



C.M.A.(MD)No.818 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.09.2022

Pronounced on : 07.11.2022

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.818 of 2021

and

C.M.P.(MD)No.7516 of 2021

M/s.National Insurance Company Limited,
represented by its Branch Manager,
having office at
Maruthi Business Hub, No.169, Anna Salai,
Chennai – 600 002.

...Appellant/2nd Respondent

Vs.

Amsu (Died)

1. R.Lakshmi

2. Kanagavalli

3. Lakshmi

...Respondents 2 to 4/Petitioners 2 to 4

4. K.Venkateswaran

...4th Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to allow this appeal and set aside the judgment



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and decree dated 23.01.2020 made in M.C.O.P.No.821 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Judge to deal with M.C.O.P. cases, Tiruchirappalli.

For Appellant : Mr.A.S.Mathialagan
For Respondents : Mr.N.Sudhagar Nagaraj for R1 to R3
R4–Tapal returned with endorsement

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.821 of 2014 dated 23.01.2020 on the file of the Motor Accident Claims Tribunal / Special District Judge to deal with MCOP cases, Tiruchirappalli.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.4,06,000/- with interest at 7.5% per annum and costs to the claimants 2 to 4/respondents 1 to 3 for the death of one Govindan, who died, consequent to an accident occurred on 01.01.2014, challenged the quantum of compensation awarded at, by the Tribunal.

3. It is pertinent to note that the appellant/Insurer has neither questioned nor challenged the finding of the Tribunal with respect to the



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negligence aspect and as such, the challenge is only with respect to the quantum of award directed by the Tribunal.

4. During enquiry, the claimants have examined the third claimant Kanagavalli as P.W.1 and examined one Ponraj as P.W.2 and exhibited 4 documents as Ex.P.1 to Ex.P.4. The first respondent therein had remained ex-parte. The appellant/Insurer has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing arguments of both sides, came to the conclusion that the car driver was responsible for the accident and consequently, mulcted liability on the appellant/Insurer directing them to pay compensation of Rs.4,06,000/- with interest at 7.5% per annum and costs. Aggrieved by the said award, the appellant/Insurer has come forward with the present appeal.

6. The points that arise for consideration are :

(i) Whether the Tribunal erred in fixing the monthly income of the deceased at Rs.6,000/-, when the claimants have failed to produce any evidence to show the income of the deceased and that too when the deceased was aged 70 years at the time of accident?



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(ii) Whether the Tribunal erred in awarding Rs.50,000/- towards love and affection apart from granting Rs.80,000/- for parental consortium?

(iii) Whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?

Point Nos.(i), (ii) and (iii) :

7. The learned counsel appearing for the appellant/Insurer would contend that the Tribunal erred in fixing the monthly income of the deceased at Rs.6,000/- in the absence of any valid material or documents or evidence, that the claimants have not established the income of the deceased, that the Tribunal has fixed the age of the deceased as 70 years at the time of accident and that therefore fixing the monthly income at Rs.6,000/- is highly excessive and the same is liable to be reduced.

8. The learned counsel appearing for the appellant/Insurer would further contend that the Tribunal, after awarding Rs.80,000/- towards parental consortium for the claimants 2 and 3, has also awarded Rs.50,000/- for love and affection which is very much against the legal position settled by the Hon'ble Supreme Court, that the award of Rs.80,000/- for parental consortium is also on the higher side and that the



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total compensation awarded at Rs.4,06,000/- is highly excessive and the same is also liable to be interfered with.

9. The case of the claimants is that the deceased was working as a Watchman at Rajagopal Godown, Old Milk Dairy Rountana, Trichy-Chennai Bye Pass Road, Trichy, and that he was earning Rs.9,000/- per month.

10. Admittedly, the three daughters of the deceased Govindan have laid the above claim petition and during the pendency of the claim petition, the first petitioner Amsu therein had died and hence, her daughter has been impleaded as the fourth petitioner in the claim petition.

11. It is not in dispute that all the daughters of the deceased were got married and that the fourth petitioner, daughter of the first petitioner therein also got married and are living separately.

12. No doubt, the claimants have not produced any documents to prove the avocation of the deceased and his income. The Tribunal, in its impugned order has specifically observed that it has been noted in the First Information Report-Ex.P.1 that the defacto complainant Ponraj



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(P.W.2) was standing along with his grandfather, the deceased Govindan, Manikandan and Shankar for crossing the road for going to ABT Parcel Service, in which all of them were working, that there is reliable proof available to show that the deceased was serving as Watchman in Rajagopal Godown, that there is no proof for his income, that the accident was occurred in the year 2014 and the age of the deceased was 70 years and that therefore, his notional monthly income is fixed at Rs.6,000/-.

13. Considering the nature of the work and the year in which the accident was occurred, fixing the monthly income of the deceased at Rs.6,000/- by the Tribunal, cannot be found fault with.

14. The Tribunal, relying on the postmortem certificate of the deceased, has rightly fixed the age of the deceased at 70 years and that the said fixation is not at all disputed by the appellant/Insurer.

15. Coming to the deductions, by relying on the decision of the Hon'ble Supreme Court in ***Smt.Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, the Tribunal has rightly deducted 1/3 amount towards personal expenses of the deceased. The Tribunal has also rightly applied the Multiplier 5 and came to the decision that the claimants are entitled to get compensation under the head of loss of dependency at Rs.2,40,000/-.



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16. The Tribunal has awarded Rs.80,000/- towards parental consortium for the claimants 2 and 3, daughters of the deceased at Rs.40,000/- each and also awarded Rs.50,000/- towards love and affection.

17. Our Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700*** 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



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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.

18. Considering the above, the claimants 2 and 3 being the daughters are certainly entitled to get Rs.40,000/- each towards parental consortium 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.3,50,000/- and the above points are answered accordingly.

19. In the result, this Civil Miscellaneous Petition is partly allowed and the compensation awarded at Rs.4,06,000/- is reduced to **Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only)** and out of the said compensation amount, the respondents 1 and 2/claimants 2 and 3 are entitled to get **Rs.1,30,000/- (Rupees One Lakh and Thirty Thousand only)** each and the third respondent/fourth claimant is entitled to get **Rs.90,000/- (Rupees Ninety Thousand only)**. The appellant/Insurer is directed to deposit the modified award amount with interest at 7.5% per annum, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the respondents 1 to 3/claimants are



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permitted to withdraw the said amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

07.11.2022

Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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Pre-Delivery order made in
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