



C.M.A.No.4343 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on: 17.03.2023	Judgment delivered on: 28.06.2023
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CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.4343 of 2019

1.Sargunam

2.Ranganathan

.. Appellants

Vs.

1.Ummer Pulikkal

2.The Oriental Insurance Co. Ltd.,
Shobatsm Complex,
P.S. Road, Palghat,
Kerala – 678 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.09.2016 made in M.C.O.P.No.254 of 2013 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Ariyalur.

For Appellants : Mr.R.Gokulakrishnan

For R1 : No appearance

For R2 : Mr.N.Sampath



J U D G M E N T

Not being satisfied with the amounts awarded by the Tribunal, the parents of the deceased one Raghavan have filed this Civil Miscellaneous Appeal against the Judgment and Decree dated 21.09.2016 made in M.C.O.P.No.254 of 2013 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Ariyalur for enhancement of compensation.

2.The claim petition was filed under Sections 140 & 166 of the Motor Vehicles Act, claiming compensation of Rs.20,00,000/- for the death of one Raghavan, who died in the road accident that had taken place on 25.06.2013.

3.The Tribunal after hearing both sides' arguments and upon perusing the oral and documentary evidence, has awarded compensation for a sum of Rs.6,78,000/- and directed the 2nd respondent – Insurance Company to pay the said compensation.

4.The learned counsel for the appellants would strenuously contend that a sum of Rs.6,000/- per month fixed by the Tribunal as notional income



of the deceased is on the lower side. The Tribunal has not added future prospects while calculating the notional income of the deceased. The compensation awarded by the Tribunal for loss of love and affection and funeral expenses are very less. The total compensation granted by the Tribunal is very meagre and prayed for enhancement. To strengthen his arguments, the learned counsel relied upon the following judgments:

(i) ***National Insurance Co. Ltd., Vs. Pranay Sethi and others***, reported in ***[2017 (2) TNMAC 609 (SC)]***;

(ii) ***S.Chinnaraj and another Vs. Suresh and another*** reported in ***[2019 (1) TNMAC 189 (DB)]***.

5.Per contra, the learned counsel for the 2nd respondent – Insurance Company would vehemently argue that the claimants failed to prove the income of the deceased and in the absence of proof for income of the deceased, the notional income fixed by the Tribunal as Rs.6,000/- per month is reasonable. The entire compensation granted by the Tribunal appears to be reasonable and hence, needs no interference and prayed for dismissal of the appeal.



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6.Though notice was served on 1st respondent and his name is printed in the cause list, neither he appeared in person nor through counsel.

7.Heard the arguments of learned counsel appearing for appellants and learned counsel for 2nd respondent – Insurance Company and perused the entire materials on record.

8.From the materials available on record, it is seen that on 25.06.2013, while the deceased Raghavan was travelling in a private bus from Virudhachalam Bus Stop, the mini lorry bearing Registration No.KL 10 AN 1035, belonging to 1st respondent, came from East to West in a rash and negligent manner and at a great speed, dashed against the bus and caused the accident. Due to the said impact, the said Raghavan who was travelling in the bus died, is not in dispute.

9.It is the case of the appellants / claimants that the monthly income of the deceased fixed as Rs.6,000/- by the Tribunal is meagre. As far as monthly income of the deceased is concerned, it is the evidence of P.W.1 that the



deceased was a +2 student and also earning a sum of Rs.10,000/- per month by doing agricultural works during holidays. The appellants / claimants have not filed any proof for the income of the deceased which they claimed before the Tribunal.

10.For fixation of monthly income of a +2 student, the Division Bench of this Court in the case of *S.Chinnaraj and another Vs. Suresh and another* reported in *[2019 (1) TNMAC 189 (DB)]*, has fixed the notional income of a deceased who was a +2 student at the time of accident as Rs.10,000/- per month for the accident that occurred in the year 2012.

11.No doubt, had he been alive, he would have further pursued his studies and earned considerably and would have enhanced the economic status of his family. Considering the year of accident and age of the deceased, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. Further, no proof has been filed by the claimants to prove the age of the deceased. The Tribunal relying upon Ex.P2 – Postmortem certificate, has fixed the age of the deceased as 19 years and applied multiplier '18', which is proper as per the judgment of the Hon'ble Apex Court reported in *2009 (2)*



TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport

Corporation & another], but did not add any amount towards future prospects. As per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, 40% to be added towards future prospects for computing income of the deceased. The deceased was a bachelor at the relevant point of time and the Tribunal rightly deducted 50% towards personal expenses of the deceased. Thus, for calculating compensation for loss of dependency, the formula emerges as follows:

Age of the deceased	:	19 years
Multiplier to be adopted	:	18
Monthly income fixed	:	Rs.10,000/-
Future prospects	:	40%
Notional Income arrived at	:	Rs.10,000/- + 40%
		Rs.14,000/-
After deducting 1/2 for personal expenses	:	Rs.7,000/-
Loss of Dependency		
Rs.7,000/- X 12 X 18	:	Rs.15,12,000/-



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12.As regards the compensation awarded by the Tribunal towards loss of love and affection is concerned, the Hon'ble Apex Court in **[Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram]** reported in **2018 (2) TNMAC 252 (SC)**, wherein the Motor Accidents Claims Tribunal in the fatal case has awarded an amount of Rs.25,000/- for the loss of love and affection. The judgment of the Tribunal was challenged by the claimants before the High Court of Punjab and Haryana, where the High Court of Punjab and Haryana enhanced the amount awarded under loss of love and affection from Rs.25,000/- to Rs.1,00,000/-. Aggrieved by the order of the High Court of Punjab and Haryana, the Insurance Company filed SLP before the Hon'ble Supreme Court praying to set aside the judgment of Punjab and Haryana High Court. The Hon'ble Supreme Court has maintained the amount of Rs.1,00,000/- awarded by the High Court towards loss of love and affection. Apart from the said amount, following the law laid down in **National Insurance Co. Ltd., Vs. Pranay Sethi and others** case, a sum of Rs.40,000/- each to the father and sister of the deceased was granted for loss of filial consortium.



13.Thus, by the above said principle laid down by the Hon'ble Supreme Court in *Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram* case, the appellants / claimants are entitled to a sum of Rs.40,000/- each towards filial consortium.

14.An amount of Rs.5,000/- is awarded for funeral expenses in addition to the amount awarded by the Tribunal. Further, the appellants are granted a sum of Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation, which were not granted by the Tribunal.

15.Thus, the amounts awarded by the Tribunal is modified and tabulated as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	6,48,000/-	Enhanced by 8,64,000/-
2.	Loss of Estate	-	Granted 15,000/-
3.	For filial consortium	-	Granted 80,000/-



4.	Loss of love and affection	20,000/-	Confirmed
5.	Transportation	-	Granted 5,000/-
6.	Funeral expenses	10,000/-	Enhanced by 5,000/-
	Total	Rs.6,78,000/-	Enhanced by Rs.9,69,000/-

16.In the result,

16(i).This Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,78,000/- is hereby enhanced to Rs.16,47,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

16(ii).The 2nd respondent-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 eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.254 of 2013 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Ariyalur.

16(iii).On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if



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any, already withdrawn by making necessary cheque applications before the Tribunal.

16(iv).It is made clear that the appellants are not entitled to any interest for the default period as per the order of this Court dated 23.10.2019 made in C.M.P.No.19980 of 2019 in C.M.A.No.SR.14805 of 2019.

16(v).The appellants are directed to pay necessary Court fee for the enhanced award amount now determined by this Court. No costs.

28.06.2023

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Ariyalur.

2.The Section Officer,
VR Section,
High Court, Madras.



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R.KALAIMATHI, J.

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