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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2880 of 2017

1. Anitha
2. Minor Dheventh
3. Minor Ovian
[Minors represented by Guardian/Mother
Anitha]
4. Ramasamy
5. Sellammal ... Appellants/Petitioners

Vs.

1.R.Subramani
2. National Insurance Co., Ltd.,
No.74-A, Paramathi Road,
Namakkal.
(The 1st Respondent remained set ex-parte
before the tribunal) ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.09.2015 made in M.C.O.P.No.487 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : M/s.K.Thangaraju
For Respondents : Mr.S.Vadivel (R2)
Exparte (R1)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 18.09.2015 made in M.C.O.P.No.487 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are the claimants in M.C.O.P.No.487 of 2013 on the file of the Motor Accident Claims Tribunal, Principal



District Court, Namakkal. They filed the above said claim petition, claiming a sum of Rs.75,00,000/- as compensation for the death of one Ramesh, who died in the accident that took place on 09.11.2012.

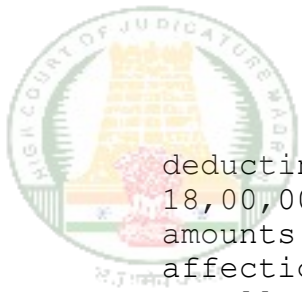
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3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the van belonging to 1st respondent and directed the respondents 1 and 2 to pay a sum of Rs.18,25,000/- (Rupees Eighteen Lakhs Twenty Five Thousand) as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the Court below has deducted 1/3rd towards personal expenses instead of 1/4th as held by the Hon'ble Supreme Court in the case of Sarla Verma & Ors Vs. Delhi Transport Corporation & Another reported in (2009) 6 SCC 121. It is further submitted that the future prospects needs to be added with the income of the deceased as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Versus Pranay Sethi & Others reported in (2017) 16 SCC 680, but the Claims Tribunal has not added any amount towards future prospects. It is further stated that the tribunal has awarded a sum of Rs.10,000/- towards Loss of consortium to the wife, a sum of Rs.10,000/- towards a loss of love and affection, a sum of Rs.5,000/- towards funeral expenses which are very low. He further submitted that in the case of Magma General Insurance Co. Ltd. V. Nanu Ram & Ors reported in (2018) 18 SCC 130, Hon'ble Apex Court interpreted "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium as well as filial consortium and held that the compensation has to be awarded to the wife, children and parents of the deceased in the aforesaid heads separately and further loss of love and affection is comprehended in loss of consortium. He therefore prayed for enhancement of the compensation.

6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.1 and Exs.P10 to P14 found that the wife of the deceased was not clear about the income of the deceased and the number of vehicles run by her husband and no documents were filed with regard to the particular income of the deceased and further the deceased is not an income tax assessee. Considering the same, the tribunal fixed a sum of Rs.15,000/- per month and rightly applied the multiplier 15 and after



deducting 1/3rd towards personal expenses awarded a sum of Rs. 18,00,000/- towards loss of income, which is not meagre. The amounts awarded by the Tribunal towards loss of love and affection, loss of consortium, funeral expenses to the appellants are also not meagre and the total compensation awarded by the Tribunal is reasonable. He further submitted that the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent- Insurance Company and perused the entire materials on record.

8. It is the case of the appellants that at the time of accident the deceased was aged 36 years and was a proprietor of transport and was earning a sum of Rs.50,000/- per month. The Tribunal considering the evidence of P.W.1, Exs.P10 to P14, held that the wife of the deceased was not clear about the income of the deceased and the number of vehicles run by her husband and no documents were filed with regard to the particular income of the deceased and further the deceased is not an income tax assessee and fixed a sum of Rs.15,000/- per month which is not in dispute. Hence, a sum of Rs.15,000/- per month awarded by the tribunal as notional income of the deceased appears to be fair and reasonable and therefore, the same is confirmed. By, following the judgments of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] and 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], this Court considering the age of the deceased is inclined to add 40% towards future prospects and by adopting the multiplier 15 and after deducting 1/4th towards personal expenses, as per the decisions cited supra, the compensation awarded by the Tribunal towards loss of income is modified to Rs.28,35,000/- {Rs.21,000/- [Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-)] X 12 X 15 - 1/4}. The amounts awarded by the Tribunal towards Loss of Consortium to wife is redetermined as follows as per the Judgment of the Hon'ble Supreme Court in Magma General Insurance Co. Ltd. Supra

Spousal Consortium	
(to spouse)	- Rs.40,000/-
Parental Consortium	- Rs.80,000/-
(Rs.40,000/- to each children)	
filial consortium	
(Rs.40,000/- each of the parents	
of the deceased)	- Rs.80,000/-

Total	Rs.2,00,000/-

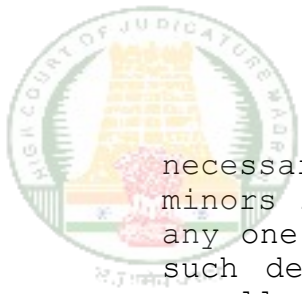


9. Considering the cost of living prevailing as on date, the compensation awarded towards Funeral expenses is enhanced to Rs.15,000/-, Loss of Estate is awarded at Rs.15,000/- and Transport expenses is awarded at Rs.10,000/- Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	18,25,000/-	28,35,000/-
2.	Funeral expenses	5,000/-	15,000/-
3.	Loss of consortium to 1 st appellant	40,000/-	2,00,000/- (Spousal, parental and filial consortium)
4.	Loss of love and affection to appellants 2 & 3	1,00,000/-	-
5.	Loss of estate	NIL	15,000/-
6.	Transport		10,000/-
	Total	Rs.18,25,000/-	Rs.30,75,000/-

10. Out of the total enhanced award amount, the first appellant/wife is entitled to a sum of Rs.11,75,000/-, parents of the deceased/appellants 4 and 5 are entitled to a sum of Rs.2,00,000/- each and the appellants 2 and 3 are entitled for a sum of Rs.7,50,000/- each.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,25,000/- is hereby enhanced to Rs.30,75,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of ten weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.487 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Namakkal. On such deposit, the appellants 1,4, 5 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the aforesaid apportionment, along with proportionate interest and costs, less the amount if any, already withdrawn by making



necessary applications before the Tribunal. The share of the minors 2nd and 3rd appellants are directed to be deposited in any one of the Nationalized Banks, till they attain majority. On such deposit, the 1st appellant, being the mother of the minor appellants is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants. The appellants are directed to pay the necessary Court fee as per the order of this Court dated 11.07.2017 made in C.M.P.No.9136 of 2017 in C.M.A.SR.No.9136 of 2017. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

- 1.The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.
2. National Insurance Co., Ltd.,
No.74-A, Paramathi Road,
Namakkal.

Copy to

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Vadivel, Advocate Sr.22411
+2ccs to Mr.C.Thangaraju, Advocate Sr.22551

C.M.A.No.2880 of 2017

kk[co]
srg 24/09/2021