BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.07.2023

Pronounced On : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.648 of 2019

The Branch Manager,
National Insurance Company Limited,
North Car Street, Angu Vilas Building,
Nagercoil, Agastheeswaram Taluk,
Kanyakumari District. : Appellant / 3rd Respondent

Vs.

1.Sheeba : 1st Respondent/1st Petitioner

2.Minor Benitta Sherjilin : 2nd Respondent/2nd Petitioner

3.Vincent : 3rd Respondent/3rd Petitioner

4.Sosamma : 4th Respondent/ 4th Petitioner

5.Albert Raj : 5th Respondent/1st Respondent

6.Sundarraj : 6th Respondent/2nd Respondent

7.The Branch Manager,
United India Insurance Company,
3/33B, P.P.K.Building, Main Road,
Marthandam, Vilavanode Taluk,
Kanyakumari District. : 7th Respondent/4th Respondent

8.Dilipkumar @ Unni : 8th Respondent/5th Respondent

(Minor 2nd respondent is represented through
her mother and natural guardian
Sheeba/1st respondent herein)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Kuzhithurai in M.C.O.P.No.29 of 2014, dated 08.11.2018.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.S.C.Herold Singh, for R5.

: Mr.C.Jawahar Ravindran, for R7.

: No Appearance, for R1 to R4 and R6 & R8.

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.29 of 2014, dated 08.11.2018 on the file of the Motor Accident Tribunal, Kuzhithurai.

2.The Appellant/Insurer, who was made liable to pay compensation of Rs.16,88,300/- with interest at 7.5 % per annum to the respondents 1 to 4/claimants 1 to 4 for the death of one Vijin, consequent to an accident occurred on 25.11.2013, challenged the liability mulcted on it and the quantum of compensation awarded at by the Tribunal.

3. Admittedly, the first respondent/first claimant is the wife; second respondent/second claimant is the daughter; third respondent/3rd claimant is the father and the fourth respondent/fourth claimant is the mother of the deceased Vijin.

4. It is pertinent to note that though the appellant/insurer has challenged the liability mulcted on it, in the appeal grounds, the learned counsel for the appellant would submit that they are only challenging the quantum of compensation awarded at by the Tribunal.

5. The case of the claimants is that the deceased was aged 26 years at the time of accident; that he has completed A.C., Mechanic Course; that he was conducting A.C Mechanic shop opposite to Government Hospital, Icotvilai, Kanyakumari District in the name and style as 'Cool king' and that he was earning Rs.25,000/- per month.

6. The defence of the respondent is that the particulars of the loss and expenses shown in the petition are exaggerated for the purpose of claim petition; that the claim of expenses sought are without any basis and that the compensation claimed, is excessive and exorbitant.

7. During enquiry, the claimants have examined the first claimant as P.W.1 and two others witnesses as P.W.2 and P.W.3 and exhibited 26 documents as Ex.P.1 to Ex.P.26. The respondents 1, 2 and 5 had remained ex-parte. The third respondent had examined its Official Thiru.Nagarajan as R.W.1 and exhibited one document as Ex.R.1.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order, dated 08.11.2018, directing the third respondent to pay a sum of Rs.16,88,300/- with interest at 7.5% from the date of petition (ie., on 16.12.2013) till the date of judgment (ie., on 08.11.2018). Aggrieved by the award, the insurer has come forward with the present appeal.

9. 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.?

10. The learned counsel for the appellant would submit that the Tribunal erred in fixing the income at Rs.7,000/- per month adding 40% future prospects, in the absence of any substantial oral or documentary evidence to prove his avocation or income; that the Tribunal erred in not deducting 1/3rd portion for personal expenses out of the amount granted towards future prospects; that the Tribunal has deducted personal expenses only on the amount of Rs.7,000/- fixed as income; that the award of Rs.90,000/- granted by the Tribunal towards loss of love and affection, is contrary to the law laid down by the Hon'ble Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, and that the compensation awarded at Rs.16,88,300/-, is highly excessive and exorbitant.

11. The claimants have produced the documents under Ex.P.17 and Ex.P.18 to show that the deceased, after studying A.C., Mechanic Course, was conducting a workshop. Admittedly, the claimants have not produced any iota of evidence to prove the income of the deceased. The Tribunal, by relying on postmortem certificate and death certificate, has fixed the age of the deceased as 27 years at the time of alleged occurrence. Considering the age of the deceased and nature of job, the trial Court has rightly fixed the

monthly income at Rs.7,000/- . The learned counsel for the appellant would submit that in the absence of any proof for avocation and income, the Tribunal has committed an error in adding 40% of the income towards future prospects.

12. As rightly contended by the learned counsel for the appellant, the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has concluded that the deceased was self employed or on a fixed salary, an addition at 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where 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 Tribunal has rightly added 40 % of the income as future prospects.

13. The Tribunal has deducted 1/3 of the income towards personal and living expenses of the deceased. But the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104,** has held that where the deceased was

married, the deduction of personal living expenses of the deceased should be 1/3 wherein member of defendants family members is to 3; 1 /4 were member of defendants family members is 4 to 6 and 1/5 where the members of defendants family members exceed.

14. In the present case, considering the number of claimants, the Tribunal should have deducted 1/4 of income towards personal expenses and as such, after deduction, the monthly income would come to Rs.7,350/- [(7,000 x 40/100 = 2,800/-; Rs.7,000 + 2,800 = 9,800) (Rs.9,800 x 3 / 4 = 7,350). As per the decision in ***Sarla Varma's*** case, the Tribunal has rightly applied the multiplier '17' and as such, the loss of dependency would be **Rs.14,99,400/-.** [Rs.7,350 x17x12= **14,99,400/**-]. The Tribunal has awarded Rs.40,000/- towards spousal consortium for first claimant; Rs.30,000/- each to the claimants 2 to 4 for loss of love and affection; Rs.15,000/- for funeral expenses ; Rs.15,000/- for loss of estate and Rs.5,000/- towards transport expenses, all totaling Rs.16,88,268/- and rounded off to **Rs.16,88,300/-**. In **Pranay Sethi'**s case, the Honourable Supreme Court has permitted to award Rs.40,000/- towards spousal consortium. But the Honourable Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others**

reported in **(2018) 18 SCC 130**, and **the New India Assurance Company Ltd., Vs. Smt.Somwati and others,** passed in **Civil Appeal No.3093 of 2020 and batch, dated 07.09.2020** case has permitted the spousal consortium to be awarded to the surviving spouse, parental consortium to be awarded to the children upon the premature death of their parents and filial consortium to be awarded to the parents for the loss of their children at the same amount that is fixed in ***Pranay Sethi'***s case.

15. Considering the above, the first claimant being the wife is entitled to get Rs.40,000/- towards loss of spousal consortium, the second claimant being the daughter of the deceased is entitled to get Rs.40,000/- towards parental consortium and the claimants 3 and 4 being the parents of the deceased are entitled to get Rs.40,000/- each towards filial consortium.

16.Considering the above, this Court decides that the claimants are entitled to get compensation under the following heads:

Head of compensation	Amount awarded by the tribunal	Amount confirmed/ modified by this Court
Loss of dependency	Rs.15,23,268/-	Rs.14,99,400/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Transportation Charges	Rs.5,000/-	-
Spousal Consortium	Rs. 40,000/-	Rs.40,000/-
Parental Consortium	Rs.30,000/-	Rs.40,000/-
Filial Consortium (claimants 3 & 4)	Rs.60,000/-	Rs.80,000/-
Loss of Estate	Rs.15,000/ -	Rs.15,000/-
Total	Rs.16,88,268/- rounded of Rs.16,88,300/-	Rs.16,89,400/-

Considering the fact that there is only minimal difference, this Court is not inclined to interfere with the award. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

17. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed in M.C.O.P.No.29 of 2014, dated 08.11.2018 on the file of the Motor Accident Tribunal, Kuzhithurai, is confirmed. The appellant/Insurer is directed to deposit the award amount with interest and

cost, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the claimants are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalized Bank in a fixed deposit scheme, till she attain majority. The mother and guardian of the minor claimant is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minor. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

18.08.2023

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

1.The Motor Accident Claims Tribunal,
Kuzhithurai.

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

K.MURALI SHANKAR,J.

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Pre-delivery order made in
C.M.A(MD)No.648 of 2019

18.08.2023