BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.09.2022

PRONOUNCED ON:.14.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.335 of 2022

1.K.Yogeswari
2.K.Gayathiri
3.A.Karthiyayini
4.K.Rameshwaran

M.Rajagopal(died)

5.R.Kalyani : Appellants / Petitioners

Vs.

1. V.Thangaraj

2. The Branch Manager,
United India Insurance Co., Ltd.,
No.7-A, West Veli Street,
Madurai-625 001. : Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.1822 of 2016, on the file of the Motor Accident Claims

Tribunal / IV Additional District Judge, Madurai, dated 06.03.2021 for enhancement of compensation.

For Appellant : Mr.K.Kumaravel

For Respondent :Mr.J.S.Murali
for R2
: R.1 – Exparte

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1822 of 2016, dated 06.03.2021, on the file of the Motor Accident Claims Tribunal/ IV Additional District Judge, Madurai.

2. The appellants/claimants, who were awarded with compensation of Rs.20,37,200/- with interest at 7.5% per annum and costs, for the death of one Kanagasabai, who died consequent to an accident occurred on 10.07.2016, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the award.

3. During trial, the claimants have examined the first claimant as P.W.1 and three other witnesses Thiru.Vikraman, Thiru.Karuppasamy and

Thiru.Somaiya as P.W.2 to P.W.4 respectively and exhibited 25 documents as Exs.P.1 to P.25. The first respondent had remained exparte. The second respondent/Insurer has examined two witnesses as R.W.1 and R.W.2 and exhibited the Investigation Report as Ex.R.1,

4. The learned trial Judge, upon considering the evidence both oral and documentary evidences and on hearing the arguments of both sides, has passed the impugned award dated 06.03.2021, directing the Insurer to pay the compensation of Rs.20,37,200/- along with interest and costs. Aggrieved by the said award, the claimants have come forward with the present Civil Miscellaneous Appeal.

5. The points that arise for consideration are

(1) Whether the Tribunal erred in fixing the monthly income at Rs.18,000/-, despite the production of ample evidence to show that the deceased had been earning Rs.35,000/- per month from two wheeler finance business and Rs.3,00,000/- p.a., from agriculture by owning 5 Acres of wet lands and 20 Acres of dry lands?

(2) Whether the Tribunal erred in not awarding any amount for loss of consortium to the appellants/claimants 2 to 5 by overlooking the settled legal position?, and

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

Points 1 to 3:

6. The case of the claimants is that the deceased was a hale and healthy man of 53 years, that he was running a two wheeler finance business as proprietor of Dhanalakshmi Finance and was earning Rs.35,000/- per month, that the deceased used to contribute Rs.30,000/- to the first claimant for the monthly maintenance, that the deceased was owning 5 Acres of Nanja lands and 20 Acres of Punja lands and was earning Rs.3,00,000/-per annum from agriculture, that the deceased had availed drip irrigation loan of Rs.28,00,000/- from Canara Bank, Thumbaipatti and Rs.3,00,000/- as cultivating loan and that he utilized the said amounts for the purpose of agriculture and his business. The claimants, in order to prove the same, have produced patta, adangal register extract, loan account pass book, copy of licence issued in the name of Dhanalakshmi Finance, the statement of account of the Finance

Company upto 30.04.2015, copy of the Farm Irrigation Development Scheme, copy of the statement of accounts for general advance – Farm Development loan ledger of Dhanalakshmi finance for the period upto 29.03.2016, the daily accounts details of Dhanalakshmi Finance and the income and expenditure statement of Dhanalakshmi Finance upto 30.04.2015 under Exs.P.7 to P.9, P.13, P.14, P.21 to P.25 respectively.

7. As rightly observed by the Tribunal, the documents would go to show that the deceased was owning wet and dry lands and was doing cultivation. It is further evident from the records that the deceased was doing two wheeler finance business as the proprietor of Dhanalakshmi Finance. The claimants have examined the Manager of the Canara Bank as P.W.3 to prove the loan transactions of the deceased and the Manager of Dhanalakshmi Finance as P.W.4 to prove the business allegedly run by the deceased. P.W.4 in his evidence would say that the Dhanalakshmi Finance has earned profit of Rs.2,82,152.25/- for the year 2015-2016, that the said Dhanalakshmi Finance, after his death, was transferred in favour of the first claimant, that the first claimant has been running the said Finance Company, that they were not able to run the Company as run by the deceased and that the income has come down.

8. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***State of Haryana Vs. Jasbir Kaur*** reported in ***2004(1) TNMAC 337***, wherein while considering the agriculture income, has held as follows:

> *" 8. ....*
>
> *The land possessed by the deceased still remains with his Legal Heirs. There is however a possibility that the Claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where Agricultural Income is the source. Attendant circumstances have to be considered."*

In the case on hand also, the lands owned by the deceased still remain with the claimants. No doubt, the claimants may be required to engage a person to look after the agricultural operations.

9. The Tribunal has rightly cited the judgment of the Hon'ble Supreme Court in Rani Gupta and Others Vs. United India Insurance Co. Ltd., and Others reported in 2009 ACJ 1605, wherein it has been held as follows:

"24. In this case, however, the deceased was a businessman. What was the actual loss of dependency to the family was his contribution to run the business. The assets of the business remained. The amount of compensation, therefore, was required to be determined keeping in view that factor in mind."

10. Now turning to the business transaction, even according to the claimants' witness, the said Finance Company now stands in the name of the first claimant and that she has been running the same. Though the claimants have alleged that after the death of Kanagasabai, the income from the Finance Company has come down and reduced to great extent. As already pointed out, though the claimants have produced the ledger of Dhanalakshmi Finance for the period upto 29.03.2016 and the income and expenditure statement of Dhanalakshmi Finance upto 30.04.2015, they have not chosen to produce the ledger and income and expenditure statement for the subsequent years ie., after the death of Kanagasabai.

11. Admittedly, the deceased is a PAN card holder and the claimants have produced the copy of the PAN card under Ex.P.10. As rightly pointed out by the learned Counsel for the Insurer, though the

claimants have alleged that the deceased used to earn Rs.35,000/-per month from two wheeler finance and Rs.3,00,000/- per month from agriculture, they have not chosen to produce the income tax return of the deceased. The claimants have not chosen to offer any reason or explanation for non-production of the said records.

12. Considering the above and also taking note of the non-production of the income tax returns of the deceased and also non-production of the income and expenditure statement for the subsequent years, fixing the monthly income of the deceased at Rs.18,000/- per month cannot be found fault with. Considering the records produced, the Tribunal has rightly taken the age of the deceased as 53 years and as per the decision 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 10% of the income towards future prospects.

13. Admittedly, the first appellant/first claimant is the wife, the appellants 2 and 3 are the daughters, the fourth appellant/claimant is the son and the 5th appellant/sixth claimant is the mother of the deceased

Kanagasabai. Pending claim petition, the fifth claimant – father had died. Considering the above, the Tribunal has rightly deducted 25% of his income towards his personal and living expenses and arrived at Rs.1,78,000/-. As per the decision of the Hon'ble Supreme Court in ***Smt.Sarlar Verma and Others Vs. Delhi Transport Corporation and another*** reported in ***2009(5) LW 561,*** the Tribunal has rightly adopted multiplier “11” and arrived at Rs.19,60,200/- towards compensation under the head of loss of dependency.

14. The learned Counsel for the appellants would further contend that the Tribunal has awarded Rs.44,000/- towards filial consortium to the first claimant and failed to award any amount for other claimants towards loss of consortium.

15. 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.

16. Considering the above, the claimants being the wife, children and mother of the deceased, they are all certainly entitled to get compensation towards loss of consortium at Rs.44,000/- each and also Rs.16,500/- towards loss of estate and Rs.16,500/- for funeral expenses under the conventional heads. Hence, the claimants are entitled to total compensation of Rs.22,13,200/- , under the following heads:

Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of income	19,60,200	19,60,200	confirmed
2	Loss of estate	16,500	16,500	confirmed
3	Funeral expenses	16,500	16,500	confirmed
4	Filial consortium to all appellants/claimants	44,000	2,20,000 (Rs44,000x5)	enhanced
	Total	Rs. 20,37,200/-	Rs. 22,13,200/-	Enhanced by a sum of **Rs.1,76,000/-**

17. In the result, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.20,37,200/- to Rs.22,13,200/- along with interest at 7.5%pa., and costs. The second respondent/Insurer is directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said M.C.O.P.No.1822 of 2016, on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Madurai, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the first appellant/claimant is entitled to withdraw Rs.10,13,200/- along with proportionate interest and costs, the appellants 2 to 5 / claimants are

entitled to withdraw Rs.3,00,000/- each, along with proportionate interest and costs on due application before the Tribunal. The parties are directed to bear their own costs.

14.11.2022

Index : Yes : No
Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal /
IV Additional District Court, Madurai.

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

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.335 of 2022

14.11.2022