

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved : 02.11.2018
Delivered on : 10.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1664 of 2015
and
M.P.No.1 of 2015

M/s.New India Assurance Co. Ltd.,
Post Box No.47,.
Kumaran Shopping Complex,
Kumaran Road,
Thiruppur-641 601.

... Appellant/Respondent

Vs

1.Kavitha
2.P.Govindaraj

..Respondents/Claimants

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree in M.C.O.P. No.136 of 2014, dated 20.8.2014 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Gobichettipalayam.

For Appellant : Mr.M.B.Raghavan
For Respondents: Mr.Ma.P.Thangavel

O R D E R

This Civil Miscellaneous Appeal has been filed against the award dated 20.8.2014 passed in M.C.O.P.No.136 of 2014 on the file of the learned Motor Accident Claims Tribunal (Sub-Court), Gobichettipalayam, wherein and whereby the Tribunal directed the appellant insurance company to pay compensation of Rs.9,89,000/- to the respondents for the death of the deceased Kumar in a road accident occurred on 09.2.2014.

2. Brief facts are that on 9.2.2014 at about 19.30 hours, the deceased Kumar was proceeding in his motorcycle bearing registration No.TN-39 BC 2097 on Villankoil to Kavindapady main road. When he came near Kamatchiamman temple at Vellankoil, a dog suddenly crossed the road. On seeing the dog, the deceased suddenly turned his motorcycle, but he lost control over the vehicle and slipped on the road. Due to the impact, the deceased sustained severe injuries over his head, legs, chest and multiple injuries all over the body. After the accident,

the deceased was taken to Government Hospital, Gobichettipalayam, where from he was referred to CMC Hospital, Coimbatore, but succumbed to injuries on the way to the hospital. Regarding the accident, a criminal case in Crime No.24 of 2014 was registered by Siruvallur police under Sections 279 and 304-A IPC. At the time of accident, the deceased was aged 27 years and was working as Manger in M.P. Shantex Mill, Mannarai and was earning Rs.15,000/- per month. Stating that the accident occurred only because a dog suddenly crossed the road, the respondents, who are parents of the deceased have filed claim petition under Section 163-A of Motor Vehicles Act claiming compensation of Rs.15.00 lakhs.

3. Denying the accident, the appellant insurance company filed counter stating that the accident occurred only due to the rash and negligent riding of the rider of the motorcycle i.e., the deceased. It is stated that no extra premium was paid by the deceased to cover the risk of the owner of the motorcycle. The deceased being the owner of the motorcycle, as no extra premium was paid to cover the risk of the owner and as the accident occurred only due to the rash and negligent riding of the deceased, the appellant is not liable to pay compensation to the respondents. The age, occupation and monthly income of the deceased are denied by the appellant. The compensation claimed by the respondents under various heads is on the higher side and prayed for dismissal of the claim petition.

4. Before the Tribunal, the second respondent examined himself as P.W.1 and one Thangavel was examined as P.W.2. Exs.P1 to P7 were marked. One Vincent, Administrative Officer of the appellant was examined as R.W.1 and Ex.R1 was marked.

5. Upon considering the oral and documentary evidence, the Tribunal held that though the accident occurred due to rash and negligent riding of the deceased since the policy issued for the motorcycle involved in the accident is a package policy, the appellant insurance company is liable to pay the compensation. Taking the monthly income of the deceased at Rs.6,000/-, deducting one-third towards personal expenses and adopting multiplier 18, the Tribunal awarded Rs.8,64,000/- towards loss of dependency. Adding conventional damages, the Tribunal awarded total compensation of Rs.9,89,000/- payable with interest at the rate of 7.5% per annum. Challenging the award, the appellant insurance company has filed the present appeal.

6. The learned counsel for the appellant submitted that the Tribunal erred in fastening liability on the appellant in a case where the victim himself is the owner of the vehicle and the Tribunal also failed to see that the claim for the owner/insured of the vehicle is neither required to be covered under Section 147 of MV Act, nor covered under Ex.R1-policy. He would submit

that the Tribunal has ignored the correct legal position and instead referred on a decision which was not correct at all.

7. The learned counsel further submitted that the Tribunal has failed to see that irrespective of Ex.R1-policy being an Act/Liability only or Package insurance policy, the coverage for the insured is not available at all. The learned counsel then submitted that the Tribunal erred in fixing the earnings/dependency and multiplier without any basis and as such the ultimate award is far in excess of what may be just and prayed for setting aside the award of the Tribunal. In support, the learned counsel relied upon the following decisions:

- (i) New India Assurance Co. Ltd. v. Prabha Devi and others, reported in 2013 (1) TN MAC 781 (SC).
- (ii) Dhanraj v. New India Assurance Co. Ltd. and another, reported in 2005 ACJ 1.
- (iii) Oriental Insurance Co. Ltd. v. Jhuma Saha and others, reported in 2007 ACJ 818.
- (iv) New India Assurance Co. Ltd. v. Meera Bai and others, reported in 2007 ACJ 821.
- (v) Divisional Manager, United India Insurance Co. Ltd. v. R.Rekha and others, reported in 2017 (2) TN MAC 674 (DB).

8. Per contra, reiterating findings of the Tribunal, the learned counsel for the respondents submitted that since the policy issued for the motorcycle in question is a package policy, the appellant insurance company cannot escape from its liability and that the appellant is liable to pay compensation awarded by the Tribunal to the respondents being the parents of the deceased.

9. The points that arise for consideration is whether the Tribunal was right in directing the appellant to pay compensation to the respondents for the death of the deceased Kumar in the accident in question and whether the compensation awarded by the Tribunal is excessive.

10. The respondents have filed the claim petition under Section 163-A of the M.V. Act claiming compensation for the death of their son due to injuries sustained by use of the motorcycle bearing registration No.TN-39 BC 2097 in a road accident occurred on 09.2.2014.

11. Section 163-A of the M.V. Act under which compensation has been claimed by the respondents provides as follows:-

"163-A. Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or

Instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule to, the legal heirs or the victim, as the case may be.

Explanation.- For the purpose of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification the Official Gazette, from time to time amend the Second Schedule. "

12. Section 163-A of the M.V. Act was introduced in the Act by way of social security scheme. It is a Code by itself. It appears from the objects and reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act, several representations and suggestions were made from the State Governments, transport operators and members of public in relation to certain provisions thereof. Taking note of the observations by various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee in its report made the following recommendations:

"The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof of fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31-3-1990. Proposals have been made from time to time

that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing this claim through the normal channels.

The General Insurance Company with whom the matter was taken up is agreeable in principle to a scheme of structured compensation for settlement of claims on "fault liability" in respect of third party liability under Chapter XI of M.V. Act, 1988. They have suggested that the claimants should first file their claims with Motor Accident Claims Tribunals and then insurers may be allowed six months time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time."

13. The recommendations of the Review Committee and representations from public were placed before the Transport Development Council for seeking their views pursuant where to several sections were amended. Section 163-A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the second schedule providing for the structured formula which may be amended by the Central Government from time to time.

14. The contention of the appellant is that the claim petition filed by the respondents under Section 163-A of the M.V. Act is not maintainable, as the accident occurred due to the rash and negligent riding of the rider of the motorcycle i.e., the deceased. Therefore, the Tribunal was not right in directing the appellant insurance company to pay the compensation to the respondents.

15. Whether Section 163-A of the M.V. Act founded on 'fault liability principle' or 'no fault liability principle' came up

for consideration before the Hon'ble Supreme Court in a decision in United India Insurance Co. Ltd. v. Sunil Kumar and another, reported in 2013 (2) TN MAC 737 (SC), wherein the Hon'ble Supreme Court has referred to Two-Judges Bench decisions in National Insurance Co. Limited v. Sinitha and others, reported in 2012 (1) TN MAC 1 (SC) and Oriental Insurance Co. Ltd. v. Hansrajbha v.Kodala, reported in 2001 (2) CTC 368 (SC). Finding difficult to accept the reasoning expressed in National Insurance Co. Limited v. Sinitha and others, reported in 2012 (1) TN MAC 1 (SC), the Hon'ble Supreme Court in United India Insurance Co. Ltd. v. Sunil Kumar and another, supra, held as under:

8. We are, therefore, of the view that liability to make Compensation under Section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the Insurance Company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or Claimant, naturally it would defeat the very object and purpose of Section 163-A of the Act. Legislature never wanted the Claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the Insurance Company or the owner, as the case may be, shall be liable to pay the Compensation, which is a statutory obligation.

9. We, therefore, find ourselves unable to agree with the reasoning of the Two-Judge Bench in National Insurance Co. Limited v. Sinitha and others, 2012 (1) TN MAC 1 (SC). Consequently, the matter is placed before the learned Chief Justice of India for referring the matter to a Larger Bench for a correct interpretation of the scope of Section 163-A of the Motor Vehicles Act, 1988, as well as the Point Nos.(iii) to (v) referred to in United India Insurance Co. Ltd. v. Shila Datta and others, 2011 (2) TN MAC 481 (SC)."

16. A Larger Bench of the Hon'ble Supreme Court has taken up the reference in United India Insurance Co. Ltd. v. Sunil Kumar and another, reported in 2017 (2) TN MAC 753 (SC), wherein Three-Judges Bench of the Hon'ble Supreme Court answered the reference as under:

"8.From the above discussion, it is clear that grant of Compensation under Section 163-A of the

Act on the basis of the Structured Formula is in the nature of a Final Award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the Driver/Owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A (2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the Claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final Compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act, which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim."

17. Thus, from the aforesaid decision of the Larger Bench of the Hon'ble Supreme Court, it is clear that it is not open for the insurer to raise any defence of negligence on the part of the victim in a proceeding under Section 163-A of the M.V. Act.

18. In Shivaji and another v. Divisional Manager, United India Insurance Co. Ltd. and others, supra, reported in 2018 (2) TN MAC 149 (SC), the Three-Judges Bench of the Hon'ble Supreme Court held as under:

"5. The issue which arises before us is no longer res integra and is covered by a recent Judgment of the Three-Judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar and another, 2017 (2) TN MAC 753 (SC) : AIR 2017 SC 5710, wherein it was held that to permit a defence of negligence of the Claimant by the Insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this

provision, which is "final compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an Insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the Insurer cannot raise any defence of negligence on the part of the victim to counter for Compensation."

19. Thus, it is clear from the decisions of the Hon'ble Supreme Court that the appellant, who is the insurer of the motorcycle bearing registration No.TN-39 BC 2097 used at the time of accident, cannot raise any defence of negligence on the part of the deceased/rider to counter for compensation.

20. The expression used in Section 163-A of the M.V. Act, is 'accident arising out of the use of the motor vehicle' and not 'accident caused by the motor vehicle' or 'accident in which the motor vehicle is involved'. The adoption of the expression 'accident arising out of the use of the motor vehicle', in preference to 'accident caused by the motor vehicle', or 'accident in which the motor vehicle is involved' is, therefore, important and clearly indicates that a much wider meaning was intended by adoption of that expression. The Courts have consistently adopted a beneficial construction in such situations and held that the expression 'arising out of the use of the vehicle' be given a liberal and wide interpretation.

21. Though the appellant denied the manner of accident, they have not produced any material to establish that the accident occurred due to the rash and negligent riding of the deceased. In his evidence, R.W.1 deposed that the accident occurred due to rash and negligent driving of the rider of the motorcycle. However, R.W.1 admits that the motorcycle involved in the accident was duly insured with their insurance company at the time of accident and he had also produced Ex.R1-policy.

22. It is also the say of the appellant that since no extra premium was paid to cover the risk of the owner - the deceased being the owner of the motorcycle, the appellant is not liable to pay the compensation. In support, the learned counsel for the appellant relied upon the following decisions, which are as under:

23. In New India Assurance Co. Ltd. v. Meera Bai and others, supra, the Hon'ble Supreme Court held:

"3. It is submitted on behalf of appellant insurance company that the High Court was clearly in error in awarding a sum of Rs.1,99,500 by way of compensation along with interest at the rate of 9 per cent per annum, in view of the fact that the policy of insurance did not cover the risk of the owner of the vehicle, who was the insured. He relies upon a decision of this court in Dhanraj v. New India Assurance Co. Ltd., 2005 ACJ 1 (SC) and contends that the judgment clearly lays down that in the absence of coverage in respect of the owner, the claim could not be sustained. We have perused the aforesaid judgment. It does support the case of the appellant."

24. In Dhanraj v. New India Assurance Co. Ltd., and another, supra, the Hon'ble Supreme Court held:

"8. Thus, in insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of Oriental Insurance Co. Ltd. v. Sunita Rathi, 1998 ACJ 121 (SC), it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured, i.e., an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989 paid under the heading 'own damage' is for covering liability towards personal injury. Under the heading 'own damage', the words 'premium on vehicle and non-electrical accessories' appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a person accident insurance has been taken out. In this case, there

is no such insurance."

25. In *New India Assurance Co. Ltd. v. Prabha Devi and others*, supra, after referring to the decision of *Dhanraj v. New India Assurance Co. Ltd.*, and another, supra, the Hon'ble Supreme Court held as follows:

"10. In view of the aforesaid ratio of law, the claim made by the Respondents could not have been allowed. Consequently, Civil Appeal No.479 of 2007 is allowed. The impugned Award as well as the impugned judgment of the High Court are set aside."

26. In *Oriental Insurance Co. Ltd. v. Jhuma Saha and others*, supra, the Hon'ble Supreme Court held:

"13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, section 147 (1) (b) of the Motor Vehicle Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case."

27. In *Divisional Manager, United India Insurance Co. Ltd. v. R.Rekha and others*, supra, a Division Bench of this Court held:

"26. Therefore, the liability of the Insurance Company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the Insurance Company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased who himself was the Owner of the vehicle and when no other Motor Vehicle was involved in this case. Therefore, the question of the Insurer being liable to indemnify the deceased/Owner of the vehicle does not arise. Since the deceased himself was the Owner of the Two-wheeler and not a Third party, the Claim Petition filed by the Claimants will not come within the purview of Section 146 or 147 of the Motor Vehicles Act for the purpose of payment of Compensation."

28. On a perusal of Ex.R1-policy and as rightly held by the Tribunal, it is clear that the policy is a package policy, which covers the risk of the owner, rider and the vehicle. Therefore, the appellant cannot escape from their liability.

29. The claim under Section 163-A of the Motor Vehicles Act can be invoked even in cases when negligence is on the part of the victim. At this juncture, it is pertinent to refer the decision of the Three-Judges Bench of the Hon'ble Supreme Court

in Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda, reported in 2004(1) TN MAC (SC) 193, wherein, it has been held as under:

"46. Section 163-A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains a non-obstante clause, in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay, in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."

30. In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Thus, Section 163-A of the M.V. Act covers cases where even negligence is on the part of the victim.

31. As stated supra, it can easily be decided that the accident was arising out of the use of motorcycle bearing registration No. TN-39 BC 2097. Section 163-A of the M.V. Act covers cases where even negligence is on the part of the victim.

32. No contra documents and contra decisions have been produced by the appellant insurance company that the claim petition filed by the respondents under Section 163-A of the M.V. Act is not maintainable and cannot be entertained. In a catena of decisions, it has been held that Section 163-A of the M.V. Act applies to all victims of motor accident whether they are inside or outside of the vehicle.

33. In view of the above narrated facts and the decisions of the Hon'ble Supreme Court, this Court of the view that the Tribunal was right in holding that the deceased died due to an accident arising out of the use of motorcycle bearing registration No. TN-39 BC 2097 and since the policy issued for the motorcycle involved in this case is a package policy, the appellant insurance company cannot escape from its liability and that the appellant insurance company is liable to pay compensation to the respondents under Section 163-A of the M.V. Act. Therefore, there is no infirmity in the finding of the Tribunal that the appellant insurance company is liable to pay compensation to the respondents.

34. As far as the quantum of compensation awarded by the Tribunal is concerned, it is the submission of the learned counsel for the appellant that the Tribunal erred in fixing the earnings/dependency and multiplier without any basis and as such the ultimate award passed by the Tribunal is far in excess of what may be justified.

35. In the claim petition, the respondents stated that at the time of accident, the deceased was aged 27 years and was earning Rs.15,000/- per month by working as HR Manager in M.P.Shantex Mill at Mannarai. In his evidence, P.W.1 deposed that due to sudden death of their son in the accident, they lost not only the love and affection of the deceased but also sustained income loss. P.W.1 further deposed that at the time of accident, his son was working as Manager in M.P. Shantex Mill at Mannarai and was earning Rs.15,000/- per month. To prove that the deceased was working as Manager in M.P. Shantex Mill and was earning Rs.15,000/- per month, the respondents have not produced any documents. The respondents have failed to examine the responsible staff of M.P.Shantex Mill to prove that the deceased had worked in M.P.Shantex Mill and was earning Rs.15,000/- per month.

36. In the absence of proof, the Tribunal has taken the monthly income of the deceased at Rs.6,000/- notionally, which in my considered opinion is reasonable. The Tribunal deducted one-third towards personal expenses. Admittedly, the deceased was unmarried. In case deceased was unmarried, the deduction towards personal expenses would be 50% of the income. If 50% is deducted towards personal and living expenses, the loss of income of the deceased would come to Rs.3,000/- per month.

37. While awarding compensation, the Tribunal has not taken into consideration the future prospects. Though the respondents have failed to prove the avocation and monthly income of the deceased, considering the age of the deceased, he would have earned more, if he were alive. Therefore, this Court finds that it would be appropriate to give 40% addition towards future prospects. Adding 40%, the monthly income of the deceased is calculated at Rs.4,200/- per month and the annual income is at Rs.50,400/-.

38. While determining the compensation, the Tribunal adopted multiplier "18". As stated supra, the deceased was unmarried and the claim petition was filed by the parents of the deceased. The first respondent is the mother, who was aged 47 years and the second respondent is the father, who was aged 55 years at the time of accident. The Tribunal erred in adopting multiplier "18" taking into consideration the age of the deceased. Considering the fact that the deceased is a bachelor, it would be appropriate to take the age of the first respondent. Since the first petitioner was aged 47 years, for the age group

46 - 50, the proper multiplier to be adopted is "13". Adopting multiplier "13", the loss of dependency is calculated at Rs.6,55,200/-.

39. As far as conventional damages are concerned, the Tribunal awarded Rs.5,000/- towards transport charges; Rs.10,000/- towards funeral expenses. Considering the facts and circumstances of the case, Rs.5,000/- awarded by the Tribunal for transport charges is enhanced to Rs.10,000/-. Like wise, Rs.10,000/- awarded by the Tribunal for funeral expenses is enhanced to Rs.15,000/-.

40. The Tribunal awarded Rs.1,00,000/- towards loss of love and affection. Considering the fact that the respondents have lost the love and affection of the deceased, a sum of Rs.1,00,000/- awarded by the Tribunal is maintained.

41. The Tribunal awarded Rs.10,000/- towards loss of estate. Since Rs.10,000/- awarded by the Tribunal for loss of estate is reasonable, the same is maintained.

42. In Magma General Insurance Company Ltd. v. Nanu Ram alias Chuhru Ram and others, Civil Appeal No.9581 of 2018, decided on 18.9.2018, the Hon'ble Supreme Court considered awarding of compensation where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. In the aforesaid decision, in para 8.7, the Hon'ble Supreme Court held as under:

"8.7. A Constitution Bench of this Court in Pranay Sethi (2017) 16 SCC 680 dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is a right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their life time. Children are valued for their love, affection, companionship and their role in the family unit.

.....

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "Loss of Consortium" as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."

43. In the present case, the claimants are mother and father. Following the decision of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. v. Nanu Ram alias Chuhru Ram and others, supra, this Court is inclined to award a sum of Rs.80,000/- (Rs.40,000 payable to each of respondent Nos.1 and 2) towards filial consortium.

44. In view of the above discussion, the compensation of Rs.9,89,000/- awarded by the Tribunal is reduced to Rs.8,70,200/- as under:

Heads	Rs.
Loss of dependency	6,55,200.00
Transport charges	10,000.00
Funeral expenses	15,000.00
Loss of love and affection	1,00,000.00
Loss of estate	10,000.00
Loss of Filial	80,000.00
Total	8,70,200.00

45. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.9,89,000/- awarded by the Tribunal is reduced to Rs.8,70,200/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant insurance company is directed to deposit the reduced compensation of Rs.8,70,200/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. The compensation of Rs.8,70,200/- is apportioned between the respondents 1 and 2 equally. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective shares with accrued interest on filing proper application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vs

To

1. The Subordinate Judge
The Motor Accident Claims Tribunal,
Gobichettipalayam.

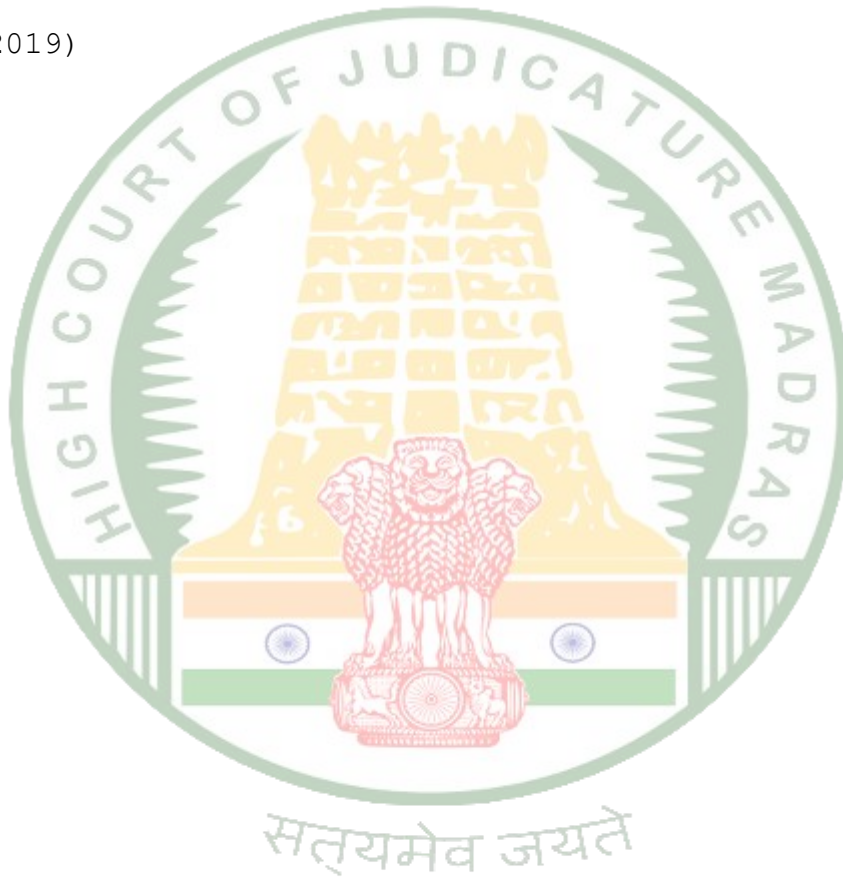
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C.M.A.No.1664 of 2015
and
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