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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2023

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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)No.59 of 2021
and
C.M.P(MD)No.526 of 2023

The Manager,
National Insurance Company Limited,
Chennai Division, 2nd Floor,
751, Annasalai, Chennai. ... Appellant/2nd respondent

Vs.

1.Nagalakshmi
2.Minor Sharu Prasanna
3.Minor Sharu Pranesh
4.Saroja
5.Prasannamoorthy ... 1st to 5th respondents/Petitioners

(Minor respondents 2 & 3 are represented by their natural guardian and mother Nagalakshmi, 1st respondent)

6.Saravanan ... 6th respondent/1st respondent

(R-6 Exparte in Tribunal:Notice dispensed with)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.317 of 2017 dated 12.03.2020 on the file of the Motor Accident Claims Tribunal, District Court, Karur.

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For Appellant :Mr.J.S.Murali
For R-1 to R-5 :Mr.M.Jothi Basu

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the award of compensation of Rs.39,41,944/- awarded by the Motor Accident Claims Tribunal, District Court, Karur, in favour of the respondents 1 to 5/claimants.

2. It is not in dispute that when the deceased Ashok Kumar was waiting at the Vallalar bus-stand at about 9.30 p.m., on 16.05.2017 in Vellore – Chennai National Highways, the car bearing No.TN-05-AX-2216, had been driven by its driver in a rash and negligent manner and hit against the deceased. As a result, he sustained grievous injuries and succumbed to the injuries.

3. The case of the respondents/claimants is that the deceased was working as a Surveyor in Survey Department of Government of Tamil Nadu. It is claimed in the claim petition that the deceased was earning Rs.34,000/- per month. He was aged 47 years at the time of death.

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4. During the course of enquiry, the respondents/claimants have examined P.Ws.1 to 3 and produced Exs.P1 to P11. There was no oral or documentary evidence produced on the side of the Insurance Company.

5. On considering the oral and documentary evidence and the submissions made on behalf of the parties, the Tribunal awarded a sum of Rs.39,41,944/- and directed the Insurance Company to pay the said amount with interest at the rate of 7.5% per annum.

6. The appellant/Insurance Company challenges the award mainly on the ground of quantum. It is the submission of the learned counsel for the appellant that the respondents/claimants produced Exs.P7 and P10-Pay Certificates, to show the monthly salary of the deceased. As per Ex.P7, the deceased was drawing a sum of Rs. 20,175/- as Gross Salary. After deduction, he was receiving the Net Salary of Rs.17,331/-. As per Ex.P10, he was drawing a sum of Rs. 21,900/- as Gross Salary. After deduction, he was receiving the Net Salary of Rs.24,076/-. The Tribunal instead of taking the salary as per Ex.P7-Salary Certificate, as a bench mark for assessing the quantum of compensation under the head of “loss of future income”, had mistakenly taken the salary as per Ex.P10-Salary Certificate and fixed the Net

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Salary of the deceased at Rs.24,076/- as a base for fixing the monthly salary and this is obviously wrong.

7. Another submission of the learned counsel for the appellant is that when loss of consortium was considered and Rs.40,000/- was awarded to the claimants, the award of Rs.2,00,000/- under the head of "Loss of Love and Affection", is not appropriate. On these grounds, the learned counsel for the appellant/Insurance Company challenges the award passed by the Tribunal.

8. In reply to the submissions of the learned counsel appearing for the appellant, the learned counsel for the respondents/claimants submitted that the Tribunal had rightly taken into consideration Ex.P10-Salary Certificate for fixing the monthly income of the deceased and for calculating the loss of future income. The deceased was not paying income tax and therefore, there is no question of deduction towards income tax. He pressed into service the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram** reported in **2018** (**2**) **TNMAC 452** (**SC**), for the proposition that the dependants are entitled for consortium individually at Rs.40,000/-. Thus, he prayed for maintaining the award passed by the Tribunal.

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9. This Court considered the rival submissions and perused the records.

10. There is no dispute with regard to the age of the deceased. The Tribunal on considering the oral and documentary evidence, had taken into consideration Ex.P10-Salary Certificate for fixing the monthly income of the deceased. As per Ex.P10-Salary Certificate, the monthly income of the deceased was Rs.24,076/-. Considering his age, 30% increase was given on this salary as future prospects and the monthly income was fixed at Rs.31,299/-(Rs.24076 + 7223). After deducting 1/4th of the salary towards the personal expenses of the deceased and adopting multiplier "13", relying on ***Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC),*** the Tribunal arrived at the total loss of dependency at Rs.36,61,944/- (Rs.23474 X 12 X 13).

11. The bone of contention raised in this appeal is that in Ex.P7, the gross salary of the deceased was shown as Rs.20,175/- and after deduction, he was drawing only Rs.17,331/- whereas in Ex.P10, the gross salary was shown as Rs.21,900/- and after deduction, the net salary was Rs.24,076/-. The Tribunal instead of taking into consideration Ex.P7-Salary Certificate, fixed the monthly income of the

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deceased based on Ex.P10.

12. However, the reading of the award of the Tribunal shows that as per Ex.P2 service records, the deceased would have received Rs. 21,900/- as per 7th Pay Commission in the scale of pay of Rs.20,600 – 65,600/-. It is quite obvious that the revised pay of the deceased was taken into consideration for fixing the monthly salary. It is common knowledge that 7th Pay Commission recommendation was accepted and introduced with effect from 01.01.2016. All the Government servants are given monetary benefits from 01.01.2016. Of course there was deferment of arrears for certain periods. Ex.P7-Salary Certificate relates to pre-7th Commission pay scale. The accident in this case happened on 16.05.2017. The 7th Pay Commission recommendation was enforced from 01.01.2016. Therefore, this Court finds that the Tribunal has rightly adopted the pay as revised on the basis of 7th Pay Commission and reflected in Ex.P10-Pay Certificate.

13. In view of the same, this Court is not able to accept the contention of the learned counsel for the appellant that the monthly pay adopted by the Tribunal on the basis of Ex.P10 is wrong. Therefore, this Court is of the view that the loss of dependency arrived at by the Tribunal at Rs.36,61,944/- is just and appropriate.

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14. With regard to the award of loss of consortium and loss of love and affection, this Court finds that the Tribunal had awarded Rs. 40,000/- under the head of “loss of Consortium” and Rs.2,00,000/- under the head of “loss of love and affection”.

15. As stated above, the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd's case(referred to supra),** had found that the father and sister are also entitled for consortium at Rs.40,000/- each under the head “Filial Consortium”.

16. In the case before hand, the claimants are wife, children and parents of the deceased. Therefore, this Court is of the view that the wife is entitled for “Spousal Consortium” and the children are entitled for consortium under the head of “Parental Consortium” and the parents are entitled for consortium under the head of “Filial Consortium” at Rs.40,000/- each. In that case, each claimant/respondent is entitled for Rs.40,000/- under the head of Consortium. When consortium is awarded, the award of compensation under the head of “loss of love and affection” is not appropriate and therefore, the compensation awarded under the head of 'Loss of love and affection” is set aside.

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17. With regard to the demand of the learned counsel for the appellant that the deduction of income tax, though we have material to find out the monthly and annual income of the deceased, there is no material produced by either side to show what was the savings of the deceased. In the absence of statistics with regard to the savings of the deceased, it is not possible to arrive at the income tax that would have to be paid or liable to be paid by the deceased. Therefore, this Court is not able to accept the contention of the learned counsel for the appellant that standard deduction of 10% should be deducted from the salary of the deceased towards income tax.

18. In view of the discussions held above, this Court modifies the compensation awarded by the Tribunal, as under:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	36,61,944	36,61,944	confirmed
2.	For consortium	40,000	2,00,000 (5 X 40,000)	enhanced
3.	For loss of estate	15,000	15,000	confirmed
4.	For funeral expenses	15,000	15,000	confirmed
5.	Transport Expenses	10,000	10,000	confirmed
6.	Loss of love and affection	2,00,000	Nil	deleted
	Total	Rs.39,41,944	Rs.39,01,944	By reducing a sum of Rs.40,000/-

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19. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from **Rs.39,41,944/**- (Rupees Thirty Nine Lakhs Forty One Thousand Nine Forty Four Only) to a sum of **Rs.39,01,944/-** (Rupees Thirty Nine Lakhs One Thousand Nine Forty Four Only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

(ii) The apportionment made by the Tribunal is sustained. Since it is stated that the entire award amount has been deposited, the excess amount if any shall be refunded to the appellant/Insurance Company.

(iii) The major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. In respect of minor claimants, their share shall be kept in the fixed deposited as directed by this Court earlier, till they attain majority. The mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs. Consequently, connected Miscellaneous Petition is closed.

06.10.2023

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Index:Yes/No
NCC:Yes/No

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To,

1.The Motor Accident Claims Tribunal,
District Court,
Karur.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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