BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.08.2023

Pronounced on : 14.08.2023

CORAM:

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

C.M.A.(MD)No.405 of 2020

The Managing Director,
M/s.Tamilnadu State Transport Corporation,
Periyamilaguparai,
Trichy. ... Appellant/ Respondent

Vs.

1. A.Thangavel

2. T.Pappa ... Respondents/ Claimants

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the impugned award passed in M.C.O.P.No.121 of 2013 on the file of the MACT (Sub Court), Kuzhithalai dated 20.11.2019.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.D.Boopal

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.121 of 2013 dated 20.11.2019 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Kuzhithalai.

2. The appellant/Transport Corporation, who was made liable to pay compensation of Rs.14,25,800/- (Rupees Fourteen Lakhs Twenty Five Thousand and Eight Hundred only) with interest at 7.5% per annum to the respondents/claimants for the death of Gopinathan, consequent to an accident occurred on 27.11.2011, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. Though the appellant/Transport Corporation has challenged the liability mulcted on it, in the grounds of appeal, the learned counsel appearing for the appellant/Transport Corporation would submit that they are only disputing the quantum of compensation awarded at by the Tribunal.

4. The only point that arises for consideration is whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?

5. The case of the respondents/claimants is that the deceased was aged 22 years at the time of accident, that he was working as an employee of bakery shop at Manapparai and that he was earning Rs.10,000/- (Rupees Ten Thousand only) per month.

6. The appellant/Transport Corporation has disputed the age, occupation and income of the deceased.

7. The learned counsel appearing for the appellant/Transport Corporation would submit that the Tribunal committed a grave error in fixing the monthly income of the deceased at Rs.9,000/- (Rupees Nine Thousand only) without any basis and that the amount awarded under all the heads are highly excessive.

8. The respondents/claimants, in order to prove their case, have produced the catering completion certificate under Ex.P.4.

9. The Tribunal, taking note of the evidence, has fixed the monthly income at Rs.9,000/- (Rupees Nine Thousand only) per month.

10. The learned counsel appearing for the appellant/Transport Corporation would submit that in the absence of any evidence to prove the avocation and income of the deceased, the monthly income fixed at Rs.9,000/- (Rupees Nine Thousand only) is very much excessive and the trial Court should have fixed the monthly income at Rs.6,000/- (Rupees Six Thousand only). But the learned counsel appearing for the respondents/claimants would submit that the Hon'ble Supreme Court in ***Syed Sadiq Vs. United India Insurance Company*** reported in ***(2014) 2 SCC 735*** has fixed the notional income by applying the inflation index, as per the notification dated 13.06.2006 issued by the Central Board of Direct Taxes. The Tribunal, taking note of the post mortem certificate, has rightly fixed the age of the deceased as 23 years. Considering the age, nature of the job and on applying the inflation index as applied by the Hon'ble Supreme Court in ***Syed Sadiq's*** case, the monthly income fixed at Rs.9,000/- (Rupees Nine Thousand only) by the Tribunal cannot said to be excessive and is very much reasonable.

11. The Tribunal, relying on the decision of the Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700,*** has rightly added 40% of the income as future prospects. As per the dictum laid down in ***Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104,*** the Tribunal has rightly applied multiplier 8 and arrived the loss of dependency at Rs.13,60,800/- (Rupees Thirteen Lakhs Sixty Thousand and Eight Hundred only).

12. The Tribunal has further awarded Rs.25,000/- (Rupees Twenty Five Thousand only) each to the respondents/claimants for loss of love and affection, Rs.10,000/- (Rupees Ten Thousand only) for funeral expenses and Rs.5,000/- (Rupees Five Thousand only) for transport expenses. 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 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.

13. The respondents/claimants being the parents of the deceased are certainly entitled to get Rs.40,000/- (Rupees Forty Thousand only) each towards loss of filial consortium. The respondents/claimants are also entitled to get Rs.15,000/- (Rupees Fifteen Thousand only) for funeral expenses and Rs.15,000/- (Rupees Fifteen Thousand only) for loss of estate under the conventional heads. Considering the above, the respondents/claimants are entitled to get total compensation of

Rs.14,70,800/- (Rupees Fourteen Lakhs Seventy Thousand and Eight Hundred only). Accordingly, 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 dependency	13,60,800	13,60,800	Confirmed
2.	Loss of love and affection	50,000 (25,000/- x 2)	Nil	Nil
3.	Funeral expenses	10,000	15,000	Enhanced
4.	Transport expenses	5,000	Nil	Nil
5.	Filial consortium	Nil	80,000 (40,000/- x 2)	Granted
6.	Loss of estate	Nil	15,000	Granted
	Total	**14,25,800**	**14,70,800**	**Enhanced by Rs.45,000/-**

14. No doubt, the respondents/claimants have not challenged the quantum of compensation. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others (C.A.No.476 of 2020 dated 21.01.2020)*** wherein, the Hon'ble Apex Court has held as follows:-

"2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants."

15. 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 and the above point is answered accordingly.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.14,25,800/- (Rupees Fourteen Lakhs Twenty Five Thousand and Eight Hundred only) is hereby

enhanced to **Rs.14,70,800/- (Rupees Fourteen Lakhs Seventy Thousand and Eight Hundred only)** together with interest at 7.5% per annum and out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.4,70,800/- (Rupees Four Lakhs Seventy Thousand and Eight Hundred only)** and the second respondent/second claimant is entitled to get **Rs.10,00,000/- (Rupees Ten Lakhs only).** The appellant/ Transport Corporation is directed to deposit the modified award amount with accrued interests to the credit of M.C.O.P.No.121 of 2013 on the file of Motor Accident Claims Tribunal/Subordinate Court, Kuzhithalai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw their shares together with interest and costs. Parties are directed to bear their own costs. The respondents 1 and 2 are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

14.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

K.MURALI SHANKAR,J.

csm

To:

1. The Motor Accident Claims Tribunal / Subordinate Court,
   Kuzhithalai.

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

Pre-Delivery Order made in
C.M.A.(MD)No.405 of 2020

Dated : 14.08.2023