



C.M.A(MD)No.554 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.10.2022

PRONOUNCED ON:28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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1.Aginiyammal
2.Maheshkumar
3.Sivakumar
4.Muthulakshmi
5.Vignesh
6.Sivan Perumal
7.Minor.Maharaja
8.Petchiammal
9.Sivakumar
10.Keerthiga
(Minor appellant through her mother
and next guardian 1st appellant)

: Appellants / Petitioners

Vs.

1.Rajesh

2.The United India Insurance Company Ltd.,
No.1/45B-6, 2nd Floor,
JPC Building,
Colachel Road,
Monday Market.

: Respondents / Respondents



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PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.207 of 2019, on the file of the Motor Accident Claims Tribunal (III Additional District Court), Tirunelveli, dated 30.06.2021.

For Appellants : Mr.T.Selvakumaran

For Respondents :Mr.N.Murugesan
for R.2
: No Appearance for R.1

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.207 of 2019, dated 30.06.2021, on the file of the Motor Accident Claims Tribunal / III Additional District Court, Tirunelveli.

2. The appellants/claimants, who were awarded with the compensation of Rs.11,59,000/- with interest at 7.5% per annum and costs for the death of one Ganesan, consequent to the accident occurred on 18.11.2018, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.



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3. Admittedly, the first appellant/first claimant is the first wife and the appellants 2 to 7 /claimants 2 to 7 are the children of the deceased Ganesan and the first appellant/first claimant and that 8th appellant/8th claimant is the second wife and the appellants 9 and 10/claimants 9 and 10 are the children of the deceased Ganesan and 8th appellant/8th claimant. During trial, the claimants have examined the first claimant Aginiyammal as P.W.1 and one Kannan as P.W.2 and exhibited five documents as Exs.P.1 to P.5. The first respondent/first respondent remained exparte before the Tribunal. Despite the receipt of notice, the first respondent has not turned up before this Court. The second respondent/Insurer has adduced neither oral nor documentary evidences. 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 30.06.2021 holding that the accident was occurred only due to the rash and negligent driving of the first respondent's driver and directed the second respondent/Insurer to pay the compensation of Rs.11,59,000/- with interest and costs. Aggrieved by the said award, the claimants have come forward with the present Civil Miscellaneous Appeal.



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4. The points that arise for consideration are

(1) Whether the Tribunal erred in fixing the monthly income at Rs.10,000/-, despite producing the evidence that the deceased was doing land broker business and agricultural work in his own land and that he was holding the post of Vice Chairman in Kayathar Co-operative Bank?

(2) Whether the Tribunal erred in not awarding any amount under the head of loss of love and affection and loss of consortium to the other claimants?

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

Points 1 to 3:

5. The case of the claimants is that the deceased was owning agricultural lands of 3 acres of Nanja lands and 10 acres of Punja lands and he was doing agricultural work, that he was also doing land brokerage work and he was holding the Honorary post of Vice Chairman of Kayathar Co-operative Bank, that the deceased was earning Rs.25,000/- per month and that he was aged at 51 years at the time of accident. The claimants have produced the document to show that the deceased was owning property.



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6. 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.

7. Though the claimants have been alleging that the deceased was doing land brokerage business and was holding the post of Vice Chairman of Kayathar Co-operative Bank, they have not produced any materials/evidence to substantiate the same. In the absence of any



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evidence to prove the avocation and the income of the deceased and taking note of the economic scenario, the Tribunal has fixed the monthly income of the deceased as Rs.10,000/-.

8. The learned Counsel for the appellants would contend that the Tribunal ought to have fixed the monthly income as Rs.15,000/-, as the deceased was doing land broker business and was doing agricultural work in his own lands and that he was holding the post of Vice Chairman in Co-operative Bank. The learned Counsel for the appellants has relied on the judgment of the Division Bench of this Court in ***Reliance General Insurance Co., Ltd., Vs. R.Amala and Others*** reported in ***2022(1) TN MAC 814*** and wherein the Tribunal adopted the Inflation Index and fixed the income of the deceased at Rs.14,109/- and the Division Bench, taking note of the fact that the accident was occurred on 16.09.2019, has come to a decision that the fixation of Rs.14,109/- as monthly income for that period even for casual labourer is fair and reasonable.

9. The learned Counsel for the appellants has also relied on the judgment of this Court in ***Anjala and Others Vs. S.Maheswaran and another*** reported in ***2022(1) TNMAC 215***, wherein the learned Judge of



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this Court, by considering the wages paid by the State PWD to Non-Mustor Roll Employees, which was fixed at Rs.600/- even in the year 2017, has fixed the monthly income at Rs.14,000/-.

10. Even assuming for arguments sake that the deceased was a casual labourer and also taking note of the fact that the accident was occurred on 18.11.2018, this Court fixes the notional income of the deceased at Rs.14,000/- per month. As per the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi and others* reported in **2017(2) TNMAC 609**, the Tribunal, taking note of the age of the deceased, has rightly added 10% of the income towards future prospects. The Tribunal, considering the number of dependents, has rightly deducted 25% of the income towards personal and living expenses of the deceased. The Tribunal, by relying on the judgment of the Hon'ble Supreme Court in *Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another* reported in **2009(5) LW 561**, has rightly adopted and applied multiplier of “11”. Hence, the compensation under the head of loss of dependency would be at Rs.15,24,600/- (Rs. 14,000+10%=Rs.15,400; Rs.15,400-25% = Rs.11,550/-; Rs.11,550x11x12=Rs.15,24,600).



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11. The Tribunal has awarded Rs.40,000/- towards loss of consortium. As rightly pointed out by the learned Counsel for the appellants, the Tribunal has not awarded any amount towards loss of consortium for the other claimants. The learned Counsel would contend that the Tribunal ought to have granted Rs.4,00,000/- under the head of loss of love and affection and loss of consortium.

12. 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***



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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.

13. Considering the above, the claimants being the wives and children of the deceased, are entitled to Rs.40,000/- each towards loss of spouse consortium and parental consortium. Hence, this Court awarded a sum of Rs.40,000/- each to the claimants towards loss of consortium. The Tribunal has rightly awarded Rs.15,000/- for funeral expenses and Rs.15,000/- towards loss of estate. In view of the above, the claimants are entitled to total compensation of Rs.19,54,600/-under the following heads:



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Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of dependency	10,89,000	15,24,600	Enhanced
2	Loss of estate	15,000	15,000	Confirmed
3	Loss of consortium	40,000	4,00,000 (Rs.40,000x10)	Enhanced
4	Funeral expenses	15,000	15,000	Confirmed
	Total	Rs. 11,59,000/-	Rs.19,54,600/-	Enhanced by a sum of Rs. 7,95,600/-

14. Though the appeal was restricted to a sum of Rs.5,00,000/-, this Court, considering the legal position laid down by the Hon'ble Supreme Court in *Sanobanu Nazirbhai Mirzand and Others Vs. Ahmedabad Municipal Transport Service* reported in (2013)16 *Supreme Court Cases 719*, has enhanced the compensation despite the value of the appeal.



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15. In the result, the Civil Miscellaneous Appeal is allowed by enhancing the compensation from Rs.11,59,000/- to Rs.19,54,600/- 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.207 of 2019, on the file of the Motor Accident Claims Tribunal / III Additional District Court, Tirunelveli, 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 get Rs.7,50,000/- along with proportionate interest and costs, the appellants 2 to 6 and 9 and 10 / claimants are entitled to get Rs.1,00,000/- each, along with proportionate interest and costs, and 8th appellant/claimant is entitled to get Rs.3,50,000/- along with proportionate interest and costs on due application before the Tribunal and on such deposit, they are permitted to withdraw their amount with interest and costs. The 7th appellant/claimant is entitled to get Rs.1,54,600/- along with proportionate interest and costs and the 7th appellant/claimant being a minor, the minor's share shall be deposited in any Nationalized Bank till he attains majority and till then,



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the first appellant/claimant is entitled to withdraw the interest once in six months directly from the Bank, for the maintenance of the minor. The parties are directed to bear their own costs. The appellants/claimants are directed to pay the balance Court fees for the enhanced amount, as per the existing Rules.

28.11.2022

Index : Yes : No

Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal /
III Additional District Court, Tirunelveli.

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



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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