



C.M.A. (MD)No.139 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.139 of 2018

and

C.M.P.(MD)No.2005 of 2018

The Manager (Legal)
Cholamandalam General Insurance Co. Ltd.,
3 & 4, Dindigul High Road
Near Sri E.N.T.Hospital
Kalavasal, Madurai.

... Appellant/
Respondent No.2

Vs.

1. Hajira Beevi

2. Sadiq Batch

3. Mohamed Mohaideen

4. Rahmath Nisha

... Respondents/
Petitioners

5. Sundar

... Respondent/
1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated



C.M.A. (MD) No. 139 of 2018

30.08.2017 made in M.C.O.P.No.1300 of 2016 on the file of Motor Accident Claims Tribunal (Special Sub Court), Thanjavur and allow this Civil Miscellaneous appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R4 : Mr.G.Karnan

For R5 : Given up

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1300 of 2016 dated 30.08.2017 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Thanjavur.

2. The appellant/insurer, who was made liable to pay compensation of Rs.6,11,000/- (Rupees Six Lakhs and Eleven Thousand only) with interest at 7.5% per annum to the respondents 1 to 4/claimants for the death of one Haja Mohaideen, consequent to an accident occurred on 11.07.2016, challenged the quantum of compensation awarded at, by the Tribunal.

3. Admittedly, the first respondent/first claimant is the wife, the respondents 2 and 3/claimants 2 and 3 are the sons and the fourth



C.M.A. (MD) No. 139 of 2018

respondent/fourth claimant is the daughter of the deceased Haja Mohaideen.

4. The learned counsel appearing for the appellant/insurer would submit that the Tribunal has granted Rs.1,00,000/- (Rupees One Lakh only) for loss of spousal consortium, Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) for loss of love and affection and Rs.25,000/- (Rupees Twenty Five Thousand only) for funeral expenses.

5. The learned counsel appearing for the respondents 1 to 4/ claimants would fairly concede that subsequent to the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, no amount can be awarded towards future prospects, as the deceased was aged 65 years at the time of accident.

6. Regarding consortium and love and affection, our Hon'ble Supreme Court in ***Pranay Sethi's case*** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias***



C.M.A. (MD) No. 139 of 2018

Chuhru Ram and others reported in **(2018) 18 SCC 130**, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Hon'ble Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, the Hon'ble Apex Court in **The New India Assurance Company Ltd. Vs. Smt. Somwati and others**, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi's** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

7. The respondents 1 to 4/claimants being the wife, sons and daughter of the deceased Haja Mohaideen, the first respondent/first claimant is entitled to get Rs.40,000/- towards loss of spousal consortium and the respondents 2 to 4/claimants 2 to 4 are entitled to get Rs.40,000/-



C.M.A. (MD) No. 139 of 2018

each towards loss of parental consortium. As per the legal dictum laid down by the Hon'ble Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in *AIR 2009 SC 3104*, the respondents 1 to 4/claimants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads, all totalling Rs.5,26,000/- and the compensation 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 or reduced
1.	Loss of income	3,36,000	3,36,000	Confirmed
2.	Funeral Expenses	25,000	15,000	Reduced
3.	Consortium (first respondent)	1,00,000	40,000	Reduced
4.	Loss of love and affection (respondents 2 to 4)	1,50,000	Nil	Nil
5.	Parental consortium (respondents 2 to 4)	0	40,000 x 3 = 1,20,000	Granted
6.	Loss of estate	0	15,000	Granted
	Total	6,11,000	5,26,000	Reduced by Rs.85,000/-



C.M.A. (MD) No. 139 of 2018

WEB COPY

8. Hence, this Court concludes that the respondents 1 to 4/ claimants are entitled to get total compensation of Rs.5,26,000/- (Rupees Five Lakhs and Twenty Six Thousand only) with interest at 7.5% per annum from the appellant/insurer. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,11,000/- (Rupees Six Lakhs and Eleven Thousand only) is hereby reduced to **Rs.5,26,000/- (Rupees Five Lakhs and Twenty Six Thousand only)** and out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.3,01,000/- (Rupees Three Lakhs and One Thousand only)** and the respondents 2 to 4/claimants 2 to 4 are entitled to get **Rs.75,000/- (Rupees Seventy Five Thousand only)** each. The appellant/insurer is directed to deposit the modified amount along with interest at 7.5% per annum and costs to the credit of M.C.O.P.No.1300 of 2016 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Thanjavur, less the amount already deposited, if any, within a period of four weeks from the date of



C.M.A. (MD) No. 139 of 2018

receipt of a copy of this judgment. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw their shares along with interest and costs, on due application before the Tribunal. If the amount was already deposited by the appellant/insurer, the balance amount shall be withdrawn by them. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

14.08.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To:

1. The Motor Accident Claims Tribunal/
Special Sub Court, Thanjavur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A. (MD)No.139 of 2018

K.MURALI SHANKAR,J.

csn

C.M.A.(MD)No.139 of 2018
and
C.M.P.(MD)No.2005 of 2018

Dated : 14.08.2023