on 09.11.2013 at 7.30 a.m. When he was taking treatment, he filed the claim petition before the Tribunal in M.C.O.P.No. 1317 of 2012 and claiming compensation of Rs.1,00,00,000/- (Rupees One Crore Only)

(ii) During the pendency of the claim petition, due to the injuries suffered in the accident, he died on 09.11.2013 at 7.30 a.m. Therefore, the present appellants 1 & 2 namely the parents of the deceased were impleaded as legal heirs of the deceased and continued the proceedings of the MCOP filed by the injured claimant Gunasekaran. Subsequently, the sister of the deceased was impleaded as third respondent. According to the third respondent, she is the dependant of the deceased and she was un-married sister and she was depending upon his income. The Sub-Inspector of Police, Virudhunagar Bazar Police Station has rightly registered a criminal case against the driver of the first respondent in Cr.No.202 of 2011 and the case was pending investigation.

(iii) The injured claimant at the time of the accident was engaged in various business namely the construction work, selling building materials and also publishing a magazine namely the Builders Voice and also he conducted the business of selling the building materials namely, the wooden doors and wooden windows etc., Through different business he earned Rs.1,00,000/- per month. He also filed the income tax returns and hence, claimed compensation of Rs.1,00,00,000/-.

4. The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the first respondent and the deceased did not possess any valid driving licence at the time of accident. Hence, the second respondent is not liable to pay any compensation and prayed for dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimants P.Ws.1 to 5 were examined and marked 60 documents as Ex.P1 to Ex.P60 and also marked the documents regarding the treatment taken as X1 to X3. The third respondent, who is the sister of the deceased was examined as R.W.1

and marked documents as Ex.R1 to Ex.R8. On the side of the insurance company, no one was examined.

6.Finding of the Tribunal:

The Tribunal, after considering the entire evidence fixed the negligence upon the insurance company and calculated the monthly income of the deceased as Rs.12,000/- and awarded compensation of Rs.19,48,370/-. Out of Rs.19,48,370/- the appellants 1 & 2 namely the parents of the deceased were entitled to receive Rs.7,79,348/- each (40% each) and the third appellant namely the sister of the deceased was entitled to receive Rs.3,89,674/-.

6.1.Not satisfying with the award, the claimants in the claim petition and the third respondent jointly filed this appeal for enhancement of compensation.

7.Submission of the learned counsel for the appellants:

(i) The learned counsel for the appellant would submit that the deceased conducted various business and he was running the Jeyam

Corporation and he was also doing the contract business and also selling building materials namely the supply of wooden doors and wooden windows etc. He was also class-IV contractor in the department also. He was also running builders voice Journal meant for the builders and the same was published in both Tamil and English. He was also an income tax assesse.

(ii) He would further submit that to prove the Income Tax Assessment, he produced the document as Ex.P38, Ex.P57, Ex.P58 to Ex.P60. The said documents were marked without any objections. The same were produced through P.W.5, who is the auditor. Ex.P.7 was the document relating to the payment of the service tax paid by the deceased for the publication of the Builders Voice Journal. The said documents clearly proved that the deceased earned more than Rs.1,00,000/- every month. The Tribunal erroneously fixed the monthly income as Rs.12,000/- without any valid reason to disbelieve the documents filed by the claimants. Hence, he seeks for enhancement of compensation from raising the monthly income from Rs.12,000/- to Rs.1,00,000/-

(iii) The learned counsel for the appellants further submitted that award for loss of love and affection was not awarded as per the ***Pranay Sethi*** case and future income was not added by the tribunal and conventional damages were not granted and hence, seeks for enhancement of compensation.

8.Submission of the learned counsel for the respondents:

The learned counsel for the respondents would submit that the income tax return was marked, but the person examined as Auditor has not deposed any evidence for supporting the documents. He deposed that he did not personally know about the deceased. In the said circumstances, the learned Tribunal has properly disbelieved the documents marked as income tax returns.

(ii) The learned counsel for the respondents further submitted that though deceased published the Journal namely Builders Voice, most of the Editions were meant for their own members. Only 20% was sold and there was no accounts for the same. Hence, the learned Tribunal has rightly fixed the monthly income as Rs.12,000/-. To prove the case of the deceased that he was Class-IV contractor and other business, no documents produced.

(iii) The learned counsel for the respondents fairly submitted that the tribunal has not given any amount under the conventional heads that should be given as per the ***Pranay Sethi*** case.

9.This Court considered the rival submission made on either side and perused the record and also the precedents relied by them.

10. Now the question in this appeal is whether the appellant is entitled for the enhancement of the compensation?

11.P.W.1/the father of the deceased and R.W.1/the sister of the deceased cogently deposed that the deceased was class-IV contractor and he was running a Construction Unit and was doing private construction work also. He was also running a business supplying building materials namely, Hardwares, PVC pipes, Wooden doors, wooden window, plywood. He conducted the business legally by obtaining the GST No.

204356 and TIN No.33393421940. He also had the Service Tax code No. ALCPG4330QST001. He also conducted the business in the name of Jeyam Corporation with separate Tin Number. He also became the member of the construction association and published a monthly Journal namely, "*builder voice*". R.W.1 specifically deposed that the said builder voice journal was started in the year 2000 and every month more than 7500 prints were published and approximately, 20% of the said monthly journal were sold in the open market and 80% of the journal were supplied to the members of the guild. He also was an income tax assessee and regularly submitted his returns. The accident took place on 10.07.2011. Ex.P.60 was marked. The auditor has certified that his net income was Rs.5,39,500/- for the financial year 2009 to 2010. He assessed the same on the basis of the "TDS certificate". In the TDS certificate, periodical credit had been made in his account. Apart from that, the income tax return for the assessment year 2008 to 2009 also was marked under Ex.P.58. Ex.P.57/service tax registration certificate also was marked and Ex.P.56/Jeyam corporation registration certificate also marked. One of the edition of the Builder voice monthly journal after the demise of the deceased, was marked as Ex.R.2. In the said edition, it is stated that the deceased was publisher and they were also collecting the subscription for the supply of the said journal. In the said subscription form, it is stated that annual subscription is Rs.1,180/-, three years subscription is Rs.540/- and five years subscription is Rs.900/-. In the said journal, there was an advertisement for Jeyam corporation. In the said advertisement, there was a reference about the supply of the teak wood doors, Flush doors, Panel Doors, Aluminum works, All kinds of PVC Doors, FRP Frames and doors, Interiors and Exteriors. The evidence of R.W.1 is that after his demise, the publication was stopped. P.W.5 also examined. He submitted that the income tax returns of the deceased were marked as Exs.P.46 to 50. From the above, it is clear that the deceased had conducted business and generated income of more than Rs.55,000/- per month. The Hon'ble Supreme Court reported in ***2021 2 SCC 166*** and ***2022 1 SCC 198,*** held that monthly income of the deceased is to be determined on the basis of some guess work.

12. Therefore, this Court inclines to take the monthly income of the deceased as Rs.35,000/-. The deceased was the BBA graduate and died at the age of 32 years, due to the accident. He had promising future from the above business activities and hence, as per the judgment of the Hon'ble Supreme Court, reported in ***Pranay Sethi,*** 40% future prospects are added and the same comes around: Rs.35,000/-X40/100=Rs.14,000/- and hence, the total monthly income is Rs.49,000/-. The multiplier, according to the Saralavarma case is 16.

13. The deceased was a bachelor. As per the evidence of R.W.1, she was depending upon his income. She also deposed that during his treatment, she used to be involved in the business activities of the deceased. Hence, she was depending upon the income of the deceased. Therefore, this Court considering the extraordinary circumstance of the case, apply the deduction of 1/3 for his personal expenditure and calculated the loss of income as follows:

Rs.49,000/-X 2/3 X 12 X16=Rs.62,72,000/-

14.As per the **Pranay Sethi case**, each claimants are entitled to Rs.40,000/- for love and affection. They are also entitled to Rs.20,000/- for the funeral expenses and Rs.10,000/- for the loss of estate.

15.The learned trial Judge without considering the above documents in proper manner, fixed the monthly income of the deceased as Rs.12,000/-. The deceased was a BBA graduate decree holder and the claimants produced number of documents to prove his income. None of the document was disputed by the respondent. In the said circumstances, the learned trial judge ought to have followed the law laid down by the Hon'ble Supreme Court reported in ***2021 2 SCC 166*** and ***2022 1 SCC 198*** that the monthly income of the deceased is to be determined on the basis of some guess work.

15.1. In view of the above circumstances, this Court icnliend to interfere in the said finding and refixed the monthly income of the deceased and applied future prospects as per the **Pranay Sethi case.**

16. Similarly, the learned trial Judge had not awarded medical expenses on the basis of the Exs.P.52 to 55. From the records, it is clear that the deceased sustained grievous head injuries and hence, he was in coma stage and also he was put on ventilator support for substantial period and hence, the learned trial Judge erred in not granting medical expenditure of Rs.4,55,348/-. Hence, this Court inclines to enhance the medical expenditure in addition to the amount already granted.

17. In view of the above, this Court modifies the award of the Tribunal, as under:-

S. No	***Description***	***Amount awarded by Tribunal (Rs)***	***Amount awarded by this Court (Rs)***	***Award confirmed or enhanced or granted***
1.	For loss of income	11,52,000/-	62,72,000/-	enhanced
2.	For medical expenses	7,46,370/-	12,01,718/-	enhanced
3.	For love and affection	25,000/-	3X40,000= 1,20,000/-	enhanced
4.	For Funeral expenses	25,000	20,000	reduced
5.	For Loss of Estate	-	10,000	awarded
	Total	**Rs.19,48,370**	**Rs.76,23,718/-**	**By enhancing a sum of Rs.56,75,348/-**

18. Accordingly, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal from

Rs.19,48,370/- to Rs.76,23,718/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation. The second respondent Insurance Company is directed to deposit the enhanced award amount with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of four weeks from the date of receipt of a copy of this order. The claimants/ appellants are directed to pay the excess court fee, if any. On such deposit being made, the appellants 1 & 2 are entitled to withdraw 40% of the amount each ie., Rs.30,49,487/- and the third appellant is entitled to withdraw 20% of the amount ie., Rs.15,24,744/-. No costs.

(V.B.S.J.,) (K.K.R.K.J.,)
02.07.2024

Index :Yes/No
Internet :Yes/No
am/vsg

After delivering judgment, the learned counsel for the first appellant would submit that the first appellant is taking treatment in the hospital and he is in serious condition and hence, he made a request before this Court to permit to withdraw the amount already deposited before the Court below.

2.Considering the bona fide requirement, this Court grants permission to withdraw the amount already deposited before the Court below and the learned trial Judge is directed to disburse the same without insisting his presence and the same has to be done within a period of seven days from the date of receipt of a copy of this order.

(V.B.S.J.,) (K.K.R.K.J.,)
02.07.2024

Index :Yes/No
Internet :Yes/No
am/vsg
Note:Issue Order Copy on 05.07.2024.

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Madurai.

2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

V.BHAVANI SUBBAROYAN.J.,

and
K.K. RAMAKRISHNAN.J.,

am/vsg

C.M.A(MD)No.173 of 2022

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