



C.M.A(MD)No.211 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 14.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

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The Manager,  
Cholamandalam M/s.General Insurance Co.Ltd.,  
No.41, Bharathidasan Salai,  
TAB Complex, Contonment,  
Tiruchirappalli : Appellant /2<sup>nd</sup> Respondent

Vs.

1.Uthirasu  
2.Muthuraman  
3.Saraswathi  
4.Orange  
5.Indumathi  
6.Vennila : Respondents/ Petitioners 1 to 6  
7.Palanimuthu : Respondent/1<sup>st</sup> Respondent

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 10.09.2018 made in M.C.O.P.No.88 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Thanjavur.



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For Appellant : Mr.S.Srinivasa Raghavan  
For Respondents : Mr.G.Karnan, for R1 to R6.  
: No Appearance, for R6

### **J U D G M E N T**

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.88 of 2018, dated 10.09.2018 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.6,09,210/- with interest at 7.5% per annum to the respondents 1 to 6/claimants for the death of one Manickayee, consequent to an accident occurred on 27.09.2017, challenged the quantum of compensation awarded at by the Tribunal.

3. The learned counsel for the appellant would submit that the Tribunal by relying on the Aadhar Card of the first claimant has fixed the age of the deceased at 59 years, but the Aadhar Card of the deceased has not been exhibited.



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4. The learned counsel for the respondents 1 to 6/claimants would fairly concede that in the postmortem certificate/Ex.P.2 age of the deceased has been shown as 69 years.

5. As rightly contended by the learned counsel for the appellant, the Tribunal by relying on the Aadhar Card of the first claimant has wrongly fixed the age of the deceased as 59 years. But it is evident from Ex.P.2 that the age of the deceased was shown as 69 years. Hence, the age of the deceased is fixed as 69 years.

6. The Tribunal taking the age of the deceased as 59 years has applied multiplier '9'. But as per dictum laid down by the Honourable Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the appropriate multiplier would be '5' and as such the loss of dependency would come to Rs.3,21,780/- [64,356 x 5].

7. As rightly contended by the learned counsel on either side, the Tribunal has not awarded any amount towards loss of consortium. Our



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Honourable 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. Honourable 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, Honourable 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 separate head of loss of love and affection.

8. The claimants being the children of the deceased Manickayee are entitled to get Rs.40,000/- each towards loss of consortium. The



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Tribunal has rightly awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

9. Considering the above, the claimants are entitled to get compensation under the following heads :

|                                       |   |                 |
|---------------------------------------|---|-----------------|
| Loss of dependency                    | - | Rs.3,21,780/-   |
| Loss of estate                        | - | Rs. 15,000/-    |
| Loss of Consortium<br>(Rs.40,000 x 6) | - | Rs.2,40,000/-   |
| Funeral Expenses                      | - | Rs. 15,000/-    |
| Total                                 | - | Rs.5, 91, 780/- |

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal is **reduced from Rs.6,09,204/- to Rs.5,91,780/-**. The Appellant/Insurer is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimants are permitted to withdraw the award amount as apportioned by the tribunal, less



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amount already withdrawn, if any, by filing a necessary application before the Tribunal. 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  
das

To

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



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**K.MURALI SHANKAR,J.**

das

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