



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.12.2020

Pronounced On : 23.12.2020

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A (MD) No.552 of 2015

and

M.P. (MD) No. 3 of 2015

The Branch Manager,
M/s.ICICI Lombard General Insurance Co.Ltd.,
414, Veera Savarkar, Sithi Vinayagar Koil,
Near Prappa Devi,
Mumbai - 25.

... Appellant /2nd Respondent

Vs.

1.Karuppayee

2.Nageswari

3.Pandiammal

4.Pandichelvi

5.Veeralakshmi

6.Suruliraj

: Respondents/ Petitioners 1 to 6

7.Sathian

: Respondent /1st Respondent

(R-7 dismissed for default)
(Vide Court order dt.27.06.2018)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 30.09.2013 made in M.C.O.P.No.48 of 2012, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge) Periakulam.

For Appellant : Mr.S.Srinivasaraghavan

For R1 to R6 : Mr.A.K.Manickam



J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the award made in M.C.O.P.No.48 of 2012, dated 30.09.2013 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge) Periakulam.

2.The Appellant/Insurer has not disputed the liability, but only challenged the quantum of compensation arrived at and the mode of calculation. Admittedly, the first respondent/first claimant is the wife, the respondents 2 to 5/claimants 2 to 5 are the daughters and the 6th respondent/6th claimant is the son of the deceased Sundarraaj. The claimants' case is that the deceased Sundarraaj was aged about 65 years on the date of accident, that he was working as a mason and was earning a sum of Rs.500/- per day, that the claimants were only depending upon the income of the deceased and that therefore, they have claimed total compensation of Rs.10,00,000/-.

3.During enquiry, the first claimant and two others have been examined as P.W.1 to P.W.3 respectively and six documents have been exhibited as Ex.P.1 to Ex.P.6. The seventh respondent herein, owner of the vehicle, had remained exparte before the trial Court. The Appellant/Insurer has adduced neither oral nor documentary evidence.

4.The trial Court, upon considering the evidence, both oral and documentary, passed the impugned award granting total compensation of Rs.6,37,000/- with interest at 7.5% per annum. Aggrieved by the said award, the insurer has preferred the present appeal.

5.The points for consideration are;

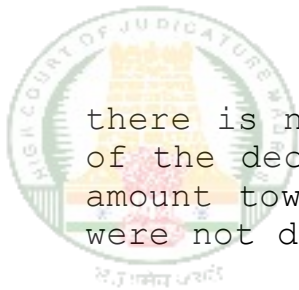
(i) Whether the trial Court erred in fixing the monthly salary of the deceased at Rs.9,000/-, when he was admittedly aged 65 years at the time of accident?

(ii) Whether the quantum of compensation arrived at by the tribunal is excessive and is in accordance with law?

(iii) Whether the impugned award dated 30.09.2013 is liable to be interfered with?

Point Nos. 1 to 3:

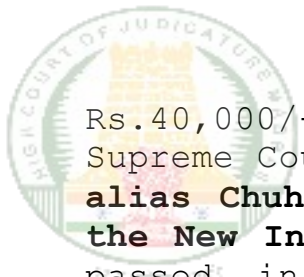
6.The learned counsel for the appellant would contend that the trial Court was not justified in finding that at the age of 65 years, the deceased was working as mason and was capable of earning of Rs.9,000/- per month, that the tribunal ought not to have fixed Rs.6,750/- as notional income of the deceased in the absence of any proof for employment and avocation, that the trial court ought to have found that the claimants are independent and



there is nothing to show that they were depending upon the income of the deceased and that the tribunal ought to have deducted more amount towards personal expenses of the deceased as the claimants were not depending on him.

7.No doubt, the trial Court, in the absence of any other evidence, by relying upon the postmortem certificate, has fixed the age of the deceased at 65 years and as such, the same cannot be found fault with. The claimants in an attempt to prove the income of the deceased, have examined another mason, one Jaganathan as P.W.3 and produced the identity card issued to the deceased by the Tamil Nadu Building Labours Union under Ex.P.5 and whereunder, it is evident that the same was issued to the deceased Sundarraaj in July 1997 and he has been shown as mason (Kothanar). The trial Court, by quoting the evidence of P.W.3 that Sundarraaj was getting Rs.5,000/- per month for his mason work, observed that the same was not challenged by the insurer through evidence and fixed the daily income of the deceased as Rs.300/-. P.W.3, in his cross examination would say that due to his old age, he was not going to mason work, that he knew that the Sundarraaj was going to mason work 4 or 5 years back, that the deceased had not attended mason work with him for the past 15 years and that he was not aware as to whether the deceased Sundarraaj was attending the mason work daily. It is pertinent to note that P.W.3 was examined before the tribunal on 12.09.2013 and according to him, he was aged 65 years at that time.

8.Except the above, the claimants have not produced any evidence to substantiate the income of the deceased at Rs.9,000/-. Moreover the accident was occurred on 15.08.2011. No doubt, agriculture coolies and other coolies are getting not less than Rs.300/- per day nowadays. On considering the age of the deceased and the date of accident and nature of the avocation canvassed, this Court is of the view that the monthly income fixed at Rs.9,000/- is definitely on higher side and this Court fixes the monthly income of the deceased at Rs.6000/- per month. Since the deceased was aged about 65 years at the time of accident, question of adding future prospects, as per the decision in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, does not arise at all. The trial Court, on applying the dictum laid by the Honourable Supreme Court in **Sarla Verma case**, has rightly applied the multiplier '7' and deducted 25% towards personal expenses of the deceased, as there are six claimants. If calculation is made on that basis, it comes to Rs3,78,000/- (4,500x12x7). The tribunal has awarded Rs.10,000/- towards loss of consortium to the first respondent and Rs.10,000/- each to respondents 2 to 6 towards loss of love and affection and Rs.10,000/-towards funeral expenses. In **Pranay Sethi and others**, the Honourable Supreme Court has permitted to award



Rs.40,000/- towards spousal consortium. But the Honourable Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in (2018) 18 SCC 130, and **the New India Assurance Company Ltd., Vs. Smt.Somwati and others**, passed in **Civil Appeal No.3093 of 2020 and batch, dated 07.09.2020** case has permitted the spousal consortium to be awarded to the surviving spouse, parental consortium to be awarded to the children upon the premature death of their parents and filial consortium to be awarded to the parents for the loss of their children at the same amount that is fixed in **Pranay Sethi's** case.

9.Applying the above legal dictum, the claimants are entitled to get Rs.40,000/- each towards loss of consortium and funeral expenses at Rs.15,000/- and Rs.15,000/- towards loss of estate under the conventional heads and on addition, the same would exceed the amount already awarded by the tribunal. The respondents 1 to 6/claimants have neither challenged the quantum fixed by the tribunal nor advanced any arguments in this regard.

10.Considering the above, this Court decides that the compensation awarded by the tribunal is liable to be sustained and hence, the appeal is liable to be dismissed. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 30.09.2013, made in M.C.O.P.No.48 of 2012, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge) Periakulam, is confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

das

To

1.The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Periakulam.



2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.S.Srinivasaraghavan , Advocate SR.No.27162

+1 cc to Mr.A.K.Manickam , Advocate SR.No.27155

C.M.A (MD) No.552 of 2015

and

M.P. (MD) No.3 of 2015

23.12.2020

KM (21.01.2021) 5P 6C