BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.07.2023

PRONOUNCED ON:19 .07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.341 of 2019
and
CROS.OBJ(MD)No.4 of 2023

C.M.A.(MD)No.341 of 2019:

The Branch Manager,
National Insurance Company Limited,
Mangalore Branch Office, II Floor,
Indland Ornate Building,
Opp.Hotel Ocean Pearl,
Kodial Bail,
Mangalore – 575 003. : Appellant/3rd Respondent

Vs.

1.M.Ponnuraman
2.P.Selvi : Respondents 1 and 2/
Petitioners 1 and 2

3.T.Lajaraz Lasrado
4.D.Prafulla Marla : Respondents 3 and 4/
Respondents 1 and 2

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Judgment and Decree dated 25.10.2017, made in M.C.O.P.No.253 of 2016, on the file of the Principal District Judge, Pudukkottai.

For Appellant : Mr.A.Ilango

For Respondents :Ms.P.Kalayarasi Bharathi
for R.1 and R.2
: No Appearance for R.3 and R.4

CROS.OBJ(MD)No.4 of 2023:

1.M.Ponnuraman
2.P.Selvi : Cross Objectors / Respondents 1 and 2

Vs.

The Branch Manager,
National Insurance Company Limited,
Mangalore Branch Office, II Floor,
Indland Ornate Building,
Opp.Hotel Ocean Pearl,
Kodial Bail,
Mangalore – 575 003. : 1st Respondent/Appellant

3.T.Lajaraz Lasrado
4.D.Prafulla Marla : Respondents 2 and 3/
Respondents 3 and 4

PRAYER:- Cross Objection filed under Order 41 Rule 22 C.P.C., against the Judgment and Decree dated 25.10.2017, made in M.C.O.P.No.253 of 2016, on the file of the Principal District Judge, Pudukkottai.

For Cross Objectors : Ms.P.Kalayarasi Bharathi

For Respondents :Mr.A.Ilango
for R.1
: No Appearance for R.2 and R.3

COMMON JUDGMENT

This Civil Miscellaneous Appeal and Cross Objection are directed against the award passed in M.C.O.P.No.253 of 2016, dated 25.10.2017, on the file of the Motor Accident Claims Tribunal / Principal District Court, Pudukkottai.

2. The Insurer, who was directed to pay compensation of Rs.16,29,000/- to the respondents/claimants for the death of one Karthick, son of the claimants, consequent to an accident occurred on 22.05.2015, challenged the quantum of compensation awarded. The

claimants have preferred Cross Objection seeking enhancement of compensation.

3. The main contention of the appellant/Insurer is that the Tribunal has wrongly deducted 1/3rd of the income of the deceased towards his personal expenses, when the deceased is a bachelor, that the Tribunal should have deducted 50% of his income towards his personal expenses, that the compensation awarded by the Tribunal under the heads of loss of consortium, love and affection are highly excessive and that therefore, the Insurer is constrained to challenge the quantum of award. The main contention of the cross-objectors / claimants is that the Tribunal ought not to have fixed the lower income at Rs.6,500/-, when the deceased claims to be a tipper lorry driver with earning capacity of Rs.25,000/- p.m., that the deceased was a driver, reflected in the F.I.R., itself, wherein the averments are that the son of the claimants was carrying on avocation of driving by purchasing a tipper lorry through finance and that the amount awarded at Rs.14,04,000/- as loss of dependency is on the lower side and is unreasonable and that therefore, the claimants are constrained to file cross-objection seeking enhancement.

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

5. It is the specific contention of the claimants that the deceased was a driver and was earning Rs.20,000/- p.m. But the Tribunal, taking note of the fact that no document has been filed by the claimants to prove the income of the deceased, has fixed the monthly income at Rs.6,500/-. The learned Counsel for the claimants would submit that the Tribunal ought to have fixed the monthly income following the principles and method of income arrived by the Hon'ble Supreme Court in ***Syed Sadiq Vs. United India Insurance Co., Ltd.,*** reported in ***2014(1) TNMAC 459***.

6. Admittedly, the claimants have not produced any iota of materials to show that the deceased was working as a driver and was earning Rs.20,000/- p.m. But the learned Counsel for the Insurer would fairly admit that the monthly income fixed by the Tribunal is low and according to him, the monthly income may be fixed at Rs.9,000/- p.m. But on the other hand, the learned Counsel for the claimants would

submit that though there is no positive evidence to show that the deceased was earning at Rs.20,000/- per month, the fact remains that he was working as a driver at the time of alleged occurrence and that the monthly income fixed by the Tribunal as well as the monthly income now suggested by the Insurer side are low. Thereafter, the learned Counsel for the claimants as well as the Insurer would submit that the monthly income can be fixed at Rs.10,000/-p.m. Considering the above submission made by the learned Counsel on either side and also taking note of the fact that no material has been produced to prove the avocation of the deceased, this Court fixed the monthly income at Rs.10,000/-p.m.

7. The learned trial Judge, after fixing the monthly income at Rs.6,500/-, has added 50% of the income towards future prospects and arrived at Rs.9,750/-. The Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi*** reported in ***2017(2) TNMAC 609 (SC)***, has held that if the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the

necessary method of computation. In the case on hand, the age of the deceased was fixed at 22 years and the same was not disputed.

8. Considering the above and the legal dictum laid down by the Hon'ble Supreme Court in ***Pranay Sethi's case,*** an addition of 40% of the income is to be added towards future prospects and as such, the monthly income would come to Rs.14,000/- Since the deceased was a bachelor, 50% of the income has to be deducted towards personal expenses of the deceased. But in the case on hand, as already pointed out, the Tribunal has deducted 1/3rd income. On deduction of 50%, the monthly income comes to Rs.7,000/-p.m. As rightly contended by the learned Counsel appearing on either side, the Tribunal has rightly applied the multiplier of "18". Hence, the loss of dependency will be at Rs. 15,12,000/- (Rs.7,000/-x12x18)

9. In the case on hand, the Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection and for funeral expenses at Rs.25,000/-.

10. Our Hon'ble Supreme Court in ***Pranay Sethi'***s case has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, 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. 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, 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.

11. Considering the above, the claimants 1 and 2 being the parents of the deceased, are entitled to Rs.40,000/- each towards loss of filial consortium. Applying the judgment of the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC)***, the claimants are entitled to get Rs.15,000/- each towards loss of estate and funeral expenses respectively.

12. Considering the above, the total amount arrived at by the Tribunal is very much reasonable and as such, this Court is not inclined to interfere with the same. Hence, this Court concludes that the Civil Miscellaneous Appeal and the Cross Objection are liable to be dismissed.

13. In the result, the Civil Miscellaneous Appeal and the Cross Objection are dismissed. There shall be no order as to costs.

19.07.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1.The Motor Accident Claims Tribunal/
the Principal District Court, Pudukkottai.

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

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.341 of 2019
and
CROS.OBJ(MD)No.4 of 2023

19.07.2023