IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.2804 of 2021

1.Murugesan

2.Parimala .. Appellants

Vs.

1.Dhanandha Suresh

(No relief sought against 1st respondent.
Hence, notice to R1 dispensed with)

2.The New India Assurance Company Ltd.,
Represented by its Divisional Manager,
No.1, Officers Line,
Vellore – 1. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.02.2021 made in M.C.O.P.No.634 of 2018 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants : Mr.M.Sivakumar

For R2 : Mr.R.Sivakumar

JUDGMENT

The legal heirs of one Lalitha, namely her husband and daughter have preferred this Civil Miscellaneous Appeal against the Judgment and Decree dated 09.02.2021 made in M.C.O.P.No.634 of 2018 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore, for enhancement of compensation.

2.The claim petition herein was filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.25,00,000/- for the death of one Lalitha, who died in the road accident that had taken place on 17.05.2018.

3.The Tribunal after hearing both side evidence and upon perusing the oral and documentary evidence, held that the 1st respondent is liable to pay 80% of the award amount i.e., Rs.5,75,400/- and ordered to pay the said amount by the 2nd respondent – Insurance Company at the first instance and later recover from the 1st respondent.

4.The learned counsel for the appellants / claimants would submit that though the deceased Lalitha was stated to have earned a sum of Rs.12,000/- per month, as an Agricultural Coolie, the Tribunal has fixed the income of the deceased at Rs.6,000/- per month which is less. He would further contend that as the deceased is aged 50 years at the relevant point of time, the future prospects for the purpose of calculating income has to be taken as 25% and instead, the Tribunal has taken only 10%, which is incorrect. The amounts awarded under loss of love and affection in respect of 2nd appellant is on the lower side. No amount was granted by the Tribumal under loss of estate and prayed for enhancement of compensation.

5.Per contra, the learned counsel for the 2nd respondent / Insurance Company would argue that no documentary proof in respect of the age of the deceased was filed by the claimants, except postmortem certificate of the deceased marked as Ex.P2, wherein the age of the deceased is found as 50 years. On the other hand, the Aadhar Card of the deceased Lalitha was marked as Ex.R1 during the cross examination of P.W.1. As per the said document, the date of birth of deceased Lalitha is 11.04.1960. Therefore, at the time of death, the age of the deceased is 58 years. As per the law laid down by the Hon'ble Apex Court in ***2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]***, for the age group of persons between 50 to 60 years, the future prospects to be added is only 10%. The Tribunal has adopted multiplier '11' which is incorrect. The correct multiplier is '9'. With respect to the income of the deceased, the income fixed by the Tribunal at Rs.6,500/- per month is reasonable and prayed for confirming the Order of the Tribunal.

6.Heard the learned counsels for the appellants as well as 2nd respondent/Insurance Company and perused the materials available on record.

7.The manner in which the accident had taken place is not in dispute.

8.It is the evidence of P.W.2 / ocular witness that at the time of accident, she and one Sumathi were standing under the electric post near her house and conversing with each other. At that time, a blue colour motorcycle bearing Registration No.TN 23 BH 8048, which came from South to North in a rash and negligent manner without sounding horn, hit against the said Lalitha, due to which she was thrown away and sustained injuries on the backside of her head and all over the body. It appears on 22.05.2018, the said Lalitha died in the Hospital.

9.As regards the age of the deceased, it has been stated that the deceased Lalitha was aged 50 years at the relevant point of time. To substantiate the same, I find only the copy of the postmortem certificate of the deceased Lalitha - Ex.P2. Whereas, the 2nd respondent – Insurance Company has stated that the Aadhar Card of the deceased Lalitha was marked during the cross examination of P.W.1, which was marked as Ex.R1. Relying upon Ex.R1 / copy of Aadhar Card of the deceased Lalitha, wherein her date of birth is mentioned as 11.04.1960, at the relevant point of time the age of the deceased is fixed as 58 years.

10.For fixation of monthly income when no proof for income was filed, the Hon'ble Supreme Court in the case of ***Syed Sadiq vs. Divisional Manager, United India Insurance***, reported in [***2014 1 TNMAC 459 (SC)***] has fixed the notional income of an injured Vegetable Vendor who was aged 24 years at Rs.6,500/- per month for the accident that occurred in the year 2008.

11.Considering the year of accident, age and nature of work done by the deceased, this Court deems fit to fix the notional income of the deceased at Rs.10,000/- per month.

12.As per the law laid down by the Hon'ble Supreme Court in ***2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]***, the Hon'ble Supreme Court has standardized the details of future prospects while computing the monthly income of the deceased. In respect of the persons self-employed or on fixed salary for the age group of persons between 50 to 60 years, 10% of the income is to be added.

13.In respect of the multiplier, the Hon'ble Supreme Court in ***2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]***, has tabulated the multiplicand to be adopted. For the age group of persons between 56 to 60 years, corresponding multiplier is '9'. As regards, the deduction to be made while calculating the loss of dependency, the Hon'ble Apex Court in ***2009 (2) TNMAC 1 SC Supreme Court,*** cited supra, standardized the deduction details for personal and living expenses. If number of dependents in family is 2 to 3, 1/3 of the income has to be deducted.

14.Thus, for calculating compensation for loss of dependency, the formula emerges as follows:

Age of the deceased	:	58 years
Multiplier to be adopted	:	9
Monthly income fixed	:	Rs.10,000/-
Future prospects	:	10%
Notional Income arrived at	:	Rs.10,000/- + 10%
		Rs.11,000/-
After deducting 1/3rd for personal expenses	:	Rs.7,333/-
Loss of Dependency		
Rs.7,333/- X 12 X 9	:	Rs.7,91,964/-
Rounded off to	:	Rs.7,92,000/-

15.In respect of loss of love and affection, the Hon'ble Supreme Court in ***[Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru***

Ram] reported in ***2018 (2) TNMAC 252 (SC)***, has held that by following the law laid down by the Constitutional Bench of the Hon'ble Supreme Court in ***[National Insurance Co. Ltd., Vs. Pranay Sethi and others]***, held that in legal parlance, consortium is a compendious term which encompasses spousal consortium, parental consortium, and filial consortium. It was also held that 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. Therefore, as a daughter has lost her mother at the early age, a sum of Rs.15,000/- is granted for loss of love and affection in addition to the amount already granted by the Tribunal. For loss of estate, a sum of Rs.15,000/- is granted by this Court.

16.Thus, the amounts awarded by the Tribunal is 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 dependency	6,29,244/-	7,92,000/-	Enhanced
2.	Loss of Estate	-	15,000/-	Granted
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium to 1st appellant	40,000/-	40,000/-	Confirmed
5.	Transportation	10,000/-	10,000/-	Confirmed

6.	Loss of love and affection to 2nd appellant	25,000/-	40,000/-	Enhanced
	Total	**Rs.7,19,244/-** rounded off to **Rs.7,19,250/-**	**Rs.9,12,000/-**	**Enhanced by Rs.1,92,750/-** (Rs.9,12,000/- - Rs.7,19,250/-)
	80% of total compensation	**Rs.5,75,400/-**	**Rs.7,29,600/-**	

17.In the result,

17(i).This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,19,250/- is hereby enhanced to Rs.9,12,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

17(ii).The 2nd respondent-Insurance Company is directed to deposit 80% of the award amount now determined by this Court, i.e., Rs.7,29,600/- 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.634 of 2018 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

17(iii).On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment made by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary cheque applications before the Tribunal. No costs.

23.06.2023

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

To

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

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

R.KALAIMATHI, J.

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