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C.M.A.No.442 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.442 of 2013

1.Kishtan
2.K.Meena
3.K.Vennila
4.K.K.Kothandam
5.K.Guna
6.K.Priya
7.K.Gowri

... Appellants

vs.

1.E.Sampath Kumar
(1st Respondent remained
exparte before the Tribunal)

2.M/s.The New India Assurance Co. Ltd.,
No.45, Moores Street,
Chennai-1.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against judgment and decree dated 11.07.2011 made in M.A.C.T.O.P.No.490 of 2008 on the file of the Motor Accident Claims Tribunal / Additional District Judge / Fast Track Court, Chennai.

For Appellant : Ms.M.Malar

1st Respondent : Exparte

For 2nd Respondent : Mr.Elveera Ravindran



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JUDGMENT

Being not satisfied by the judgment and decree passed in M.C.O.P.No.490 of 2008 dated 11.07.2011 on the file of Motor Accident Claims Tribunal / Additional District Court No.II, Chennai, the legal heirs of Tmt.Lakshmi Kisthtan have preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act and Rule 3 of Motor Accident Claims Tribunal Rules claiming compensation of Rs.6,00,000/- from the respondent for the death of Tmt.Lakshmi Kishtan who died in a road traffic accident that took place on 02.01.2008.

3. The Tribunal after hearing both sides and upon considering the oral and documentary evidence has granted compensation of Rs.3,08,000/-with interest at 9% per annum from the date of petition till the date of deposit.

4. The learned counsel appearing for the appellants/claimants would strenuously argue that the deceased who was aged about 56 years as per



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Ex.P2 post mortem certificate, died due to the accident occurred on 02.01.2008. She was working as a tailor, earning Rs.9,000/- p.m., and the Tribunal has fixed her income at Rs.3,000/- p.m., is very less. The learned counsel for the appellant drew the attention of this Court to the observations made by the Hon'ble Supreme Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.**, reported in **2014 (1) TN MAC 459 (SC)**, in an injury case, monthly income of the 24 years vegetable vendor is fixed at Rs.6,500/- for the accident that occurred in the year 2008. It is her further argument that the amounts awarded under other heads are also less and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company would vehemently contend that the children of the deceased are above the age of 22 years and they are not dependents. The income fixed by the Tribunal at Rs.3,000/- is a reasonable one. As the award passed by the Tribunal is a well reasoned order and it need not be interfered with.

6. Heard the arguments of the learned counsels for both sides and perused the materials on record.



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7. At trial, on the claimants' side, the husband of the deceased Lakshmi Kishtan and one Audhikesavan / ocular witness were examined as PW1 and PW2. Exs.P1 to P3 were marked. On the respondents side neither any witness was examined nor any document was marked.

8. It is the evidence of ocular witness namely PW2 that on 02.01.2008 at about 1.30 p.m., when he was standing near Amaresan grocery shop on Kanchipuram high road, a lady was walking towards Chengalpattu on the left side of the road, a mini Auto bearing Reg.No.TN-21-AZ-4325 came in a rash and negligent manner dashed on the woman. Eventually she sustained grievous injuries and died on the same day, is not in dispute.

9. As per the post mortem certificate Ex.P2 her age was 56 years. According to the claimants, the deceased was working as a tailor and earning Rs.9,000/- p.m. The Tribunal has fixed the income of the deceased at Rs.3,000/- , relying upon the judgment cited by the claimant side namely ***Rahul Gupta and others v. Oriental Insurance Co. Limited & Others***, reported in ***2008 (1) TN MAC 29 (Delhi)***, the Tribunal fixed the income of the deceased at Rs.3,000/- p.m., and no amount was deducted for personal and living expenses. The Delhi High Court has held



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that deduction of 1/3rd towards personal expenses is not required if the deceased was a house wife.

10. In Hindu Society, father or mother till his/her death often takes care of the married daughters and the major sons also in sometimes. With regard to this aspect, it is relevant to refer to the decision of the Hon'ble Supreme Court in **Manjuri Bera v. The Oriental Insurance Company Ltd., and Others** reported in **MANU/SC/1978/2007**, wherein the *ratio decidendi* in the case is that "even if there is no loss of dependency, the claimant if he or she is a legal representative, will be entitled to compensation.

11. As rightly pointed out by the learned counsel for the appellants, with regard to the fixing of notional income, the Hon'ble Supreme Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.**, reported in **2014 (1) TN MAC 459 (SC)**, has fixed the notional income of a vegetable vendor who aged about 24 years at Rs.6,500/- p.m., for the accident that had occurred in the year 2008. Therefore, as the claimants have claimed that the deceased was working as a tailor at the relevant point of time, her income is fixed at Rs.6,500/- p.m. As regards, addition of future prospects, along with income, the Hon'ble Supreme Court has



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standardised the details in the case of ***National Insurance Co. Ltd., vs.***

Pranay Sethi reported in ***2017 (2) TN MAC 609 (SC)***, for the age group of the persons between 50 to 60 years, in case of person who is self-employed or on a fixed salary, while computing the monthly income, 10% to be added as future prospects. Therefore, notional income of Rs.6,500/- + 10 % = Rs.7,150/-. The Hon'ble Supreme Court has standardised the details in ***Smt.Sarla Verma & Others v. Delhi Transport Corporation and another*** reported in ***2009 (2) TN MAC 1 (SC)***. If the number of dependents are more than 6, 1/5th is to be deducted for personal and living expenses. With regard to multiplier, for the different age group of persons, the corresponding multiplier have been given in Smt.Sarla Verma case as mentioned supra, for the age group of persons between 56 to 60 the multiplicand to be selected is 9. Based on the above said details, the **loss of dependency** is re-worked as follows:

Age of the deceased	= 56 years
Notional Income fixed	= Rs.6,500/-
10% Future Prospects	
to be added	= Rs.6,500/- + 10% = Rs.7,150/-
Deduction to be made	= 1/5
	Rs.7,150/- – Rs.1430/- = Rs.5,720/-
Multiplicand to be adopted	= 9
Rs.5,720/- X 12 X 9	= Rs.6,17,760/-



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12. For loss of consortium, the Tribunal has awarded Rs.5,000/- to the husband of the deceased. As per ***National Insurance Co. Ltd., vs. Pranay Sethi*** reported in ***2017 (2) TN MAC 609 (SC)***, an amount of Rs.40,000/- is awarded to husband of the deceased as he lost his wife in the accident, for the loss of consortium and the filial consortium is granted to the children of the deceased. This Court deems fit to grant Rs.40,000/- each for the children towards loss of filial consortium. For loss of Estate, an amount of Rs.15,000/- is granted. In all other aspects, the amounts awarded by the Tribunal appears to be very reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of Income	Rs.2,88,000/-	Rs.6,17,760/-	Enhanced
2	For Funeral Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
3	For loss of consortium to the 1 st petitioner/husband	Rs. 5,000/-	Rs. 40,000/-	Enhanced
4	For loss of love and affection	Rs. 10,000/-	Rs. 10,000/-	Confirmed
5	For Loss of Estate	NIL	Rs. 15,000/-	Granted
6	For loss of filial	NIL	Rs.2,40,000/-	Granted



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
	consortium to the children			
	Total	Rs.3,08,000/-	Rs.9,27,760/-	
	Rounded off to		Rs.9,28,000/-	

13. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.3,08,000/-** to **Rs.9,28,000/-** which would carry interest at the rate of 7.5% per annum.

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.3,08,000/-** to **Rs.9,28,000/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.9,28,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.490 of 2008, on the file of the Motor Accident Claims Tribunal



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/ Additional District Judge, Fast Track Court, No.II, Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per apportionment made by the Tribunal along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The appellants/claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

29.09.2023

Index : Yes/No
ssn

To:

1. The Motor Accident Claims Tribunal,
Additional District Judge / Fast Track Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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