BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.(MD).No.728 of 2019
and
C.M.P(MD)No.6012 of 2020
and
CROS. OBJ(MD)No.13 of 2021

C.M.A(MD)No.728 of 2019:

The Branch Manager,
M/s.Iffco-Tokio General Insurance Company Limited.,
5/132C, Sundaram Street, IndusInd Bank Upstairs,
Opposite to New Bus Stand, Avinasi,
Thirupur District. ... Appellant /Second respondent

-vs-

1.Vijayarani
2.Minor Jeevitha
3.Minor Vasanthakumar

(Minor 2 and 2 respondents represented
through their mother and guardian
the first respondent herein)

4.Periyasamy
5.Saraswathi .. Respondents 1 to 5/Petitioners

6.Chinnadurai .. Respondent No.6/Respondent No.1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 13.06.2019 passed in M.C.O.P.No.201 of 2017 on the file of the Motor Accident Claims Tribunal Judge(Additional District Judge), Palani.

For Appellant :Mr.V.Sakthivel
For R-1 to R-5 :Mr.D.Venkatesh

CROS. OBJ(MD)No.13 of 2021

1.Vijayarani
2.Minor Jeevitha
3.Minor Vasanthakumar

(Minor 2 and 2 cross objectors represented through their mother and guardian the first cross objectors herein)

4.Periyasamy
5.Saraswathi ..Cross Objectors/Respondents 1 to 5

vs.

1.The Branch Manager,
M/s.Iffco-Tokio General Insurance Company Limited.,
5/132C, Sundaram Street, IndusInd Bank Upstairs,
Opposite to New Bus Stand, Avinasi,
Thirupur
District. .. 1st respondent/Appellant

2.Chinnadurai .. 2nd respondent/6th respondent

PRAYER: Cross Objection filed under Order 41 Rule 22(1) of the Civil Procedure Code, against the award and decree dated 13.06.2019 passed in M.C.O.P.No.201 of 2017 on the file of the Motor Accident Claims Tribunal Judge(Additional District Judge), Palani.

For Cross Objectors :Mr.D.Venkatesh
For R-1 :Mr.V.Sakthivel

COMMON JUDGMENT

[Judgment of the Court was delivered by V.BHARATHIDASAN,J.]

The above Civil Miscellaneous Appeal and the Cross Objection are filed against the award and decree dated 13.06.2019 passed in M.C.O.P.No.201 of 2017 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Palani, by the Insurance Company and the Claimants.

2. The case of the claimants before the Tribunal is that the deceased by name Sivasamy was an Agriculturist. On 21.07.2016, while he was travelling in a two-wheeler from Thoppampatti – Vagarai main road, the Toyota Qualis Car bearing Registration No.TN-34-A-5566 owned by the first respondent insured with the second respondent came in a rash and negligent manner and dashed against the deceased and caused serious injuries to him. Immediately, he was taken to the Government Hospital, Palani, where he succumbed to the injuries on the very same day. Alleging that the accident had taken

place due to the rash and negligent driving of the driver of the first respondent vehicle, the claim petition has been filed by the wife, minor children and parents of the deceased claiming compensation of Rs.30,00,000/-.

3. Before the Tribunal, the first respondent, who is the owner of the offending vehicle remained ex-parte, the Insurance Company contested the claim petition on the ground that the accident had occurred only due to the rash and negligent driving of the deceased and no negligence could be fixed on the part of the driver of the first respondent and they have also disputed the income of the deceased.

4. To prove the case, on the side of the claimants, three witnesses were examined and as many as nine documents were marked. On the side of the respondents, two witnesses were examined and four documents were marked.

5. The Tribunal after considering the materials available on record held that the accident had taken place due to the rash and negligent driving of the driver of the first respondent and considering the fact that the driver of the first respondent was not having valid driving licence at the time of accident, the Insurance Company is not liable to pay compensation and fixed the liability on the first respondent/owner of the vehicle, however, ordered pay and recovery.

6. So far as the quantum of compensation is concerned, considering the fact that the deceased was having a Tractor and rented it out and doing dairy business, the Tribunal has fixed the monthly income of the deceased at Rs.15,000/-, considering the voluminous of the dependency deducted 1/4th amount towards his personal expenses and by applying multiplier '16', awarded Rs.21,60,000/- as loss of income. Apart from that, the Tribunal has awarded Rs.40,000/- to the first claimant, towards loss of consortium; Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate and awarded total compensation of Rs.22,30,000/- along with interest at the rate of 7.5% per annum. Challenging the same, the Insurance Company has filed the present C.M.A(MD)No.728 of 2019 before this Court.

7. Aggrieved by the quantum awarded by the Tribunal, the claimants also filed Cross Objection(MD)No.13 of 2021, on the ground that the income of the deceased fixed by the Tribunal is very low. That apart, the Tribunal awarded consortium only in respect of the first claimant alone and no amount has been awarded to the minor children and parents of the deceased.

8. Mr.V.Sakthivel, learned counsel appearing for the Insurance Company would contend that, the available evidence clearly shows that the accident had taken place only due to the rash and negligent

driving of the deceased. So far as the monthly income of the deceased is concerned, the learned counsel for the would contend that there is no material available on record to show that the deceased was doing agricultural operation, owned a Tractor and earning a sum of Rs.15,000/- per month. Hence, the compensation awarded by the Tribunal is highly excessive and liable to be set aside. Learned counsel further submitted that admittedly the driver of the first respondent's vehicle had no driving licence. It is a policy violation, hence, the Tribunal ought not to have ordered pay and recovery.

9. Per contra, Mr.D.Venkatesh, learned counsel appearing for the claimants would submit that the Tribunal considering the oral and documentary evidence, has rightly come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the first respondent vehicle. He would further submit that the Tribunal also considering the material available on record rightly, fixed the income of the deceased as Rs.15,000/- per month and following the judgments of the Hon'ble Apex Court in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 SCC 680 and Smt. Sarla Varma and other vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), deducted 1/4th towards his personal expenses and correctly applying the multiplier '16', awarded the compensation of Rs.21,60,000/- as loss of income and there is no reason to interfere with the same. He would also submit that as per the judgment of the Hon'ble Apex Court, in the case of Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others reported in (2018) 2 TN MAC 452, the minor children are entitled for parental consortium and the fourth and fifth claimants/father and mother are entitled for filial consortium. But, without considering the same, the Tribunal awarded a sum of Rs.40,000/- only to the first claimant/wife. Hence, the compensation awarded by the Tribunal is liable to be enhanced.

10. We have considered the submissions of the learned counsel for the Insurance Company and the learned counsel for the claimants and perused the materials available on record.

11. Insofar as the negligent aspect is concerned, before the Tribunal, the first claimant was examined as P.W.1 and the eyewitness to the occurrence was examined as P.W.2 and in his evidence, P.W.2 has clearly stated that only due to the rash and negligent driving of the driver of the first respondent/owner of the vehicle, the accident had taken place. The driver of the first respondent was not having valid driving licence at the time of accident. That apart, a criminal case was registered against the driver of the offending vehicle and the final report also filed before the Criminal Court. The driver of the offending vehicle was not examined by the Insurance Company, to prove the negligence on the part of the deceased and no other material available on record

to show that the accident took place due to the negligent driving of the deceased. Considering the above circumstances, the Tribunal has rightly held that the accident had taken place only due to the rash and negligent driving of the driver of the first respondent/sixth respondent in the appeal and there is no error in it.

12. So far as the quantum of compensation is concerned, from the materials available on record, it could be seen that the deceased was an Agriculturist, owned a Tractor and rented it to third party and was also running dairy farm and earning a sum of Rs.25,000/- per month. Hence, the Tribunal has rightly fixed the monthly income of the deceased at Rs.15,000/- per month. That apart, the Tribunal has also rightly deducted $\frac{1}{4}^{th}$ amount towards his personal expenses as there are five dependants in the family and considering the age of the deceased, rightly applied multiplier '16' and arrived at a loss of income at Rs.21,60,000/- and there is no reason to find fault with the finding of the Tribunal.

13. So far as the contention of the learned counsel appearing for the claimants that, the Tribunal awarded only a sum of Rs.40,000/- towards consortium to the first claimant/widow and no amount was awarded to the minor children and the parents towards consortium, the Hon'ble Apex Court, in the case of ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 2 TN MAC 452***, held that the minor children are entitled for parental consortium of Rs.40,000/- each and the parents also entitled for filial consortium of Rs.40,000/- each. The relevant portion of the judgment is extracted hereunder:-

> *"8.7. A Constitution Bench of this Court in Pranay Sethi 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,* ***(Rajesh and Ors. vs. Rajbir Singh and Ors,*** *(2013)9 SCC 54)*
> *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, cooperation, affection, and aid of the other in every conjugal relation. " (BLACK'S LAW DICTIONARY (5TH ED 1979))*
> *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 the 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 lifetime. Children are valued for their love, affection, compensationship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions worldover have recognized that the value of a child's consortium for exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companianship of the deceased child.

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 (Rajasthan High Court in ***Jagmala Ram @ Jagmal Singh & Ors. V. Sohi Ram & Ors*** *(2017)4 RajLW 3368 (Raj); Uttarakhand High Court in Smt.* ***Rita Rana & Anr. v. Pradeep Kumar & Ors,*** *(2014)3 UC 1687; Karnataka High Court in* ***Lakshman and Ors. v. Susheela Chand Choudhary & Ors.*** *(1996)3 KarlJ 570 (DB). 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 Pranay Sethi.

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."

14. Considering the above judgment, the second and third claimants/minor children are entitled to get Rs.40,000/- each towards parental consortium and the fourth and fifth claimants/parents of the deceased are entitled to get Rs.40,000/- each towards filial consortium, totally Rs.1,60,000/-.

15. Considering the above facts, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	21,60,000	21,60,0000	confirmed
2.	For Consortium to first claimant	40,000	40,000	confirmed
3.	For Consortium to Claimants 2 to 5	Nil	1,60,000 (Rs.40,000 /-each)	awarded
4.	For Funeral expenses	15,000	15,000	confirmed
5.	For loss of estate	15,000	15,000	confirmed
	Total	Rs.22,30,000	Rs.23,90,000	By enhancing a sum of Rs.1,60,000/-

16. Insofar as the contention of the learned counsel for the Insurance Company regarding 'pay and recovery' ordered by the Tribunal is concerned, the Honourable Supreme Court in ***National Insurance Co. Ltd., vs. Swaran Singh*** reported in ***(2004) 3 SCC 297***, has held that where the driver did not have the valid driving licence and there are breach of policy conditions, 'pay and recover', can be ordered in case of third-party risks. That judgment has been followed in ***Shamanna and another vs. Divisional Manager, Oriental Insurance Company Limited and Others*** reported in ***(2018) 9 SCC 650***, wherein the Honourable Supreme Court has held as follows:

> "*13. Since the reference to the larger Bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran*

Singh case followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

14. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan wherein this Court held that:

> *"8. ….For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."*

17. The judgment in ***Shamanna's*** case has been followed by the Honourable Supreme Court in ***Parminder Singh vs. New India Assurance Company Limited and Others*** reported in ***(2019) 7 SCC 217***, wherein the Honourable Supreme Court has held as follows:

> "7*.1.This Court in Shamanna v. Oriental Insurance Co. Ltd., held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of "pay and recover" can be ordered to direct the insurance company to pay the victim, and then recover the amount from the owner of the offending vehicle."*

In such circumstances, we find no error in the order passed by the Tribunal directing "pay and recover".

18. In fine, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed and the claimants are entitled for Rs.23,90,000/-(Rupees Twenty Three Lakhs and Ninety Thousand Only) as compensation along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. The compensation amount is apportioned to the claimants as per the ratio fixed by the Tribunal. The Insurance Company is directed to deposit the award amount at the first instance with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order and thereafter, recover the same from the owner of the vehicle by filing Execution Petition. On such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The 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 minors. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The Additional District Judge
Motor Accident Claims Tribunal
(Additional District Judge), Palani.

2.The Section Officer,(2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-27942[F] dated 02/09/2021)

+1 CC to M/s.D.VENKATESH, Advocate (SR-28273[F] dated 06/09/2021)

C.M.A.(MD).No.728 of 2019
and
Cros. Obj.(MD)No.13 of 2021
02.09.2021

KB(11.10.2021) 10P 6C