



C.M.A. (MD) No. 506 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.09.2023

Pronounced on : 30.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.506 of 2020

M/s.Reliance General Insurance Company,
represented by its Manager,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omaloor Main Road,
Sornapuri, Salem.

...Appellant/
2nd Respondent

Vs.

1. M.Kavitha

2. P.Mani

...Respondents 1&2/
Petitioners

3. N.Jeganathan

4. T.Rajammal

5. M/s.New India Assurance Company Ltd.,
represented by its Manager,
KVR Complex, 3rd Floor,
80 feet Road, Sengundhapuram,
Karur – 2.

...Respondents 3to5/
Respondents 1,3&4



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 09.07.2019 passed in M.C.O.P.No.28 of 2019 on the file of the Motor Accidents Claims Tribunal/Fast Track Mahila Court, Karur by allowing this appeal.

For Appellant : Mr.V.Sakthivel
For R1 & R2 : Mr.M.Karthikeya Venkatachalapathy
for Mr.K.Balasubramani
For R3 to R5 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.28 of 2019 dated 09.07.2019 on the file of the Motor Accident Claims Tribunal/Fast Track Mahila Court, Karur.

2. The appellant/insurer, who was made liable to pay compensation of Rs.17,02,000/- (Rupees Seventeen Lakhs and Two Thousand only) with interest at 7.5% per annum to the respondents 1 and 2/claimants for the death of Sowndarya, consequent to an accident occurred on 26.10.2014, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.



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For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the Tribunal.

3. The case of the claimants is that on 26.10.2014 in the evening the claimant in M.C.O.P.No.29 of 2019 was driving an auto rickshaw bearing Registration No.TN-33-2214 along with his granddaughters Sowndarya, Nandhini and Varshini on Karur to Dindigul heading to Sukkaliyur and when he turned his vehicle to the right side and halted on the side of the central median near branch road watching oncoming vehicles in order to cross the Karur to Dindigul main road, a car belonging to the first respondent came in a rash and negligent manner from South to North and while overtaking a lorry dashed on the auto rickshaw and as a result of which, Sowndarya succumbed to the injuries and the claimant in M.C.O.P.No.29 of 2019 Thangavel and the claimant in M.C.O.P.No.27 of 2019 Nandhini sustained grievous injuries.

4. It is their further case that the deceased Sowndarya was aged about 19 years at the time of accident, that she was hale and healthy at that time and that she was working as a typist and was earning Rs.7,000/- per month.



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5. The respondents 1 and 3 had remained *ex parte*.

6. The defence of the second respondent is that the driver of the auto rickshaw drove the vehicle in a rash and negligent manner and unmindful of vehicular traffic turned the auto rickshaw in the central median towards Sukkaliyur branch road and caused the accident, that the auto driver alone was responsible for the accident, that there is no contract of insurance between the second respondent and the first respondent and that the compensation claimed is on higher side.

7. The fourth respondent has filed a counter statement stating that the first respondent's vehicle alone caused the accident, that the respondents 3 and 4 have been impleaded as formal parties in order to avoid technical flaw and that since they are not necessary parties, the claim petition is liable to be dismissed as against them.

8. During trial, the claimants have examined the second claimant Mani as P.W.1 and the claimant in M.C.O.P.No.29 of 2019 Thangavel as P.W.2 and the medical officer Dr.Raman as P.W.3 and exhibited 14 documents as Ex.P.1 to Ex.P.14. The respondents 2 and 4 have adduced neither oral nor documentary evidence.



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9. The learned trial Judge, after conducting a joint trial in respect of in all the three claim petitions including M.C.O.P.No.28 of 2019 now under challenge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the common order dated 09.07.2019 by holding that the accident was occurred only due to the rash and negligent driving of the car driver, mulcted liability on the second respondent and directed them to pay compensation of Rs.17,02,000/- to the claimants with interest and costs. Aggrieved by the impugned award, the second respondent has preferred the present appeal.

10. The learned counsel appearing for the second respondent would submit that the Tribunal erred in fixing the entire negligence on the part of the car driver and the Tribunal ought to have fixed 50-50 negligence on the part of the drivers of both the vehicles.

11. The learned counsel appearing for the second respondent would further submit that the claimants have not produced any records to show that the deceased had completed typewriting course, that the Tribunal,



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even after disbelieving certificate under Ex.P.8, has fixed the monthly income at Rs.10,000/- per month without any basis, that the Tribunal ought to have fixed monthly income at Rs.6,500/- considering the accident was occurred on 26.10.2014, that the Tribunal has failed to follow the guidelines issued by the Hon'ble Supreme Court in ***Pranay Sethi's case*** and that the Tribunal has erred in awarding a sum of Rs.1,50,000/- towards loss of love and affection and Rs.10,000/- towards transport expenses.

12. The points for consideration are:-

1. *Whether the Tribunal erred in mulcting the entire liability on the car driver, despite showing that the auto rickshaw driver has also contributed for the accident?*
2. *Whether the quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law?*

Points 1 and 2:

13. The claimants in their claim petition have specifically stated that while the auto rickshaw driver, after stopping the vehicle on the side of the central median, watching the oncoming vehicles for crossing the Karur to Dindigul main road, the car driver, who came from South to North in a rash and negligent manner, by overtaking a lorry, dashed against the auto



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rickshaw and caused the accident. P.W.2-auto rickshaw driver, who is also a claimant in another claim petition in his evidence would reiterate the mode of accident as stated in the claim petition.

14. It is pertinent to note that only on the basis of the complaint lodged by P.W.2, FIR came to be registered in Crime No.734 of 2014 against the car driver for the offences under Sections 279, 337 and 304(A) IPC. Though P.W.2 was cross-examined, his evidence with regard to the mode of accident was not at all shaken and nothing was elicited by the other side in their favour.

15. As already pointed out, though the second respondent has alleged that the auto rickshaw driver alone was responsible for the accident and the car driver was not at fault, they have not chosen to examine the car driver nor any other witnesses, who had allegedly witnessed the accident. As already pointed out, the first respondent/owner of the vehicle had remained *ex parte*. Admittedly, there is absolutely no contra evidence with regard to the mode of accident. Considering the above, the finding of the Tribunal that the accident was occurred only due



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to the rash and negligent driving of the car driver cannot be found fault with and this Court is in entire agreement with the finding recorded by the Tribunal.

16. Now turning to the quantum of compensation, as already pointed out, it is the specific case of the claimants that the deceased was aged 19 years and was working as a typist and was earning Rs.7,000/- per month. Though P.W.1-father of the deceased in his evidence would say that his deceased daughter was working as a typist in M/s.Rashika and Co. in Subbaiah Pillai Layout, Karur and was earning Rs.12,000/- per month, which includes overtime service remuneration at Rs.3,000/-, as rightly observed by the learned trial judge, the claimants have not produced any documents nor examined any person concerned with the said establishment to prove the avocation and income of the deceased, but the Tribunal, taking note of the fact that the deceased has completed Diploma course in Office Automation under Ex.P.8, has fixed the notional monthly income at Rs.10,000/-. In the absence of any evidence to show the income of the deceased and considering the facts that the accident was occurred in 2014 and the Diploma course she had completed, the monthly income



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fixed at Rs.10,000/- by the Tribunal, as rightly pointed out by the learned counsel appearing for the second respondent, is on higher side and taking note of the above facts and circumstances and the date of accident, this Court fixes the monthly income at Rs.9,000/- per month.

17. As per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, 40% of the income is to be added towards future prospects and after such addition, the monthly income would be Rs.12,600/- (Rs.9,000/- + Rs.3,600/- (40% of the income)). Considering the fact that the deceased died as a spinster, the Tribunal has rightly deducted 50% of the income towards personal and living expenses of the deceased and after such deduction, the monthly income would be Rs.6,300/-. As per the decision of the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, the Tribunal has rightly applied the multiplier 18 and as such, the loss of dependency would be Rs.13,60,800/- (Rs.6,300/- x 12 x 18).



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18. The Tribunal has rightly awarded Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses under the conventional heads.

19. The Tribunal has awarded Rs.1,50,000/- towards loss of 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 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



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the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

20. Considering the fact that the claimants are the parents of the deceased, they are entitled to get Rs.40,000/- each towards loss of filial consortium. Hence, the claimants are entitled to get total compensation of Rs.14,70,800/- (Rupees Fourteen Lakhs Seventy Thousand and Eight Hundred only).

21. 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 points are answered accordingly.

22. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,02,000/- (Rupees Seventeen Lakhs and Two Thousand only) is hereby reduced to **Rs.14,70,800/- (Rupees Fourteen Lakhs Seventy Thousand and Eight Hundred only)** together with interest at 7.5% per annum and costs from the date of petition till the date of realization. The appellant/insurer is directed to deposit the modified amount with interest and costs to the



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credit of M.C.O.P.No.28 of 2019 on the file of the Motor Accident Claims Tribunal/Fast Track Mahila Court, Karur, 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 being made, the first respondent/first claimant is entitled to get **Rs.9,00,000/- (Rupees Nine Lakhs only)** and the second respondent/second claimant is entitled to get **Rs.5,70,800/- (Rupees Five Lakhs Seventy Thousand and Eight Hundred only)**. Accordingly, the respondents 1 and 2/claimants are permitted to withdraw their shares along with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. If the entire amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer. Parties are directed to bear their own costs.

30.11.2023

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



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To

1. The Motor Accident Claims Tribunal /
Fast Track Mahila Court,
Karur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Judgment made in
C.M.A.(MD)No.506 of 2020

Dated :30.11.2023