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C.M.A.No.3698 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.3698 of 2021

1.P.Palani

2.P.Kumaran (since died)

3.P.Saravanan

4.P.Kandavel

.. Appellants

Vs.

1.David

2.ICICI Lombard General Insurance
Company Ltd.,
Chotta Bai Centre, Uthamar Gandhi Salai,
140, Nungambakkam,
Chennai – 600 034.

3.D.Sathyanarayanan

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.12.2019 made in M.C.O.P.No.8625 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.



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For Appellants : Mr.K.Malaikannu

For R2 : Mr.B.Sivakollapan

J U D G M E N T

Not being satisfied by the compensation awarded by the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai, in M.C.O.P.No. 8625 of 2015 on 04.12.2019, the appellants / claimants have preferred this Civil Miscellaneous Appeal for enhancement of the compensation.

2.The claim petition was filed by the legal heirs of the deceased G.Prabhunathan under Section 166 of the Motor Vehicles Act, and Rule 3 of MACT Rules, claiming compensation of Rs.20,00,000/- for the death of said G.Prabhunathan, who died in the road accident that had taken place on 23.09.2015.

3.The Tribunal after hearing both sides' evidence and upon perusing the oral and documentary evidence, has awarded compensation for a sum of Rs.5,95,000/- and directed the 2nd respondent – Insurance Company to pay the compensation amount to the appellants.



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4.The learned counsel for the appellants / claimants would vehemently contend that the deceased was a Painter and earning a sum of Rs.15,000/- per month at the relevant point of time and the appellants proved the same by producing Tamil Nadu Building Construction Employees Union Membership Card. But the Tribunal failed to consider the said document and fixed the notional income of the deceased at Rs.10,000/- per month which is on the lower side. The Tribunal failed to add future prospects and also deducted 50% towards personal expenses, which are incorrect. The amounts awarded under loss of love and affection at Rs.10,000/- each for the appellants is on the lower side. No amount was granted by the Tribunal under loss of estate and transport expenses and prayed for enhancement of compensation.

5.Per contra, the learned counsel for the 2nd respondent - Insurance Company would strenuously submit that all the appellants are married sons of the deceased and they are not depending upon the deceased for their livelihood and hence, 50% deducted by the Tribunal towards personal expenses of the deceased is reasonable. The amounts granted by the Tribunal under other heads are also sufficient and the award needs no interference and prayed for dismissal of the appeal.



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6.Heard the rival submissions of the learned counsels for appellants and 2nd respondent - Insurance Company and perused the entire materials on record.

7.From the materials available on record, it is seen that on 23.09.2015 at about 21.00 hours, while the deceased G.Prabhunathan was walking along T.H.Road, the offending motorcycle bearing Registration No.TN 18 Q 0934 came in a rash and negligent manner and dashed on the deceased G.Prabhunathan. In the said impact, the said G.Prabhunathan sustained fatal injuries and died, is not in dispute.

8.As regards the age of the deceased, it has been stated that the deceased was aged 57 years at the relevant point of time. To substantiate the same, the appellants did not mark any document. As per Ex.P3 – Post mortem certificate, the deceased was aged 59 years. Relying upon the same, age of the deceased is taken as 59 years.



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9.As regards, the monthly income of the deceased is concerned, it is claimed that the deceased was earning Rs.15,000/- per month by working as Painter. To prove the avocation, the appellants / claimants have marked Tamil Nadu Building Construction Employees Union Membership Card as Ex.P5.

10.The Hon'ble Apex 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, a vegetable vendor aged 24 years at the time of accident, at Rs.6,500/- per month for the accident that occurred in the year 2008.

11.This Court deems fit to fix the income of the deceased at Rs.12,000/- per month.

12.As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., Vs. Pranay Sethi and others***, reported in [***2017 (2) TN MAC 609 (SC)***], 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, only 10% of the income is to be added as future prospects.

13.In respect of the multiplier, the Hon'ble Supreme Court in ***Sarla Verma & others Vs. Delhi Transport Corporation & another***, reported in ***[2009 (2) TNMAC 1 SC Supreme Court]***, has held that for the age group of persons between 56 to 60 years, corresponding multiplier to be adopted is '9'.

14.It is the contention of the learned counsel for the 2nd respondent-Insurance Company that all the appellants are married sons of the deceased and they were not dependants of the deceased and hence, 50% deducted by the Tribunal towards personal expenses of the deceased is proper.

15.A careful reading of Section 2 of Motor Vehicles Act, 1988, wherein, the term 'legal representatives' is not defined. 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 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



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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 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."

16.The 1st proviso deals about the legal representatives. It is interesting to note that it is 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 such 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 where mother may maintain her major son for some reasons. In 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.

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

18.In the facts and circumstances of this case, 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 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 8 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.

19.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, the quantum of which shall be not less than the liability flowing from Section 140 of the Motor Vehicles Act, 1988.

20. Therefore, it could be seen that all the four appellants/claimants names have been mentioned in the legal heir certificate-Ex.P4. Therefore, based on Section 166 of the Motor Vehicles Act and the observations made by the Hon'ble Supreme Court, this Court is of the considered view that appellants being the legal heirs of the deceased cannot be excluded from granting of compensation.

21. 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, has standardized the deduction of personal and living expenses. If the number of dependents is 4 to 6, 1/4 of the income to be deducted.

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



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Age of the deceased	:	59 years
Multiplier to be adopted	:	9
Monthly income fixed	:	Rs.12,000/-
Future prospects to be added	:	10%
Notional Income arrived at	:	Rs.12,000/- + 10%
		Rs.13,200/-
After deducting 1/4 th for personal expenses	:	Rs.9,900/-
Loss of Dependency		
Rs.9,900/- X 12 X 9	:	Rs.10,69,200/-

23.For Transport expenses and loss of estate, the Tribunal has not granted any amounts and a sum of Rs.5,000/- towards transportation and Rs.15,000/- towards loss of estate is granted.

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

25.Thus, the amounts awarded by the Tribunal is modified and



tabulated as follows:

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	For loss of dependency	5,40,000/-	Enhanced by 5,29,200/-
2.	For loss of Estate	-	Granted 15,000/-
3.	For funeral expenses	15,000/-	Confirmed
4.	For loss of love and affection	40,000/-	Confirmed
5.	For transport charges	-	Granted 5,000/-
	Total	Rs.5,95,000/-	Enhanced by Rs.5,49,200/-

26.In the result,

26(i).This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,95,000/- is hereby enhanced to Rs.11,44,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

26(ii).The 2nd respondent-Insurance Company is directed to deposit the



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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.8625 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

26(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. No costs.

06.07.2023

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Index : Yes / No
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To

- 1.The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.



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R.KALAIMATHI, J.

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