IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.06.2023

Judgment Pronounced on : **26.06.2023**

CORAM :

THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.576 of 2022
and Cross Objection No.79 of 2022
and C.M.P.No.4201 of 2022

In C.M.A.No.576 of 2022 :

Reliance General Ins. Co. Ltd.
II Floor, A Kanagu Towers, 15A,
Thillai Nagar Main Road,
11th Cross street, Trichy - 620 018. .. Appellant

Versus

1. Manju
2. Minor N.Nikitha
3. Minor Samyuktha
4. Jayamani
5. Soundararajan
6. Minor Mithun Arrav

Minors 2, 3 and 6 above rep. by mother next friend Manju

7. C.Chinnusamy .. Respondents

In Cross Objection No.79 of 2022 :

1. Manju
2. Minor N.Nikitha
3. Minor Samyuktha
4. Jayamani
5. Soundararajan
6. Minor Mithunarrav

Minors 2, 3 and 6 above rep. by mother
and next friend Manju, wife of late Nandhakumar .. Cross Objectors

Versus

1. Reliance General Ins. Co. Ltd
   II Floor, Akanagu Towers,
   15A, Thillai Nagar Main Road,
   11th Cross Street,
   Trichy - 620 018.

2. C.Chinnusamy .. Respondents

Prayer in C.M.A.No.576 of 2022 : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 4th October, 2021 passed in M.C.O.P.No.4 of 2017 by the Motor Accident Claims Tribunal, Additional District Court at Namakkal.

Prayer in Cross Objection No.79 of 2022 : Cross Objection filed under Order XLI R 22 of the Code of Civil Procedure, to set aside the decree and judgment in M.C.O.P.No.4 of 2017 dated 04.10.2021 on the file of Motor Accident Claims Tribunal, Additional District Judge, Namakkal and to enhance the compensation amount claimed by the cross objectors / respondents 1 to 6 herein with interest and cost by allowing this Cross Appeal.

In C.M.A.No.576 of 2022 :

For Appellant : Mrs.C.Bhuvanasundari

For Respondents : Mr.M.Guruprasad, for RR-1 to 6

: No Appearance for R7

In Cross Objection No.79 of 2022 :

For Cross Objectors: Mr.M.Guruprasad

For Respondents : Mrs.C.Bhuvanasundari, for R1

: No Appearance for R2

COMMON JUDGMENT

D.BHARATHA CHAKRAVARHY, J.

This Civil Miscellaneous Appeal is directed against the award of the Motor Accident Claims Tribunal, Namakkal dated 04.10.2021 in M.C.O.P.No.4 of 2017, in and by which, the claim made by the respondents / claimants for compensation towards the death of one *Nandakumar* in the motor accident, dated 08.08.2016 was allowed by awarding a total sum of Rs.54,52,917/- with further interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Aggrieved by the findings of both the negligence as well as the quantum, the Insurance Company has filed this Civil Miscellaneous Appeal.

Aggrieved by the quantum, the claimants have filed the above Cross Objection praying to enhance the compensation. Hereinafter, the parties are referred to as per their array in the Original Petition.

2. The case of the claimants is that the first claimant, *Manju*, is the wife of the deceased. The fourth and fifth claimants are the parents of the deceased and the claimant Nos.2, 3 and 6 are the minor children of the deceased and the first claimant. The deceased was in the business of selling electricals in the name and style of *Sri Venkateswara Electricals* and was earning a sum of Rs.55,000/- per month. In the year 2016, he was aged about 39 years. While so, on 08.08.2016, when the deceased was riding two wheeler bearing Registration No.TN 28 BA 7686 in Namakkal to Salem National Highway near Chellapambatti Saiway bridge from South to North, the lorry which was driven in a rash and negligent manner bearing registration No.TN 30 L 2163, suddenly stopped and turned in the wrong direction resulting in an accident, by which, the two wheeler collided on the rear side of the lorry resulting in serious injuries to the aforesaid *Nandakumar* and the pillion rider, in which, the said *Nandakumar* died on the spot. A case in Cr.No.266 of 2016 was registered against the driver of the lorry by the Inspector of Police, *Nallipalayam* Police

Station. Hence, the claim was made against the first respondent, being the owner of the vehicle and the second respondent, being the insurer for a total sum of Rs.1,00,00,000/-.

3. The claim was resisted by the second respondent, Insurance Company by contending that it was the deceased who was riding two wheeler in a rash and negligent manner without wearing helmet resulting in the accident. The compensation claimed by them is also exorbitant and excessive. Thereafter, the first claimant i.e., the wife of the deceased was examined as ***P.W.1*** and one *Pannerselvam*, the eye witness to the accident was examined as ***P.W.2***. ***Exs.A-1*** to ***A-17*** were marked on behalf of the claimants. On behalf of the respondent Insurance Company, one *Rajkumar*, the driver of the lorry was examined as ***R.W.1*** and ***Ex.B-1*** was marked on behalf of the respondents. Thereafter, the Tribunal proceeded to analyse the case of the parties and found that the accident happened only because of the rash and negligent driving of the driver of the lorry. However, since the deceased was riding two wheeler without wearing helmet, the Tribunal attributed 10% contributory negligence to the accident and accordingly, apportioned the negligence as 90 : 10. The Tribunal, thereafter, by taking into account the income tax returns, filed by the claimants,

arrived at Rs.32,964.17 ps as the actual monthly income and thereafter, calculated the compensation as follows :

(i) Monthly income, Rs.32,964.17 ps. Since the age of the deceased is 40 years, for further future prospects, add 40% = Rs.13,185.66 ps;

Rs.32,964.17 ps + Rs.13,185.66 ps = Rs.46,149.83 ps;

(ii) Deduction of personal expenses as per ***Sarla Verma (Smt) and Ors. Vs. Delhi Transport Corporation and Anr.***[1], as there are six dependents = 1/5 i.e., Rs.9,229.96 ps;

Rs.46,149.83 ps - Rs.9,229.96 ps = Rs.36,919.87 ps;

(iii) Age of the deceased is taken as 40 years. Therefore, multiplier adopted is 15.

(iv) Loss of earnings = Rs.36,919.87 ps x 12 months x 15 multiplier = Rs.66,45,576.60 ps;

(v) - 10% for the contributory negligence = Rs.66,45,576.60 ps - Rs.6,64,557.66 ps = Rs.59,81,018.94 ps;

(vi) Deduct 10 % towards T.D.S = Rs.59,81,018.94 ps - Rs.5,98,101.90 ps = Rs.53,82,917.04 ps

Particulars	Amount
A) Loss of earnings	Rs.53,82,917.04 ps

1 (2009) 6 SCC 121

B) Consortium	Rs.40,000/-
C) Loss of love and affection	Rs.15,000/-
D) Funeral expenses	Rs.15,000/-
Total	Rs.54,52,917.04 ps
Round up total	**Rs.54,52,917/-**

4. Heard *Mrs.C.Bhuvanasundari*, the learned Counsel for the appellant in C.M.A.No.576 of 2022 and the first respondent in Cross Objection No.79 of 2022 and *Mr.M.Gurupurasad*, the learned Counsel for the respondents in C.M.A.No.576 of 2022 and the cross objectors in Cross Objection No.79 of 2022.

5. *Mrs.C.Bhuvanasundari*, the learned Counsel for the appellant in C.M.A.No.576 of 2022 and the first respondent in Cross Objection No.79 of 2022 would submit that in this case, the deceased was following the insured vehicle from the rear side and with a very great speed, collided on the rear side and thus, caused the accident. The insurance company examined the lorry driver as ***R.W.1***. Therefore, the Trial Court erred in deducting only 10% towards the contributory negligence. As a matter of fact, the deceased was completely negligent. If at all, they should have added the insurance company

of the two wheeler, in any event, atleast 60% of the amount should have been deducted towards contributory negligence. Secondly, even on the quantum, the deceased was only a partner of the aforesaid *Sri Venkateswara Electricals*. Therefore, the other partners are also entitled to a share and the Trial Court ought not to have taken the income of Rs.32,964/-, as the income tax return is only a declaration and cannot be the conclusive proof of the actual income. She would submit that the grant of loss of love and affection is also incorrect and therefore, she would pray for interference with the award of the Trial Court.

6. Per *contra*, *Mr.M.Gurupurasad*, the learned Counsel for the respondents in C.M.A.No.576 of 2022 would submit that the Tribunal ought to have taken atleast Rs.40,000/- per month and ought to have awarded a total sum of Rs.74,62,000/- towards loss of income and ought to have awarded consortium to each of the claimants. The Tribunal also did not award any sum towards the loss of estate and therefore, he would pray that the award amount be enhanced.

7. We have considered the rival submissions made on either side and perused the material records of the case. Upon consideration thereof, the

following points arise for consideration in this appeal :

(i) Whether or not the liability, fixed by the Tribunal, is in order?

(ii) Whether the compensation, as granted by the Tribunal, is fair and reasonable and as per law?

Point No.i :

8. We have gone through the oral evidence of ***P.W.2***, *Pannerselvam*, ***Ex.A-1***, the First Information Report and ***Ex.B-1***, the rough sketch. On a careful consideration thereof, even though it is seen that the deceased was riding a two wheeler without wearing helmet, it can be seen that the sole and proximate reason for the accident is the sudden stopping and turning of the vehicle belonging to the first respondent i.e., the lorry and the proximate cause was only the negligent driving of the driver of the lorry. However, the deceased failed in taking reasonable care of himself by not wearing helmet and the said failure can be gauged to the degree of 10%. Therefore, we do not find any error whatsoever in the well considered finding of the Tribunal apportioning the percentage of negligence as 90 : 10 and therefore, we uphold the finding of the Tribunal and reject the contention of both the sides made in this appeal and

accordingly, answered this point.

Point no.ii :

9. Firstly, the contention raised on behalf of the appellant that the said *Sri Venkateswara Electricals* is a partnership firm and therefore, the Tribunal erred in taking the income, on the face of it is erroneous as the Tribunal did not deduct the income from the books of accounts of the said *Sri Venkateswara Electricals*, but, as per the income tax returns of the deceased *Nandakumar* filed as ***Ex.A-9***. It can be seen that the income tax returns for the assessment year 2016-2017 was filed on 01.08.2016 prior to the accident and as per the same, his annual income was Rs.3,95,570/-. The same comes within the tax net at the rate of 10%. Therefore, after deduction of income tax, the established income is 3,56,013/- (as per paragraph 59.4 of ***National Insurance Company Limited Vs. Pranay Sethi and Ors.***[2]). Therefore, the monthly income as Rs.29,667,75 ps. Thereafter, while considering the age of the deceased, it can be seen that the date of birth of the deceased was 04.04.1977. Therefore, as on the date of the accident i.e., as on 08.08.2016, he had completed 39 years of age and therefore, as such, has to be taken as 39 years.

2 (2017) 16 SCC 680

10. Since the deceased is in self-employment, and less than 40 years, 40% of the income has to be added towards future prospects, thus, Rs.29,667.75 ps + Rs.11,867.10 ps = Rs.41,534.85 ps (as per the paragraph No.59.5 of ***Pranay Sethi***'s case (cited *supra*)). As far as the deduction towards personal and living expenses, the number of dependents are 6 and therefore, 1/4th to be deducted (as per the paragraph No.30 of ***Sarala Verma***'s case (cited *supra*) : Rs.41,534.85 ps – Rs.10,383.71ps = Rs.31,151.14 ps rounded off to Rs.31,152/-. Age of the deceased is 39 years and therefore the multiplier is 15 (as per ***Sarala Verma***'s case (cited *supra*). Thus, the loss of earnings = Rs.31,152/- x 12 x 15 = Rs.56,07,360/-.

11. Similarly, there seems to be some confusion with reference to award of compensation under the conventional heads. The same has been certainly made clear by the Hon'ble Supreme Court of India in ***Janabai WD/o.Dinkarrao Ghorpade and Ors. Vs. ICICI Lambord Insurance Company Limited***[3]. From the same, it is clear that there are only three conventional heads, on which, compensation can be awarded in respect of the case on hand. Firstly, the loss of estate which is a sum of Rs.15,000/-, secondly, the consortium which would be Rs.40,000/- as per ***Pranay Sethi***'s

3 (2022) 10 SCC 512

cased (cited *supra*), Rs.40,000/- each to the spouse for the spousal consortium, Rs.40,000/- each to the children towards parental consortium, Rs.40,000/- each to the parents towards filial consortium by following the judgment of the Hon'ble Supreme Court of India in ***Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and Ors.***[4]. It is useful to extract the paragraph No.14 of the judgment in ***Janabai***'s case (cited *supra*) which reads as follows :

> " ***14.*** *The appellant has claimed compensation on account of love and affection as well on account of spousal consortium for wife and for the parental consortium for the children in the calculation given to this Court but in view of the three-Judge Bench judgment reported as* ***United India Insurance Co. Ltd. v. Satinder Kaur [United India Insurance Co. Ltd. v. Satinder Kaur, (2021) 11 SCC 780 : (2022) 1 SCC (Cri) 306]****, the compensation under the head on account of loss of love and affection is not permissible but compensation on account of spousal consortium for wife and for the parental consortium for children is admissible. This Court held as under : (SCC pp. 797-98, paras 30-35)*
>
> > *"* ***30.*** *In Magma General Insurance Co. Ltd. v. Nanu Ram [****Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153****] this Court interpreted "consortium" to be a compendious*

4 (2018) 18 SCC 130

term, which encompasses spousal consortium, parental consortium, as well as 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.

31. *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 and affection, and their role in the family unit.*

32. *Modern jurisdictions world over have recognised 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 permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.*

33. *The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of 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 the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi [**National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205**] .*

34. *At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi [**National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205**] , has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General [**Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3***

> ***SCC (Cri) 153****], this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.*
>
> ***35.*** *The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.'"*

Therefore, while the Tribunal failed to award any sum towards loss of estate, it erred in awarding separate sum of Rs.15,000/- towards loss of love and affection and it further erred in awarding only a sum of Rs.40,000/- towards consortium.

12. It has also been stated in ***Pranay Sethi***'s cased (cited *supra*) that the sum of Rs.40,000/- fixed by it as on the date of judgment i.e., 30.10.2017 and it has been held in the paragraph No.52 that the Court should increase the sum by 10% for every three years. Therefore, if the accident happened after 30.10.2000, consortium would be Rs.44,000/- in respect of each of the claimant. However, in this case, the accident happened in the year 2016 and therefore, the consortium will only be Rs.40,000/- each. Now, in every case of

fatal accident, the method of awarding has been simplified by the Hon'ble Supreme Court of India to be under only four heads as (A) loss of earnings; (B) loss of estate; (C) consortium which includes spousal, parental and filial; (D) funeral expenses. Therefore, the final compensation in the present case would be as follows:

Particulars	Compensation
A) Loss of earnings	Rs.56,07,360/-
B) Loss of Estate	Rs.15,000/-
C) Loss of Consortium (i) Spousely consortium for wife / first claimant - Rs.40,000/- each; (ii) parental consortium for the children / claimants 2, 3 and 6 - Rs.40,000/- each; (iii) filial consortium to the parents / claimants 4 and 5 - Rs.40,000/- each.	Rs.2,40,000/-
D) Funeral expenses	Rs.15,000/-
Total	Rs.58,77,360/-
Round up total	**Rs.58,78,000/-**

13. The interest of 7.5% has been rightly awarded by the Trial Court and as such, the above sum is payable with interest at the rate of 7.5% per annum from the date of petition till date of realisation.

14. The above said compensation is apportioned as follows :

A) First claimant (Wife)	Rs.12,80,000/-
B) Second claimant (Minor Daughter)	Rs.12,70,000/-
C) Third claimant (Minor Daughter)	Rs.12,70,000/-
D) Fourth claimant (Mother)	Rs. 4,00,000/-
E) Fifth claimant (Father)	Rs. 3,88,000/-
F) Sixth claimant (Minor Son)	Rs.12,70,000/-

15. In the result :

The Civil Miscellaneous Appeal in C.M.A.No.576 of 2022 and Cross Objection No.79 of 2022 are disposed off on the following terms :

(i) The appellants are directed to pay a sum of Rs.58,78,000/- as compensation to the respondents/claimants with interest at the rate of 7.5% per annum from the date of petition till date of realisation and the claimants will be entitled in the proportion as indicated in the table above;

(ii) The appellant / Insurance Company shall deposit the aforesaid compensation with interest after deducting the amount, if any, already deposited by it within a period of six weeks from the date of receipt of a copy of this order;

(iii) The first claimant / wife is permitted to withdraw the entire amount of compensation;

(iv) The second claimant / Minor *Nikitha* is born on 15.11.2003, as such, is declared as major and she will also be permitted to withdraw the entire amount;

(v) The fourth and fifth claimants namely, the mother *Jayamani* and father *Soundarararajan* will also be entitled to withdraw the entire amount;

(vi) The third and sixth claimants are minors and as such, their shares shall be deposited in Court in any interest bearing deposit in any nationalised bank until the attainment of their majority.

(vii) That the respondents / claimants shall be entitled to the costs throughout.

(viii) Consequently, connected miscellaneous petition is closed.

(J.N.B., J.) **(D.B.C., J.)**
26.06.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

The Motor Accident Claims Tribunal,
Additional District Court,
Namakkal.

J.NISHA BANU, J.
AND
D.BHARATHA CHAKRAVARTHY, J.

grs

Pre-Delivery Judgment in

C.M.A.No.576 of 2022
and Cross Objection No.79 of 2022

26.06.2023