



C.M.A(MD)No.444 of 2020
&Cross.Obj.(MD)No.4 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.09.2023

Delivered on : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.444 of 2020
and
Cross.Obj.(MD)No.4 of 2021

C.M.A(MD)No.444 of 2020:

The Branch Manager,
The Oriental Insurance Company Limited,
3rd Floor, Bulltech Foundation,
Chithoor Road, Palakatt Kerala.

: Appellant/2nd Respondent

Vs.

1.Selvaraj

2.Jeyanthi

3.Minor Santhiya

: Respondents/Petitioners

4.P.Hemavathi

: Respondent/1st Respondent

(Minor 3rd Respondent rep.by her mother and next friend
of the second respondent Jeyanthi)



C.M.A(MD)No.444 of 2020
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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the decree and judgment made in M.C.O.P.No.69 of 2015, dated 31.08.2018 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Ramanathapuram.

For Appellant : Mr.K.Balasubramanian

For Respondents : Mr.T.R.Jeyapalam, for R1 to R3

: No Appearance, for R4.

Cross.Obj.(MD)No.4 of 2021 :

1.Selvaraj

2.Jeyanthi

3.Minor Santhiya : Cross Objectors/Respondents 1 to 3

(Minor 3rd Cross Objector rep.by her mother and next friend
of the second Cross Objector Jeyanthi)

Vs.

1.The Branch Manager,
The Oriental Insurance Company Limited,
3rd Floor, Bulltech Foundation,
Chithoor Road, Palakatt Kerala. : 1st Respondent/Appellant

2.P.Hemavathi : 2nd Respondent/4th Respondent



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Prayer: This Cross objection is filed under Order 41 Rule 22 of the Civil Procedure Code, against the decree and judgment made in M.C.O.P.No.69 of 2015, dated 31.08.2018 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Ramanathapuram.

For Cross Objectors : Mr.T.R.Jeyapalam

For Respondents : Mr.K.Balasubramanian, for R1.

J U D G M E N T

The Civil Miscellaneous Appeal and the Cross Objection are directed against the award passed in M.C.O.P.No.69 of 2015, dated 31.08.2018 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Ramanathapuram.

2.The appellant/insurer, who was made liable to pay compensation of Rs.14,68,000/- with interest at 7.5% per annum to the respondents 1 to 3/claimants for the death of Sathish, consequent to an accident occurred on 18.01.2015, challenged the quantum of compensation awarded at by the Tribunal.



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3. The cross objectors/claimants have also challenged the quantum of compensation and claimed enhancement of the same.

4. The case of the claimants is that the deceased Sathis was a B.Tech, Engineering student from Kalasalingam University Engineering College, Krishnankovil, Srivilliputhur, Virudhunagar; that during the final year, the deceased was selected for placement in Polaris and Reliance Companies that they have fixed Rs.7,252/- + shift allowance during the training period and also paid Rs.100/- per day towards stipend for 16 days training period and that the deceased was aged 22 years at the time of accident.

5. The claimants have also produced the selection letter issued by the Reliance Company and Polaris Company under Ex.P.5 and Ex.P.6 respectively. The Tribunal, taking note of the amount quoted in Ex.P.6 at Rs.7,252/-, has fixed the monthly income as Rs.7,000/-.

6. The learned counsel for the cross objectors would submit that after adding Rs.100/- given as stipend along with the amount of Rs.7,252/-, the same would come to Rs.8,852/- for 16 days and Rs.16,600/- per month.



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7. Considering fact that the deceased was in the final year of B.Tech, Course and also the fact that he was selected in the campus interview, this Court fixes the notional monthly income of the deceased at Rs.10,000/-.

8. Admittedly, the Tribunal has not awarded any amount towards future prospects. 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. Applying the above decision of the Honourable Apex Court, 40 % of the income is only to be added towards future prospects and it comes to Rs.14,000/- per month. (Rs.10,000/- + 40%)

9. Since the deceased was a bachelor, 50 % of the income is to be deducted for personal and living expenses of the deceased and after such



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deduction, the income would be Rs.7,000/-. The Tribunal, taking note of the postmortem certificate, has fixed the age of the deceased at 23 years at the time of accident. As per the decision of the Hon'ble 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 '18'. But the Tribunal has wrongly applied the multiplier at '17'. Hence, the loss of dependency would be **Rs.15,12,000/-** (Rs.7,000 x 12 x 18).

10. The Tribunal has awarded Rs.10,000/- and Rs.25,000/- towards loss of love and affection and Rs.5,000/- towards transportation charges. Our Honourable Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently 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



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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.

11. Considering the above, the claimants 1 and 2 being the parents and the third claimant being the sister of the deceased, are entitled to get Rs.40,000/- each towards loss of consortium. The claimants are also entitled to get Rs.15,000/- towards loss of estate and Rs.15,000/- for funeral expenses under the conventional heads.

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



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Head of compensation	Amount awarded by the tribunal	Amount confirmed/modified by this Court
Loss of dependency	Rs. 14,28,000/-	Rs. 15,12,000/-
Loss of love and affection	Rs. 25,000/-	-
Loss of consortium claimants 1 to 3 (40,000x3)	-	Rs. 1,20,000/-
Transportation Charges	Rs. 5,000/-	-
Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
Loss of Estate	-	Rs. 15,000/-
Total	Rs. 14,68,000/-	Rs. 16,62,000/-

13. In view of the above, the claimants are entitled to get total compensation of **Rs.16,62,000/-**. 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 points are answered accordingly.

14. In the result, the Civil Miscellaneous Appeal is dismissed and the Cross Obj.(MD)No.4 of 2021, is partly allowed. The compensation amount is enhanced from **Rs. 14,68,000/- to Rs.16,62,000/-** with interest at 7.5% per annum. The appellant/Insurance Company is directed to deposit the modified/enhanced award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order



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and on such deposit, the first claimant/father of the deceased is entitled to get **Rs.4,62,000/-** lakhs and the second claimant/mother of the deceased is entitled to get **Rs.8,00,000/-** and the third claimant/sister of the deceased is entitled to get **Rs.4,00,000/-**, with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

29.09.2023

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

- 1.The Motor Accident Claims Tribunal
cum Principal District Judge, Ramanathapuram.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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