



C.M.A.No.2292 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on: 28.06.2023	Judgment delivered on: 12.07.2023
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CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.2292 of 2021

1.C.Sarasu

2.R.Punitha

3.M.Kalaiselvi

4.C.Murugesan

5.C.Palanivel

.. Appellants

Vs.

1.S.Muthusamy

2.The Manager,

Iffco Tokio General Insurance Company Limited,

Plot No.3, Sector 29, Gurgaon,

State of Haryana – 122 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.03.2021 made in M.C.O.P.No.371 of 2019 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram.



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For Appellants : Mr.R.Nalliyappan
For R1 : No appearance
For R2 : Mr.M.Jayaraj

J U D G M E N T

Not being satisfied by the award passed by the learned Tribunal in M.C.O.P.No.371 of 2019 on 24.03.2021 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram, the legal heirs namely, the wife, two married daughters Smt. Punitha Raja and Kalaiselvi Mani and two sons of the deceased V.Chandrasekaran have preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2.The claim petition was filed under Section 166 of the Motor Vehicles Act, R/W Rule 3 of TNMACT Rules, claiming compensation of Rs.30,00,000/- for the death of the deceased, who died in the road accident that occurred on 30.09.2019.

3.The learned Tribunal, after hearing both sides arguments and upon consideration of oral and documentary evidence has passed an award for a sum of Rs.7,58,400/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization.



4.Reiterating the grounds of appeal, the learned counsel for the appellants / claimants would vehemently argue that the deceased V.Chandrasekaran was an Agriculturist as well as working as Tapioca Broker and earning a sum of Rs.15,000/- per month. But the Tribunal has fixed the notional income of the deceased as Rs.6,000/- per month is very less. He would also further contend that no amount is awarded for loss of filial consortium. He would fairly concede that Rs.30,000/- granted for loss of spouse has to be set aside as Rs.40,000/- is granted for loss of consortium.

5.Per contra, the learned counsel for the 2nd respondent – Insurance Company would strenuously contend that no age proof for the deceased was filed, except the Post mortem certificate – Ex.P3. It is the evidence of P.W.1 during his cross examination that though the Aadhar Card of the deceased is available, the said document was not filed and he would stress upon that adverse inference be drawn for not production of the said document. He would also point out that P.W.1 stated that difference of age between his father and mother was 5 years and prayed for reducing the compensation.

6.Though notice has been served on the 1st respondent and his name is



printed in the cause list, there is no representation for him, either in person or through counsel.

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

8. The wife, two married daughters and two sons, who are aged about 31 and 30 years respectively have filed the claim petition. The learned counsel for the 2nd respondent – Insurance Company would contend that all the claimants are not dependants of the deceased – their father.

9. In this regard, it is relevant to extract the provisions of Section 166 of the Motor Vehicles Act, 1988, which speaks about impleading of legal representatives of the deceased. For better understanding, Section 166 of Motor Vehicles Act, 1988 is extracted hereunder:

*“166. Application for compensation. – (1)
An application for compensation arising out of an
accident of the nature specified in sub-section (1)*



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of section 165 may be made – (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be :

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[Provided further that where a person accepts compensation under Section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the



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Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed :

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [Section 159] as an application for compensation under this Act.

(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not."

10.The 1st proviso deals about the legal representatives. It is interesting to note that prior to the amendment in 1970, application was to be made by all



the legal representatives. By the amendment, the application can be made by all or any of the legal representatives. It has to be taken note of that such an application is on behalf of and for the benefit of all the legal representatives of the deceased. It has to be noted that the legal representatives who have not joined as claimants, they shall be impleaded as respondents to the application. Therefore, the legislature does not distinguish whether they are dependent or not dependent of the deceased. Hypothetically speaking in some case where mother may maintain her major son for some reasons. In this regard, in **Gujarat State Road Transport vs. Ramanbhai Prabhatbhai & Another** reported in *1987 ACJ 561*, wherein, the Hon'ble Supreme Court held that every legal representative who suffers on account of the death of a person due to motor accident should have remedy to realise compensation under Section 110 A of the Motor Vehicles Act.

11.In **Megjibhai Khimji Vira and Anr. vs Chaturbhai Taljabhai And Ors.**, reported in *1977 ACJ 253*, the Gujarat High Court has held that even a nephew is entitled to maintain a claim petition being the sole relative and the legal representative of the deceased. The provisions have to be ordinarily understood in a simple meaning and in clear terms. It postulates



that all the legal representatives can maintain a claim under Section 166 of Motor Vehicles Act.

12.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.

13.In the facts and circumstances, the arguments of the learned counsel appearing for the 2nd respondent – Insurance Company is too technical. When the basic provision under Motor Vehicles Act namely Section 166 mandates that if some of the legal representatives have not joined in the application for compensation, the legal representatives who have not so joined shall be arrayed as respondents to the application. Therefore, Section 166 of the Motor Vehicles Act gives a clear indication in this regard. More so, daughter and the son are class-1 legal heirs under Section 8 of the Hindu Succession Act. In Hindu Society, father till his death takes care of the married daughter and the major son also on sometimes.



14. Therefore, the appellants Nos.2 to 4 being the legal heirs of the deceased cannot be excluded from granting of compensation.

15. As regards the age of the deceased, with the available documents, namely Ex.P3 / Post mortem certificate, his age is fixed at 55 years. It is relevant to note that during the cross examination of P.W.1, he would state that difference of age between his father and mother is 5 years. Therefore, as per the version of P.W.1, his father age would be 57 years. However, relying upon available better evidence, namely the Post mortem certificate – Ex.P3, the learned Tribunal has fixed the age of the deceased as 55 years cannot be found fault with. Therefore, the age of the deceased is taken as 55 years for the purpose of calculating the loss of income.

16. As regards the income of the deceased, it is the evidence of P.W.1, that the deceased was earning a sum of Rs.15,000/- per month as an Agriculturist and working as Tapioca Broker. No document was filed to prove the above said details. 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 aged about 24



years, who was a Vegetable Vendor as Rs.6,500/- per month for the accident that occurred in the year 2008.

17.In the case on hand, the accident had taken place on 30.09.2019. Based on the aforesaid observations, this Court deems fit to fix the income of the deceased at Rs.9,000/- per month.

18.As regards adding of future prospects along with monthly income, the Hon'ble Supreme Court has standardized the details in respect of future prospects in *National Insurance Co. Ltd., Vs. Pranay Sethi and others*, reported in *[2017 (2) TN MAC 609 (SC)]*. In respect of persons who are self-employed or a fixed salary for the age group of persons between 50 to 60 years, 10% to be added.

19.As regards the multiplier to be adopted, as per the law laid down in *Sarla Verma & others Vs. Delhi Transport Corporation & another*, reported in *[2009 (2) TNMAC 1 SC Supreme Court]*, the Hon'ble Supreme Court has given a table, wherein for the age group of persons between 51 to 55 years, the relevant multiplier to be adopted is '11'.



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20. In the above said case reported in *[2009 (2) TNMAC 1 SC Supreme Court]*, cited supra, the Hon'ble Supreme Court has also standardized the deduction for personal and living expenses. If a person dies leaving the family members 4 to 6, 1/4 to be deducted.

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

Age of the deceased	:	55 years
Multiplier to be adopted	:	11
Monthly income fixed	:	Rs.9,000/-
Future prospects	:	10%
Notional Income arrived at	:	Rs.9,000/- + 10%
		Rs.9,900/-
After deducting 1/4 th for personal expenses	:	Rs.7,425/-
Loss of Dependency		
Rs.7,425/- X 12 X 11	:	Rs.9,80,100/-



22.As rightly pointed out by the learned counsel for the appellants that an amount of Rs.40,000/- is granted for loss of consortium and also an amount of Rs.30,000/- is granted for loss of spouse, therefore, the amount of Rs.30,000/- granted for loss of spouse is hereby set aside, as, for one head two amounts cannot be granted.

23.The Hon'ble Apex 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 apex 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.

24.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, the appellants 2 to 5, who have lost their father in a road accident are entitled for a sum of Rs.40,000/- each for parental consortium.



25. In all other aspects, the amounts awarded by the Tribunal appears to be reasonable and hence, the same needs no interference.

26. 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)	Award confirmed or enhanced or granted
1.	Loss of dependency	6,53,400/-	9,80,100/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	For Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
5.	For Transport Charges	5,000/-	5,000/-	Confirmed
6.	Loss of consortium	30,000/-	-	Set aside
7.	For loss of Parental consortium to appellants 2 to 5	-	1,60,000/-	Granted
	Total	Rs.7,58,400/-	Rs.12,15,100/-	Enhanced by Rs.4,56,700/-

27. In the result,

27(i). This Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.7,58,400/- is hereby enhanced to Rs.12,15,100/- together with interest at the rate of 7.5% per annum from the



date of petition till the date of deposit.

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27(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.371 of 2019 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

27(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 filing necessary application to withdraw the amount before the Tribunal.

27(iv).The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation. No costs.

.07.2023

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



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To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Rasipuram.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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R.KALAIMATHI, J.

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Pre-delivery judgment in
C.M.A.No.2292 of 2021

12.07.2023