



C.M.A(MD)No.265 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.11.2022

Pronounced On : 02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.265 of 2022

1.Rabia Jahani Farzana

2.Minor.Rida Hajira

(2nd appellant rep.by her mother and next friend,
the first appellant herein) : Appellant /Petitioner

Vs.

1.Achithan Automibiles
Dealers in Indian Oil,
No.75, Palanisamy Road,
Thiruppathur, Vellore District.

2.United India Insurance Company Ltd,
Promenade Road, Cantonment,
Trichy.

3.Jailani Khanam : Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment, dated 12.10.2020 passed in M.C.O.P.No.676 of 2015 on the file of the Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli.



C.M.A(MD)No.265 of 2022

For Appellants : Mr.K.Gokul,

For Respondents : Mr.I.Suthakaran, for R2.

: No Appearance, for R1& R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.676 of 2015, dated 12.10.2020 on the file of the Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli.

2.The appellants/claimants, who were awarded with compensation of Rs.12,49,200/- with interest at 7.5% per annum for the death of one Zakir Hussain, who died consequent to an accident occurred on 14.10.2013, challenging the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

3.Admittedly, the first appellant /first claimant is the wife; second appellant/second claimant is the daughter and the third respondent/third claimant is the mother of the deceased Zakir Hussain.



C.M.A(MD)No.265 of 2022

4. During enquiry before the Tribunal, the appellants/claimants have examined the first claimant as P.W.1 and one Rathinam as P.W.2 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The respondents have adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award, dated 12.10.2020, by holding that the tanker lorry driver was responsible for the accident, directed the second respondent to pay compensation of Rs.12,49,200/- with interest and costs to the claimants and the third respondent. Aggrieved by the said award, the claimants have come forward with the present appeal.

6. The points that arise for consideration are;

(i) Whether the Tribunal erred in not awarding any amount for future income; for loss of love and affection and for damages caused to the motor bike?

(ii) Whether the quantum of compensation awarded by the Tribunal is just and proper and in accordance with law?



C.M.A(MD)No.265 of 2022

7.The learned counsel for the appellants would contend that the first appellant was aged 37 years and the second appellant was one year old child at the time of accident; that the Tribunal ought to have awarded a sum of Rs.2,00,000/- for future income; that the Tribunal has failed to award any amount towards loss of love and affection; that the Tribunal instead of awarding Rs.1,00,000/-, has only awarded Rs.35,000/- towards loss of consortium; that since the deceased is retired from Indian Airforce and further, he is highly qualified and hence, for his funeral, many of people would have come to give last respect and hence, the Tribunal ought to have awarded Rs.40,000/- towards funeral expenses and that the Tribunal has failed to award any amount for the damages caused to the motor bike.

8.The case of the claimants is that the deceased was aged 41 years at the time of accident; that he was holding M.B.A., M.Phil degrees; that the deceased was working in Air force, that the deceased had been taking tuition for college students and that he was earning Rs.20,000/- per month. It is the further case of the claimants that the first claimant is the second wife, after divorcing the first wife, vide decree, dated 19.04.2010 and that the claimants in order to prove their case produced the certificate



C.M.A(MD)No.265 of 2022

issued by the Wing Commander, Commending Officer, 341 TRU, Air Force under Ex.P.7 and the Corrigendum payment order under Ex.P.8, wherein it is clearly evident that the deceased after working in Indian Air Force, has retired from the said service.

9.As rightly pointed by the learned counsel for the appellants, in Ex.P.7 certificate, the Wing Commander has certified that the deceased was a promising dynamic multifaceted professional with 20 years of versatile functional efficiency.

10.It is evident from Ex.P.8 that the pension amount sanctioned was Rs.7,980/- and the residual pension was at Rs.3,990/- per month. According to the claimants, the deceased was holding degree of Master of Business Administration (MBA) and Master of Computer Application (MCA). According to the claimants, the deceased was taking tuition to the college students. As rightly observed by the learned Tribunal, the claimants have not produced any evidence to show that the deceased was taking tuition to the college students.



C.M.A(MD)No.265 of 2022

11.P.W.1 wife of the deceased in her evidence would say that her husband was holding degrees in M.B.A., M.Phil., and Ph.D.

12.The Tribunal by relying on Ex.P.8, has rightly fixed the age of the deceased as 42. Considering the educational qualification and the quantum of pension amount and taking note of the age of the deceased, this Court fixed the monthly income of the deceased as Rs.10,000/-.

13.The Tribunal relying on the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi and others* reported in **2017(2) TNMAC 609**, has rightly added 25% of the income towards future prospects.

14.As per the legal dictum laid down by the Hon'ble Supreme Court in *Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another* reported in **AIR 2009 SC 3104**, the Tribunal taking note of the number of the dependants, has rightly deducted 1/3 of the income towards personal and living expenses of the deceased. The Tribunal has rightly adopted the multiplier '14' and the compensation for the loss of dependency would come to Rs.14,00,000/- [Rs.10,000 +(25/100) -1/3 x 14 x 12].



C.M.A(MD)No.265 of 2022

WEB COPY

15.The Tribunal has awarded Rs.35,000/- each towards loss of consortium. 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.



C.M.A(MD)No.265 of 2022

WEB COPY

16.Considering the above, the claimants being the wife, daughter and the mother of the deceased, they are all certainly entitled to get compensation at Rs.40,000/- each towards loss of spousal consortium, parental consortium and filial consortium respectively; this Court awards Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads. Hence, the claimants are entitled to get Rs.15,50,000/- and the above points are answered accordingly.

17.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at Rs.12,49,200/- is enhanced to Rs.15,50,000/-. Out of the said compensation amount, the first claimant/first appellant is entitled to get Rs.7,50,000/-, minor claimant is to be given Rs.5,00,000/- and the third respondent/mother of the deceased is entitled to get Rs.3,00,000/-. The second respondent/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 claimant in any one of the Nationalized Bank in a fixed deposit scheme, till she attains majority. The mother and guardian of the minor claimant is permitted to withdraw



C.M.A(MD)No.265 of 2022

the accrued interest once in three months directly from the Bank only for the welfare of the minor. Parties are directed to bear their own costs.

02.12.2022

Index : Yes : No
Internet : Yes : No
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To

- 1.The Motor Accident Claims Tribunal,
Special District Judge, Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.265 of 2022

K.MURALI SHANKAR,J.

das

Pre-deliver order made in
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02.12.2022