



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2020

Pronounced On : 08.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A (MD)No.678 of 2016

and

C.M.P. (MD)No.7102 of 2016

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The Branch Manager,
United India Insurance Company Limited,
Ottanchathram, Dindigul District. : Appellant / 2nd Respondent

Vs.

1.M.Priya
2.Minor.M.Subash
3.Minor.M.Nithish Kumar
4.Minor.M.Inba Lakshmi
5.Sree Rangammal : Respondents 1 to 5/Claimants
6.K.Chinnaraju : 6th Respondent/1st Respondent

[2-4 Minor Respondents are represented by their Mother and next guardian M.Priya 1st respondent]

[R-6 dismissed for default vide order dated 29.01.2019]

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order passed by the learned Subordinate Judge, Vedasanthur/Motor Accident Claims Tribunal in M.C.O.P.No.62 of 2013, dated 31.08.2015.

For Appellant : Mr.N.Dilip Kumar

For Respondents : Mr.N.Sudhakar Nagaraj, for R1 & R5

R6 : Dismissed for default on 29.01.2019

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, challenging the award, dated 31.08.2015, in M.C.O.P.No.62 of 2013, on the file of the Motor Accident Claims Tribunal/ Subordinate Judge, Vedasanthur.

2.The Appellant/Insurer, who was made liable to pay compensation of Rs.30,00,000/- with interest at 7.5% per annum to the claimants for the death of one Manikandan, who died consequent to an accident occurred on 28.02.2013, challenged the quantum of



compensation awarded at by the tribunal. Though the Appellant/Insurer, in their memorandum of appeal, has questioned the findings of the tribunal with respect to the negligence aspect, the same was not pressed into service and the challenge is only with respect to the quantum of award granted by the tribunal.

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3. During enquiry before the tribunal, the claimants have examined the first claimant and three other persons as P.W.1 to P.W.4 respectively and exhibited 11 documents as Ex.P.1 to Ex.P.11. The sixth respondent herein, who is the owner of the offending vehicle TATA ACE bearing Registration No.TN 57 AD 0156, had remained ex-parte. On the side of the Appellant/Insurer, they have summoned and examined a staff attached to the Regional Transport Office, Dindigul, as R.W.1 and exhibited one document as Ex.R.1, two witness documents through R.W.1 as Ex.W.2 and Ex.W.3 respectively.

4. The trial Court, upon considering the evidence both oral and documentary, came to the conclusion that the TATA ACE driver was responsible for the accident and consequently, mulcted liability on the Appellant/Insurer directing them to pay compensation of Rs.30,00,000/- 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 tribunal erred in determining the monthly income of the deceased at Rs.18,750/-, when the claimants have failed to produce any evidence to show the income of the deceased derived from the Hotel allegedly run by the deceased?

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

Point Nos.1 and 2:

6. The learned counsel for the appellant would contend that the tribunal erred in fixing the income of the deceased at Rs.18,750/- per month in the absence of any valid material documents or evidence, that the claimants have not established the income of the deceased, that the document Ex.P.7 produced by the claimants are not relevant to determine the income of the deceased and that the total compensation awarded at Rs.30,00,000/- is highly excessive and the same is liable to be interfered with.

7. The case of the claimants is that the deceased Manikandan was running a Hotel in the name of Muniyandi Vilaas at Palayam and that he was earning Rs.30,000/- per month. The first claimant /P.W.1 in her cross examination would say that they have not produced any documents to show that her husband was running the Muniyadi Vilaas at Palayam in Kujiliamparai and that she has not produced any receipts for the period prior to 2011-2012. The claimants have produced and exhibited the receipts for payment of



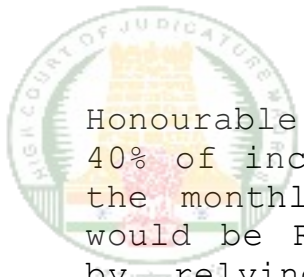
professional tax under Ex.P.7 and Ex.P.8 for the period 2011-2012 and 2013-2013 respectively and the receipts for payment of license fee to Palayam Panchayat under Ex.P.9 to Ex.P.12.

8.The claimants have summoned and examined the Executive Officer Thiru.Mathiyas as P.W.2 and he would depose about the receipts issued under Ex.P.7, and Ex.P.9 to Ex.P.11. During cross examination, he would admit that they are not having the original or copy of the receipts issued prior to 2010, that he does not know about the income derived from the Muniyandi Vilaas Hotel, that no documents were produced to show the income of the hotel and that tax was not paid for the year 2015-2016, that he does not know as to whether the hotel was sold to somebody and that they have to pay Rs.22/- for Rs.22,000/- for six months period. No doubt, as rightly pointed out by the claimants side, Ex.P.7 to Ex.P.11 have been issued in the name of the deceased Manikandan. Except the payment of professional tax and license fee for running hotel, no other particulars can be gathered from the said receipts. Except the above, the claimants have not produced any other evidence to prove the income of the deceased. They have not even chosen to produce the accounts or ledgers maintained in the Muniyandi Vilaas Hotel nor the Bank statements to show the income of the Muniyandi Vilaas Hotel, allegedly run by the deceased.

9.As rightly pointed out by the appellant side, the trial Court, in the absence of any acceptable evidence or materials has fixed the daily income of the deceased at Rs.750/- and after calculating for 25 days, arrived at Rs.18,750/- as monthly income.

10.On considering the evidence available, this Court is of the view that the daily income arrived at by the tribunal is definitely on higher side and the same is reduced and fixed at Rs.500/- per day and on calculating for 25 days, it would come to Rs.12,500 [500x25]. At this juncture, it is necessary to refer the decision of Honourable Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700** and whereunder, Full Bench have concluded that if the deceased was self employed or on a fixed salary, an addition of 25% 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.

11.The tribunal, on relying the postmortem certificate, has fixed the age of the deceased as 33 years on the date of accident and that the said factum is not at all disputed by the Appellant/Insurer. Considering the age of 33 years, as fixed by the tribunal and as per the legal dictum laid down by the

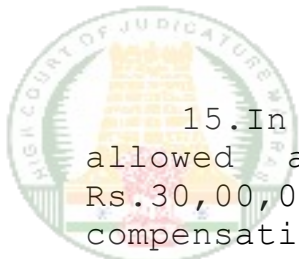


Honourable Supreme Court in **Pranay Sethi's** Case, an addition of 40% of income is to be added towards future aspects and as such, the monthly income would come to Rs.17,500/- and annual income would be Rs. 2,10,000/-.[Rs.17,500x12] Coming to the deductions, by relying the decision of the Honourable Apex Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the tribunal has rightly deducted 25% towards personal expenses of the deceased and if the same is deducted, the contribution would come to Rs.1,57,500/-.[(Rs.2,10,000-25/100= Rs.52,500) (Rs.2,10,000-52,500)]

12.The trial Court has also rightly applied the multiplier 16% and if the same is adopted, the claimants are entitled to get compensation under the head of loss of dependency at Rs.25,20,000/-. The tribunal has awarded Rs.50,000/- for loss of consortium to the first claimant and Rs.50,000/- each for the claimants 2 to 4 towards loss of love and affection and Rs.20,000/- for loss of love and affection for the fifth claimant and Rs.20,000/- towards funeral expenses.

13.Our Hon'ble Supreme Court in **Pranay Sethi's** case has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, Hon'ble Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Hon'ble Apex Court in **The New India Assurance Company Ltd. Vs. Smt.Somwati and others**, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi's** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

14.Considering the above, the claimants being the wife, children and the mother of the deceased, they are all certainly entitled to get compensation towards loss of consortium at Rs.40,000/- each and also Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses under the conventional heads. Hence, the claimants are entitled to get total compensation of Rs.27,50,000/- and the above points are answered accordingly.



15.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at Rs.30,00,000/- is reduced to Rs.27,50,000/-. Out of the said compensation amount, the first claimant is entitled to get Rs.9,50,000/-, minor claimants 2 to 4 are to be given Rs.5,00,000/- each and the fifth claimant is entitled to get Rs.3,00,000/-. The Appellant/Insurer is directed to deposit the modified amount with interest at 7.5% per annum, if not already deposited. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalized Bank in a fixed deposit scheme, till they attain majority. The mother and guardian of the minor claimants is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minors. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

das

To

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

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

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-711[F] dated 08/01/2021)

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-726[F] dated 08/01/2021)

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