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C.M.A.No.1433 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1433 of 2013
and
Miscellaneous Petition Nos.1 and 2 of 2013

M/s. New India Assurance Company Ltd.,
Cuddalore.

... Appellant/3rd Respondent

Vs.

1. Arul

2. Vijaya

3. Minor Abhinaya

4. Minor Akshaya

[Minor Appellants represented by their father viz., Arul,
the first appellant herein]

5. Selvakumar

6. Udayakumar

7.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 06.02.2012 made in M.C.O.P.No.195 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Chidambaram.

For Appellant	:	Mr. J. Micheal Visuvasam
For R1 – R4	:	Mr. A. Murugan
For R5 & R6	:	No appearance



JUDGMENT

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The Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation granted to the claimants, as per the Common Award in M.C.O.P.No.195 of 2010, dated 06.02.2012, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Chidambaram, whereby, the Tribunal has awarded a sum of Rs.12,60,000/- as compensation along with interest at the rate of 7.5% per annum for the death of the deceased one Anusuya.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimants are as follows:

On 27.12.2009 while the claimants travelled in the Passenger Auto (Three Wheeler) bearing Registration No.TN 31 AB 1876 on Vadalur-Bhuvanagiri road, while the auto reached Therku Thittai Village, a Mini Lorry bearing Registration No.TN 37 KU 4786 belongs to the first respondent came in a rash and negligent manner dashed against the Auto and also hit on few cows which were in the nearby field. The claimants sustained grievous injuries and immediately they were admitted into the



Rajah Muthiah Medical College Hospital, Annamalai Nagar. In spite of better treatment, one Minor Anusuya succumbed to injuries. Hence, the dependants of the deceased Anusuya filed Claim Petition, claiming compensation of Rs.15,00,000/- for the death of one Minor Anusuya.

4. Before the Tribunal, the first and second respondents, who are the owner and driver of the offending vehicle (Mini Lorry) were remained ex-parte and has not contested the claim.

5. The third respondent-Insurance Company filed counter and contented that the driver of the auto – three wheeler in which, the deceased travelled was responsible for the accident and that the driver of the Mini lorry drove the vehicle very cautiously and slowly. The auto was not insured with the Insurance Company and no permit was issued to the Auto and also not having Fitness Certificate at the time of accident. The Driver of the Auto was not having valid driving licence at the time of accident. Hence, the Insurance Company is not liable to pay any compensation. In any event, the compensation claimed before the Tribunal is on the higher side and prays to dismiss the claim petition.



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6. Before the Tribunal, on the side of the claimants P.W.1 to P.W.5 were examined and Exs.P1 to P24 were marked. On the side of the respondents no oral and documentary evidence marked.

7. The Tribunal after considering the evidence placed on record in Point No.1, has held that the accident has occurred due to the rash and negligent driving of the driver of the first respondent vehicle i.e., Mini lorry. In Point No.2, the Tribunal has held that the driver of the mini lorry was not having valid driving licence at the time of accident and in point No.3, the Tribunal has held that the first and second claimants alone are entitled for compensation for the death of one Anusuya and that the third and fourth claimants are not entitled to any claim, and awarded a sum of Rs.12,60,000/- as compensation.

8. Aggrieved over the quantum of compensation awarded by the Tribunal, the insurer of Mini Lorry has filed this present Civil Miscellaneous Appeal.

9. The learned counsel for the Insurance Company has



submitted that the Tribunal notionally fixed the income on the deceased as Rs.15,000/- per month which is on the higher side since the deceased is aged about 17 years old and was a student, that the compensation awarded under the head loss of love and affection is also on the higher side and prays to modify the same.

10. Per Contra, the learned counsel appearing for the claimants submitted that the deceased was a bright student and was awarded various merit certificates and also expert in various languages. By considering the talent and age, the Tribunal has rightly fixed the quantum of compensation and oppose to modify the same.

11. I have considered the rival submissions made on both sides and also perused the materials placed on record.

12. The claimants herein are the legal heirs of the deceased Anusuya viz., the father, the mother and two sisters who are the minors. The deceased was the student, studying 12th Std., at Seva Mandir Girls Higher Secondary School. She was interested in participating various extra-curricular activities. Ex.P10 is the Merit Certificate in Hindi, Ex.P11 is the



merit SA Certificate in Tamil Essay Writing Competition conducted by the Subramania Bharathi Matric Higher Secondary School. Exs.P12 and P13 are the certificates issued by various private Trust showing that she has secured merit in English as well as Tamil. These Certificates showed that she has excelled her language capabilities in three languages. These evidence also supports the case of the claimants that the deceased was a bright and brilliant student.

13. The Tribunal has fixed the notional income of the deceased at Rs.15,000/- per annum, by adopting multiplier '16' and awarded loss of income as Rs.2,40,000/-. This Court is of the view that the accident has taken place in the year 2009 and notional income of Rs.15,000/- per annum is on the lower side. The Tribunal failed to add future prospects of the deceased and also adopted multiplier of '16', which is not in accordance with by the Judgement of the Hon'ble Supreme Court in *Sarla varma and Ors v. Delhi Transport Corporation and Another [AIR 2009 SC 3104]* and *National Insurance Company Ltd., vs. Pranay Sethi and others* reported in *2017 (16) SCC 680*, compensation is being awarded. Accordingly, notional monthly income for the deceased would be Rs.4,000/- per month and Rs.48,000/- [4000 x 12] shall be the annual income and 40% future



prospects to be added. The Hon'ble Apex Court in ***Kishan Gopal and Others vs. Lala and Others [2014 (1) SCC 244]*** and in ***Rajendra Singh and Others vs. National Insurance Company Limited and Others [2020 (7) SCC 256]*** has fixed monthly income of the minor child aged about 14 years and 12 years, fixed a sum of Rs.30,000/- and Rs.36,000/- respectively per annum. This Court in ***C.M.A.No.467 of 2022 the New India Assurance Company Ltd., vs. Amirthavalli and 3 others*** has fixed the notional income of minor aged about 14 years as Rs.45,000/-.

14. The Tribunal has awarded a sum of Rs.5,00,000/- totally under the heads for loss of love and affection, mental agony, grief, disruption of trust. For loss of income, the Tribunal has awarded a sum of Rs.2,40,000/- and totally a sum of Rs.12,60,000/- was awarded as compensation to the claimants. The award of lumpsum compensation of Rs.5,00,000/- each under the head loss of love and affection, Mental agony and etc., are not permissible and the compensation awarded is also on the higher side. The Hon'ble Apex Court in ***Magma General Insurance Company Ltd., vs. Babu Ram [2018 (18) SCC 130]*** has held that, grant of compensation under the head loss of consortium included love and affection and other heads of the family and in Paragraph No.8.7 held as follows:



WEB COPY



C.M.A.No.1433 of 2013

“8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation.

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual



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C.M.A.No.1433 of 2013

relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium.”

15. Accordingly, 50% deduction to be made for personal



expenses of the deceased. [48,000 + 40% future prospects – 50% deduction + '18' multiplier] and that the total loss of income arrived at Rs.6,04,800/-.

The Tribunal has awarded Rs.10,000/- as compensation under the head Transportation Charges and this Court finds the same is just and reasonable and the same is hereby confirmed. The Tribunal has granted Rs.10,000/- for Funeral Expenses and this Court finds the same is low and hence a sum of Rs.15,000/- is granted under the head Funeral Expenses. The Tribunal has not granted any amount under the head Loss of Estate and this Court granted a sum of Rs.15,000/- under the head Loss of Estate. This Court grants a sum of Rs.40,000/- to the each claimants for loss of consortium since the claimants are four in person accordingly, Rs.1,60,000/- [40000 x 4] is granted under the head Loss of Consortium to the claimants.

16. Thus, the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	Rs.2,40,000/-	Rs.6,04,800/-	Enhanced
2.	Funeral Expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
3.	loss of love and affection,	Rs.10,00,000/-		Modified



C.M.A.No.1433 of 2013

	mental agony, grief, disruption of trust. Rs.5 lakhs each			
4.	For Transportation	Rs.10,000/-	Rs.15,000/-	Enhanced
5.	Loss of Estate	----	Rs.15,000/-	Granted
6.	Loss of consortium to each Rs.40,000/-	----	Rs.1,60,000/ -	Granted
	Total	Rs.12,60,000/-	Rs.8,09,800/ -	Reduced by Rs.4,50,200/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,60,000/- is hereby reduced to Rs.8,09,800/- [Rupees Eight Lakhs Nine Thousand and Eight Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The Appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.195 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Chidambaram. The claimants 3 and 4 are entitled for Rs.40,000/- each, out of the total compensation and remaining compensation shall be apportioned equally among the claimants 1 and 2 (parents of the deceased). On such deposit, the claimants 1 and 2 are permitted to withdraw equally among



C.M.A.No.1433 of 2013

themselves of such compensation amount now determined by this Court along with proportionate interest and costs, as per the apportionment fixed by this Court, less the amount, if any, already withdrawn. The share of the minor claimants shall be deposited in any one of the Nationalized Bank till the minor claimants attain majority. If they already attained majority, they are permitted to withdraw their share amount. On such deposit the father of the minor claimants viz., Arul, the first respondent herein is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. The Tribunal shall disburse the amount now determined by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. The Appellant-Insurance Company is permitted to withdraw the excess amount, which was lying in the credit of M.C.O.P.No.198 of 2010, already deposited, if any. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petitions stands closed.

14.08.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:



C.M.A.No.1433 of 2013

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Chidambaram.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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C.M.A.No.1433 of 2013

K.RAJASEKAR,J.

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C.M.A.No.1433 of 2013

14.08.2023