



C.M.A.(MD)No.760 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.09.2022

Pronounced on : 14.11.2022

CORAM:

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

C.M.A.(MD)No.760 of 2021

and

C.M.P.(MD)No.6935 of 2021

The General Manager,
Cholamandalam M.S.General Insurance
Company Ltd.,
Kalavasal,
No.7, Dindigul National Highway,
Arasaradi,
Madurai City, Madurai District.

...Appellant/2nd Respondent

Vs.

1. Kaleeswari
2. Rajeshwari
3. Karthikai Rajan
4. Loganathan
5. Suganya Gandhi
6. Mahalakshmi
7. Gopal

...Respondents 1 to 6/Petitioners 1 to 6

...7th Respondent/1st Respondent



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree passed in M.C.O.P.No.236 of 2019 on the file of the Motor Accident Claims Tribunal (Sessions Judge, Fast Track Mahila Court), Sivagangai, dated 18.03.2021.

For Appellant : M/s.K.R.Shivashankari

For Respondents : Mr.K.Gokul for R1 to R6

No appearance for R7

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.236 of 2019 dated 18.03.2021 on the file of the Motor Accident Claims Tribunal / Fast Track Mahila Court, Sivagangai.

2. Despite the receipt of Court notice, the seventh respondent/first respondent has not turned up.

3. The appellant/Insurer, who was made liable to pay compensation of Rs.15,84,000/- with interest at 7.5% per annum and costs to the respondents 1 to 6/claimants for the death of one Pandi, who died consequent to an accident occurred on 30.04.2019, challenged the quantum of compensation awarded at by the Tribunal.



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4. It is pertinent to note that the appellant/Insurer has not challenged the finding of the Tribunal with respect to the negligence aspect and hence, the challenge is only with respect to the quantum of award granted by the Tribunal.

5. During enquiry, the respondents 1 to 6/claimants have examined the third respondent/third claimant Karthikai Rajan as P.W.1 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The seventh respondent/first respondent had remained ex-parte before the Tribunal. The appellant/Insurer has adduced neither oral nor documentary evidence.

6. 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 18.03.2021 directing the appellant/Insurer to pay a sum of Rs.15,84,000/- as compensation with interest at 7.5% per annum and costs to the respondents 1 to 6/claimants. Aggrieved by the said award, the appellant/Insurer has now come forward with the present appeal.

7. The main contention of the appellant/Insurer is that the Tribunal erred in fixing the notional monthly income as Rs.15,000/-, when it is proved that the deceased is not carrying on any employment at the time



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of accident, that though the age of the deceased, which is clearly evident as 64 years from Ex.P.3-death certificate and Ex.P.8-Identity Card issued by the Traders Association, the Tribunal erred in adopting Multiplier as 9 instead of 7, that the Tribunal erred in awarding more amount of compensation under the conventional damages, that the Tribunal also erred in granting amounts for loss of love and affection and loss of consortium separately and that therefore, the quantum of compensation fixed by the Tribunal is liable to be interfered with.

8. The points that arise for consideration are :

(i) Whether the Tribunal erred in fixing the monthly income as Rs.15,000/-, despite proving that the deceased was not carrying on any employment at the time of accident?

(ii) Whether the Tribunal erred in adopting Multiplier as 9 instead of 7 by taking note of the postmortem certificate and by not considering the Identity Card issued by the Traders Association and death certificate produced by the respondents 1 to 6/claimants themselves?

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



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

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9. The case of the respondents 1 to 6/claimants is that the deceased has been running a Tea stall and cool drinks shop in shop No.2 at Rani Rajalakshmi Nachiyar Shopping Complex situated at Aranmanai Southern Section, Sivagangai, from 2006 onwards and that he was earning Rs.50,000/- per month.

10. The respondents 1 to 6/claimants have produced the rent receipts issued by Rani Rajalakshmi Nachiyar Shopping Complex under Ex.P.7, rental agreement under Ex.P.9, Sivagangai Corporation licence fee receipt under Ex.P.10, Food Safety and Standards Authority of India (FSSAI) registration certificate under Ex.P.11 and Sivagangai Town Traders Association Identity Card under Ex.P.8 to show that the deceased was doing business of Tea shop / Cool drinks bar at Rani Rajalakshmi Nachiyar Shopping Complex.

11. The Tribunal, on considering the documents produced and taking note of the non-production of rental receipts from February-2016 to March-2019 and the production of one receipt for the month of April-2019, in which the accident was occurred, has observed that the deceased had not continued his business at the said premises, but at the



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same time, the Tribunal, considering the fact that the deceased being a worker can very well earn Rs.500/- per day and thereby fixed the monthly income as Rs.15,000/-.

12. It is not in dispute that the deceased was granted registration certificate for running Petty Retailer of snacks / tea shops at Rani Rajalakshmi Complex, Aranmanai Vasal, Sivagangai, under Ex.P.11 and it is clearly evident that the registration was valid for the period between 11.02.2014 and 10.02.2016.

13. As already pointed out, Ex.P.8 is the Identity Card issued by Sivagangai Town Traders Association to the deceased Pandi and whereunder, it is evident that the deceased was a member of the said Association bearing No.1401/2012 and his concern name has been shown as Mahalakshmi (Coffee Bar). Considering the above, fixing of the monthly income at Rs.15,000/- cannot be found fault with.

14. According to the respondents 1 to 6/claimants, the deceased Pandi was aged 50 years at the time of filing the claim petition.

15. As rightly pointed out by the learned counsel appearing for the appellant/Insurer, the age of the deceased has been shown as 60 years in



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Ex.P.2-postmortem certificate, but whereas, in Ex.P.3-death certificate and Ex.P.8-Identity Card as 64 years.

16. Admittedly, the respondents 1 to 6/claimants have not produced the birth certificate or any other documents to prove the age of the deceased. But the Tribunal has observed that this Court in ***Manager, New India Assurance Co. Ltd., New Delhi vs. T.Nagaraj and others*** reported in ***2019 (1) TN MAC 84 (DB)*** has settled as to the age of the deceased shall be conclusive as per postmortem certificate and on that basis, fixed the Multiplier as 9. In that decision case, though P.W.1 admitted the age of the deceased was 31 years, taking note of the age given in the postmortem certificate, this Court has confirmed the finding of the Tribunal determining the age of the deceased at 27 years. But in the present case, the respondents 1 to 6/claimants have themselves produced the original Identity Card issued to the deceased by Sivagangai Town Traders Association, in which the date of birth of the deceased has been shown as 20.05.1955.

17. As rightly contended by the learned counsel appearing for the appellant/Insurer, the said Identity Card was issued, when the deceased was very much alive and that too was given in the year 2012.



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18. The third respondent/third claimant, while giving evidence before the Tribunal as P.W.1, in his cross-examination would say that the age of his father was 50 years, that his father age was shown as 64 years in Ex.P.3 and that it is correct to state that his father's date of birth has been shown as 20.05.1955 in Ex.P.8.

19. The respondents 1 to 6/claimants have not disputed the correctness of the contents of Ex.P.8 and more importantly, the said document has been produced by them to show that the deceased was a member of the Traders Association.

20. Considering the above and also taking note that better evidence to prove the age of the deceased is very much available, the decision of the Tribunal in fixing the age of the deceased at 60 years, by relying on the postmortem certificate, is not proper and cannot be accepted. Consequently, this Court fixes the age of the deceased as 64 years at the time of accident.

21. The learned counsel appearing for the appellant/Insurer would submit that the Tribunal, without any basis, has awarded Rs.26,000/- towards funeral expenses and that the Tribunal, after awarding Rs.3,00,000/- for loss of love and affection at Rs.50,000/- each, has also



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awarded Rs.40,000/- towards loss of consortium for the first respondent/first claimant.

22. 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 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.



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23. Considering the above, the respondents 1 to 6/claimants being the wife and children of the deceased are certainly entitled to get compensation towards loss of consortium at Rs.40,000/- each totally Rs.2,40,000/-, but at the same time, they are not entitled to get any amount towards loss of love and affection. Under the conventional heads, the respondents 1 to 6/claimants are entitled to get Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Hence, the respondents 1 to 6/claimants are entitled to get total compensation of Rs.12,15,000/- and the above points are answered accordingly.

24. In the result, this Civil Miscellaneous Petition is partly allowed and the compensation awarded at Rs.15,84,000/- is reduced to **Rs.12,15,000/- (Rupees Twelve Lakhs and Fifteen Thousand only)**. Out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.5,90,000/- (Rupees Five Lakhs and Ninety Thousand only)** and the respondents 2 to 6/claimants 2 to 6 are entitled to get **Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only)** each. The appellant/Insurer is directed to deposit the modified and reduced award amount with interest at 7.5% per annum, 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 respondents 1 to 6/claimants are permitted to withdraw the said amount with accrued



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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.

14.11.2022

Index :yes/No
Internet:yes/No
csm

To

1. The Motor Accident Claims Tribunal /
Fast Track Mahila Court, Sivagangai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
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and
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