



C.M.A.(MD).No.107 of 2018 & Cros.Obj (MD)No.14 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 17.10.2023

Delivered on: 20.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.M.A.(MD).No.107 of 2018
and
C.M.P.(MD)No.1621 of 2018
and
Cros.Obj(MD)No.14 of 2021**

C.M.A.(MD).No.107 of 2018

The Manager,

Iffco Tokio General Insurance Company Ltd.,

Firtham Plaza, No.82, Chandragandhi Nagar,

Bye Pass Road, Madurai.

.. Appellant / Respondent No.2

Vs.

1.J.Suresh

2.S.Pavithran

3.S.Vikram

.. Respondents 1 to 3 / Petitioners

4.Jeyaraj @ Muthu Karuppan .. Respondent No.4 / Respondent No.1

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 23.09.2016, passed in M.C.O.P.No.11 of 2014 on the file of the Motor Accident Claims Tribunal - Special District Judge, Madurai.



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For Appellant : Mr.S.Srinivasa Ragavan

For Respondents : Mr.G.Aravindan for R1 to R3

Cross.Obj.(MD).No.14 of 2021

1.J.Suresh

2.S.Pavithran

3.S.Vikram .. Cross objectors / Respondents 1 to 3

Vs.

1.The Branch Manager,

Iffco Tokio General Insurance Company Ltd.,

Firtham Plaza, No.82, Chandragandhi Nagar,

Bye Pass Road, Madurai. .. Respondent No.1 / Appellant

2. Jeyaraj @ Muthu Karuppan .. Respondent No.2 / Respondent No.3

Prayer:- Appeal filed under Order XLI Rules 22 & 23 of the Code of Civil Procedure, against the award and decree dated 23.09.2016, passed in M.C.O.P.No.11 of 2014 on the file of the Motor Accident Claims Tribunal - Special District Judge, Madurai.

For Cross objectors : Mr.G.Aravindan

For Respondents : Mr.S.Srinivasa Ragavan for R1



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COMMON JUDGMENT

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(Judgment of the Court was made by P.B.BALAJI,J.)

The Civil Miscellaneous Appeal as well as the Cross objection arise out of the proceedings in M.C.O.P.No.11 of 2014 on the file of the Motor Accident Claims Tribunal / Special District Judge, Madurai., Madurai.

2. The brief facts, that are necessary for deciding the above Appeal along with the Cross objection, are as follows:-

The respondents, as claimants filed the M.C.O.P., seeking compensation to the tune of Rs.40,00,000/- for the death of his wife on account of the accident due to the rash and negligent driving of the first respondent's vehicle (TAT 407), which has been insured with the appellant / Insurance Company. It is the case of the claimant that the deceased, who is the wife of the claimant, was aged about 53 years and was a partner in two business Firms, earning Rs.30,000/- per month. The claimant and his wife (deceased) were travelling on the fateful day of accident and as surviving legal representatives, the claimants approached the Tribunal, seeking compensation under various heads, totally claimed a sum of



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to the respondent / claimant along with interest at the rate of 7.5% per annum from the date of petition filed before the Tribunal.

6. Aggrieved by the said award of the Tribunal, the appellant has come forward with the present Civil Miscellaneous Appeal, challenging the award mainly on the ground that there has been no stoppage of income from the business being carried on by the two partnership Firms on account of the death of the deceased, as the business continued to be operated by the first claimant, namely, the husband of the deceased. Challenge is also made to the award of conventional damages being on the higher side.

7. Per contra, the learned counsel for the respondents 1 to 3 / claimants 1 to 3 contended that the Tribunal has awarded a much lower compensation than what the claimants were entitled to and has erred in not fixing the income based on Ex.P17 and future prospects have not also been considered by the Tribunal. He prayed for the Civil Miscellaneous Appeal being dismissed and the Cross objection being allowed.

8. We have heard Mr.S.Srinivasa Raghavan, learned counsel for



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the Insurance Company and Mr.G.Aravindan, learned counsel for the claimants. We have perused the records and also the impugned order of the Tribunal.

9. Though it is strenuously contended by the learned counsel for the claimants that the documents exhibited in Ex.P16 and Ex.P17, would indicate that the deceased was earning not less than Rs.40,000/- per month, on perusing the said exhibits, we find that the said exhibits are income tax returns of the Firm, J.A. Promoters, in which the deceased was one of the partners. It is an admitted fact that the first claimant - husband of the deceased was one of the partners in the said firm. Ex.P17 has been rightly rejected by the Tribunal on the ground that it is after the date of the accident. After discussing the other oral and documentary evidence, the Tribunal has fixed the annual income of the deceased at Rs.3,00,000/-. The Tribunal has given justifiable reason for taking into account the said amount as the income of the deceased. We do not find any valid reason to interfere with the same and accordingly, the monthly income of the deceased is confirmed as Rs.25,000/-. There is no error committed by the Tribunal in deducting 1/3 towards personal expenses and the multiplier



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adopted is also in line, with the ratio of the Hon'ble Supreme Court as well as this Court and the same also does not call for any interference.

10. However, the Tribunal has not added any amount in respect of future prospects. Admittedly the deceased was carrying on business, though as a partner in Two Firms, namely, J.A. Promoters and Jawahar Associates. The firms were assessed to income tax and it is seen from the income tax returns that the businesses were being carried on profitably. Therefore, considering this aspect as well as the age of the deceased, we propose to add 10% towards future prospects (Rs.2,500/-). In respect the award of compensation under all other heads, we do not find any infirmity or error warranting interference. Consequently, the award of the Tribunal is modified in the following terms.

11. The learned counsel for the claimants relied on the judgment of the Hon'ble Supreme Court in the case of ***Sushma H.R. V. Deepak Kumar Jha*** reported in ***2023-ACJ-331*** and contended that in a similar set of facts before the Hon'ble Supreme Court, Rs.50,000/- per month was taken as income of the wife, who was doing Bakery business. However,



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on going through the said judgment of the Hon'ble Supreme Court, we find that ultimately loss of dependency has been arrived at taking into account only Rs.25,000/-, as the monthly income of the deceased and on the facts of the Hon'ble Supreme Court, future prospects was taken as 40%. We therefore do not find the facts of the case being applicable to the facts on hand.

12. The learned counsel for the Insurance Company relied on the judgment of the Hon'ble Supreme Court in case of ***State of Haryana V. Jasbir Kaur*** reported in ***2003-7-SCC-484***, where the Hon'ble Supreme Court held that "*compensation cannot be a bonanza and at the same time cannot be a pittance also*". The Hon'ble Supreme Court has held that "*the Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the*



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background of "just" compensation which is the pivotal consideration.

Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non- arbitrary."

13. The said decision of the Hon'ble Supreme Court, has been cited by the learned counsel for the Insurance company, to fortify his contention that there has been no loss of income from the business as the partnership firms have been continued even subsequent to the death of the wife of the claimant. We are conscious of the said ratio laid down by the Hon'ble Supreme Court. Admittedly, though the claimant had stated that the deceased was earning Rs.50,000/- per month from the businesses being carried on in two partnership firms, the Tribunal has not taken the claim of such claimant as gospel truth and on considering the documents available, monthly income has been arrived at Rs.25,000/- per month. 21. The claimant is entitled to Rs.15,000/- for loss of estate. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium to the wife and Rs.



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25,000/- each to the claimants 2 to 4 / respondents 2 to 4 towards loss of love and affection. The Hon'ble Supreme Court in **Pranay Sethi's** case, held as follows:

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.



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(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) 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 aforesaid amounts should be enhanced at the rate of 10% in every three years.



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14. We place on record our appreciation for the fair submissions of Mr.S.Srinivasa Raghavan, learned counsel for the Insurance Company, who brought to our notice that despite the Hon'ble Supreme Court in ***Pranay Sethi's*** case specifically ruling that the amounts set out in respect of the funeral expenses, loss of estate and loss of consortium have to be enhanced once in every three years. The same is not given effect to by the Tribunal. In the above circumstances, we have applied the said ratio of the Hon'ble Supreme Court in ***Pranay Sethi's*** case to the facts of the present case. The funeral expenses, the loss of consortium and loss of estate should be enhanced once in every three years at 10%. Since the above judgment is of the year 2017, from 2017- 2020 , 10% should be enhanced, ie. from Rs.40,000/- to Rs.44,000/- towards loss of consortium, from Rs.15,000/- to Rs.16,500/- each towards funeral expenses as well as loss of estate and from 2020- 2023, another 10% should be enhanced ie. Rs.44,000/- to Rs.48,400/- towards loss of consortium, from Rs.16,500/- to Rs.18,150/- each towards funeral expenses as well as loss of estate. In view of the above discussion, the compensation is reworked in the manner hereunder:



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Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 19,80,000/-	Rs. 21,78,000/- Rs.19,80,000/- +10%	enhanced
2.Loss of consortium	Rs. 1,00,000/-	Rs. 48,400/-	reduced
3.Loss of love & affection (Claimants 2 &3)	Rs. 50,000/- each Rs.25,000/-	Rs. 96,800/- each Rs.48,400/-	enhanced
4.Funeral expenses	Rs. 10,000/-	Rs. 10,000/-	confirmed
5.Transportation	Rs. 10,000/-	Rs. 10,000/-	confirmed
6.Damages to cloth	Rs. 1,000/-	Rs. 1,000/-	confirmed
7.Loss of consortium		Rs. 48,400	awarded
Total Compensation	Rs. 21,51,000/-	Rs. 23,92,600/-	Enhanced

15. In fine, the Civil Miscellaneous Appeal stands dismissed and the Cross Objection stands partly allowed. the compensation awarded by the Tribunal is enhanced from Rs.21,51,000/- to Rs.23,92,600/- with interest at the rate of 7.5% per annum along with proportionate interest and costs.

16. The appellant / Insurance Company is directed to deposit the modified award amount along with interest at the rate of 7.5% per annum



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from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment.

17. On such deposit being made, the claimants are permitted to withdraw their share amount as apportioned by the Tribunal, along with interest and costs, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
20.10.2023

Internet : Yes
Neutral Citation: Yes/No
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To

- 1.The Motor Accident Claims Tribunal -
Special District Judge, Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
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judgment in
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