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C.M.A.No.2951 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

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THE HONOURABLE MRS. JUSTICE K. KALAIMATHI

C.M.A.No.2951 of 2021

1. N.Panjali

2. N.Martin

.. Appellants/claimants

Vs.

1.M.Babu

2. Reliance General Ins.Co.,Ltd,
Reliance House, 4th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai-600034.

.. Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1938, for enhancement of the compensation in M.C.O.P.No.7095 of 2017 dated 03.01.2020 on the file of the Motor Accidents Claims Tribunal/III Court of Small Causes, Chennai.

For Appellants : Ms.Ramya V. Rao

For R2 : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

JUDGMENT



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Not being satisfied by the compensation awarded by the Motor Accidents Claims Tribunal/III Court of Small Causes, Chennai, in M.C.O.P.No.7095 of 2017 dated 03.01.2020, the legal heirs of the deceased Nagan namely his wife and his son have preferred this Civil Miscellaneous Appeal for enhancement of the compensation.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.12,00,000/- for the death of Nagan caused in a road accident that occurred on 26.09.2017.

3. The learned Tribunal after hearing both sides arguments and upon consideration of oral and documentary evidence has passed an award for an amount of Rs.3,90,331/-, along with interest at the rate of 7.5% per annum from the date of numbering of the petition till the date of realization.

4. Ms.Ramya V. Rao, the learned counsel for the appellants



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vehemently contended that as the claim petition is filed by wife and son, the Tribunal has deducted half instead of $\frac{1}{3}^{\text{rd}}$ which is not correct. She restricted her arguments with regard to the deduction aspect and she would further contend that for loss of love and affection, the Tribunal has granted Rs.25,000/- and the son is entitled for additional amount of Rs.15,000/- under the said head.

5. Per contra, Mr.M.B.Raghavan, learned counsel for the second respondent – Insurance Company would argue that as the mother is the only legal heir and hence, the deduction of 50% is correct. The Tribunal after taking into consideration of oral and documentary evidence has passed an award, appears to be very reasonable and prayed for dismissal of the Appeal.

6. Heard Ms.Ramya V. Rao, the learned counsel for the appellants and Mr.M.B.Raghavan, the learned counsel for second respondent – Insurance Company and perused the materials on record.

7. As regards the manner of the accident, it is the case of the



appellants that on 26.09.2017 at about 16.00 hrs, the deceased was walking at the left side of the road towards the west direction along GST Road, near Urapakkam School bus stop, the TATA ACE goods vehicle bearing Registration No.TN 12 K 9772 came in a rash and negligent manner which was proceeding from Chengalpattu towards Tambaram hit against the deceased and he died in the hospital on 11.10.2017, is not in dispute.

3. No doubt, the appellants are wife and son of the deceased Nagan. The Tribunal has deducted 50% towards the personal expenses of the deceased. To have a proper understanding, it is relevant to go through the Section 166 of Motor Vehicles Act, 1988. The said Section 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) 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

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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 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



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be entertained unless it is made within six months of the occurrence of the accident.

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(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.'

9. The 1st proviso speaks about the legal representatives. Therefore, the legislature does not distinguish whether they are dependent or not dependent of the deceased. Hypothetically speaking where mother may maintain her major son for some reasons. As per Section 166 of the Motor Vehicles Act, all the representatives of the deceased if they have not joined in the application for compensation, they shall be impleaded as the respondents. In this regard, the Hon'ble Supreme Court in **Gujarat State Road Transport vs.**



Ramanbhai Prabhatbhai & Another reported in **1987 ACJ 561**, wherein, it has been held that every legal representatives 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.

10. 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. 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.



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11. In the facts and circumstances, the arguments of the learned counsel appearing for the second 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 impleaded 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 3 of the Hindu Succession Act. In Hindu Society, father till his death often takes care of the married daughter and the major son also for sometimes.

12. As the claimants are two in numbers, as regards deduction for personal and living expenses, the Hon'ble Supreme Court of India has standardized the details in *Sarala Verma and others Vs Delhi Transport Corporation and Another* reported in 2009 2 TNMAC 1 SC. Wherein, if the dependents are two in number, 1/3rd is to be deducted for the personal and living expenses of the deceased. With



regard to the notional income and multiplier adopted by the Tribunal,
there is no issue.

13. Based on the aforesaid observations loss of dependency is re-
worked as follows:-

Monthly income of the deceased	=	Rs.2000/-
Less: Personal expenses of the deceased (1/3)	=	Rs.2666/-

Monthly loss of dependency	=	Rs.5334/-
Annual loss of dependency x 12	=	Rs.64,008/-
Total loss of dependency by adopting Multiplier 5	=	Rs.3,20,040/-

14. As per the law laid down by the Hon'ble Apex Court in
**National Insurance Co. Ltd., Vs. Pranay Sethi and
others**, reported in [2017 (2) TN MAC 609 (SC)], for loss of
consortium, wife and children are entitled to be compensated. Therefore,
this Court deems fit to grant an amount of Rs.20,000/- for loss of
parental consortium to the second appellant. In other aspects, the



amounts awarded by the Tribunal appears to be reasonable and hence, the same needs no interference.

15. Based on the aforesaid discussions, the compensation awarded by the Tribunal is re-worked and modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Towards loss of dependency	2,40,000/-	3,20,040/-	Enhanced
2.	For Loss of Consortium (1 st appellant)	40,000/-	40,000/-	Confirmed
3.	Towards loss of love and affection	25,000/-	25,000/-	Confirmed
4.	For Transport Charges	10,000/-	10,000/-	Confirmed
5.	Medical Expenses	45,231/-	45,231/-	Confirmed
6.	Loss of Estate and Funeral expenses	30,000/-	30,000/-	Confirmed
7.	Loss of Parental Consortium (2 nd appellant)	-	20,000/-	Granted
	Total	Rs.3,90,831 /-	Rs.4,90,871 / -	Enhanced by Rs.1,00,040 / -

16. In the result,

16(i). This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,90,831/- is hereby enhanced to Rs.4,90,871/- together with interest at the rate of 7.5% per



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annum from the date of petition till the date of deposit.

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16(ii).The second 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.7095 of 2017 dated 03.01.2020 on the file of the Motor Accidents Claims Tribunal/III Court of Small Causes, Chennai.

16(iii).On such deposit, the appellants / claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn by filing necessary cheque application before the Tribunal. No costs.

30.06.2023

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Index : Yes / No
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R.KALAIMATHI, J.

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To

- 1.The Motor Accidents Claims Tribunal/III Court of Small Causes, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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