BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.07.2023

PRONOUNCED ON: 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.206 of 2018

1.Radhika
2.Minor Kirubakaran
3.Minor Gayathri Priya
(Minor appellants 2 and 3 are
represented by their mother and
guardian – first appellant herein)

4.Sellammal : Appellants / Petitioners

Vs.

1.K.Parthasarathi

2.M/s Reliance General Insurance Company Ltd.,
Rails Tower, Plot No.2054,
2nd Avenue, 2nd Floor,
Next to Senthil Nursing Home,
Anna Nagar,
Chennai-600 040. : Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Judgment and Decree made in M.C.O.P.No.344 of 2010, dated 22.11.2016 on the file of the Motor

Accident Tribunal/I Additional District Judge (PCR), Tiruchirappalli.

For Appellant : Mr.Kanimozhi Mathi

For Respondents :Mr.S.Srinivasa Raghavan for R.2

: No Appearance for R.1

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.344 of 2010, dated 22.11.2016, on the file of the Motor Accident Claims Tribunal / I Additional District Court, (PCR), Tiruchirappalli.

2. The appellants/claimants who were awarded with the compensation of Rs.20,05,000/- with interest at 7.5% p.a., for the death of one Ramamoorthi, consequent to an accident occurred on 28.04.2009, challenged the quantum of compensation awarded at by the Tribunal and claimed the enhancement of compensation.

3. The case of the claimants is that the deceased was running a computer centre by name Unites Carrier Computer Education, at Madipakkam, Chennai, that he was running Jawaharlal Nehru Natioal Youth Centre in Tamil Nadu and Andhra, which impart primary future training software teaching for the students and he was granted franchise for running centre for three years and he was having more than 15 branches, that the deceased was also carrying an weighing machine business as “K.G.Instruments”, that the deceased was aged 40 years at the time of accident and that the deceased was doing multi various revenue yielding business and was getting more than Rs.50,000/-p.m. The second respondent -Insurer has denied and disputed the above averments and further stated that the claim of Rs.40,00,000/- is highly excessive and exorbitant.

4. During enquiry, the claimants have examined the first claimant as P.W.1 and one Selvakumar as P.W.2 and exhibited 38 documents as Exs.P.1 to P.38. The first respondent had remained exparte. The second respondent- Insurer has adduced neither oral nor documentary evidence. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the

impugned order dated 22.11.2016, directing the second respondent -Insurer to pay compensation of Rs.20,05,000/- with interest at 7.5% p.a., from the date of petition till the date of deposit, excluding the period of default if any, with proporationate costs. Aggrieved by the quantum of award, the claimants have preferred the present appeal.

5. The learned Counsel for the appellants would submit that the Tribunal has granted a lesser compensation amount of Rs.20,05,000, as against the claim of Rs.40,00,000/-, that the Tribunal had erred in fixing the monthly income of the deceased at Rs.10,000/- per month, that the deceased was self employed at the time of accident and was running computer centre and Jawaharlal Nehru National Youth Centre with more than 15 branches, that the deceased was also having dealership business of weighing machines in the name of "KG Instruments", that the Tribunal erred in awarding addition of 30% of income towards future prospects while reckoning the monthly income of the deceased and that the Tribunal also erred in awarding lesser amounts for the loss of dependency, for loss of consortium, for the loss of estate and for the loss of love and affection.

6. 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?

7. The claimants have produced the pan card of the deceased Ramamoorthi under Ex.P.37 and wherein the date of birth of the deceased has been shown as 05.05.1969. Admittedly, the accident was occurred on 28.04.2009. Considering the above, it is clearly evident that the deceased was aged about 39 years, 11 months, 23 days at the time of occurrence. As rightly contended by the learned Counsel for the appellants, when the claimants have produced the pan card of the deceased, the Tribunal has committed an error in relying the postmortem certificate for fixing the age of the deceased. It is not the case of the second respondent or the Tribunal that Ex.P.37 – pan card was not a genuine document or that the particulars found therein are proved to be false.

8. The claimants have produced Exs.P.6 to P.38 to prove the educational and professional qualifications of the deceased and the institutions run by the deceased. No doubt, the claimants have also produced the copies of the Income Tax returns for the assessment years

2005-2006, 2006-2007, copy of Form – D – Income Tax return for the assessment year 2004-2005, copies of Form 2-D-Saral – Income Tax return for the assessment year 2005-2006 and 2006-2007 under Exs.P.10, P.11, P.21 to P.23 respectively.

9. The learned trial Judge has specifically observed that the claimants have mainly relied on Ex.P.23 to fix the income of the deceased. It is evident from Ex.P.23 - Income Tax return for the assessment year 2006-2007 that the income from the business has been shown as Rs.2,37,323/-. But as rightly pointed out by the learned trial Judge, it is pertinent to note that though the accident was occurred on 28.04.2009, the claimants have not chosen to produce the Income Tax return for the assessment years 2007-2008 and 2008-2009. Admittedly, the claimants have not produced any other material or evidence to prove the income from the computer centre and Jawaharlal Nehru Youth centre and from weighing machine business of KG Instruments.

10. Considering the educational and professional qualifications of the deceased and the institutions run by him, as rightly contended by the learned Counsel for the claimants, the fixation of monthly income at

Rs.10,000/- is on lower side and hence, this Court, taking note of the above aspects, fixed the monthly income at Rs.12,000/-.

11. The Tribunal, taking note of the age of the deceased as 40 years, has added 30% of the income towards future prospects.

12. The learned Counsel for the appellants would submit that the Tribunal has failed to consider that the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi*** reported in ***2017(2) TNMAC 609 (SC),*** has permitted for addition of 40% of the income where the deceased was below the age of 40 years.

13. No doubt, as rightly pointed out by the learned Counsel for the appellants/claimants, 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.

14. In the case on hand, as already pointed out, the deceased was below the age of 40 years at the time of accident. The Tribunal should have added 40% of the income as future prospects. Applying the dictum laid down in ***Pranay Sethi's case,*** taking note of the age of the deceased, this Court has no hesitation to hold that an addition of 40% of the established income should be added. After the addition towards future prospects, the monthly income would come to Rs.16,800/-. Considering the number of claimants, the Tribunal has rightly deducted 1/4th of the amount towards personal and living expenses of the deceased and after such deduction, the same would come to Rs.12,600/-. Considering the age of the deceased, the Tribunal has rightly applied the multiplier of "15", applying the decision of the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC).*** Hence, the loss of dependency would be Rs.22,68,000/- (Rs.12,600/-x12x15).

15. The Tribunal has granted a sum of Rs.1,00,000/- for the first claimant towards loss of consortium, Rs.25,000/- each to all the claimants for love and affection and Rs.25,000/- for loss of estate and Rs.25,000/- for funeral expenses.

16. 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.

17. Considering the above, the first claimant being the wife of the deceased is entitled to get Rs.40,000/- towards spousal consortium, the claimants 2 and 3 being the children of the deceased are entitled to get Rs.40,000/- each towards parental consortium and the fourth claimant being the mother of the deceased, is entitled to get Rs.40,000/- towards 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. Accordingly, the claimants are entitled to get the compensation as follows:

Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of dependency	17,55,000	22,68,000	enhanced
2	Loss of estate	25,000	15,000	reduced
3	Loss of love and affection	1,00,000	---	----
4	Loss of consortium	1,00,000	1,60,000 (Rs.40,000/- x4)	Enhanced
5	Funeral expenses	25,000	15,000	reduced
	Total	**Rs. 20,05,000**	**Rs. 24,58,000**	**enhanced**

18. In the result, the Civil Miscellaneous Appeal is partly allowed The compensation awarded by the Tribunal to the claimants is enhanced from **Rs.20,05,000/- to Rs.24,58,000/-** along with interest at 7.5%pa., from the date of petition till the date of realization and costs. The second respondent – Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.344 of 2010, on the file of the Motor Accident Claims Tribunal / I Additional District Court (PCR), Tiruchirappalli, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the first

claimant is entitled to withdraw Rs.10,00,000/- along with proportionate interest and costs, the second claimant is entitled to withdraw Rs. 5,00,000/- along with proportionte interest and costs, the third claimant is entitled to withdraw Rs.7,50,000/- along with proportionate interest and costs and the fourth claimant is entitled to withdraw Rs.2,08,000/- along with proportionate interest and costs on due application before the Tribunal. The parties are directed to bear their own costs.

07.08.2023

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

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To

1.The Motor Accident Claims Tribunal/
I Additional District Court, Tiruchirappalli.

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

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.206 of 2018

07.08.2023