BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.07.2023

Pronounced on : 07.08.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.182 of 2018

1. N.Kandavel

2. Minor K.R.Susema Devi

3. Minor K.Sujitha

(Minors 2nd and 3rd appellants are represented by their father and natural guardian i.e., 1st appellant)

4. M.Sangili Mala

5. M.Murugesan ... Appellants/ Petitioners

Vs.

1. A.Murugan

2. M/s.Bharti Axa General Insurance Co. Ltd.,
Represented through its Authorised Signatory,
Shri Ram Centre,
#180, Ground Floor,
P.P.Chavadi,
Theni Main Road,
Madurai. ... Respondents/ Respondents

(1st Respondent was set ex-parte before the Tribunal. Hence, 1st respondent herein may be dispensed with)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow the appeal and enhance the award passed in M.C.O.P.No.950 of 2014 on the file of the Motor Accident Claims Tribunal/III Additional District Judge (PCR), Madurai dated 22.08.2017.

For Appellants	: Mr.N.Sudhagar Nagaraj
For R2	: Mr.P.Pethu Rajesh

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.950 of 2014 dated 22.08.2017 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Madurai.

2. The appellants/claimants, who were awarded with compensation of Rs.18,22,000/- (Rupees Eighteen Lakhs and Twenty Two Thousand only) with interest at 7.5% per annum for the death of one Rajarajeswari, consequent to an accident occurred on 01.04.2014, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

3. Admittedly, the first appellant/first claimant is the husband, the appellants 2 and 3/claimants 2 and 3 are the minor daughters and the appellants 4 and 5/claimants 4 and 5 are the parents of the deceased Rajarajeswari.

4. The case of the appellants/claimants is that the deceased was a leading industrialist in the field of confectionery, that she was the sole proprietor of M/s.Leaa Foods (jelly manufacturing company) at Door No.3-5/60, Alanganallur Main Road, Meyyappan Patti, Madurai, that she was earning more than Rs.50,000/- per month and that therefore, the appellants/claimants are entitled to get Rs.1 crore as compensation.

5. The defence of the second respondent/insurer is that the appellants/claimants have not produced any proof of the occupation and income of the deceased and the fact that they have not been able to pay requisite Court fee, despite the tall claims made regarding income of the deceased, would go a long way to show that the deceased was not earning as alleged in the petition and that the claim for compensation at Rs.1 crore is grossly exaggerated and is untenable.

6. During enquiry, the appellants/claimants have examined the first appellant/first claimant Kandavel as P.W.1 and two other witnesses Murugan and Susila Devi as P.W.2 and P.W.3 respectively and exhibited 17 documents as Ex.P.1 to Ex.P.17. The first respondent/owner of the vehicle has remained ex-parte. The second respondent/insurer has summoned and examined Income Tax officer Uma Maheswari as R.W.1 and exhibited 3 documents as Ex.R.1 to Ex.R.3. 9 documents were exhibited as Court documents as Ex.C1 to Ex.C9.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, holding that the rash and negligent driving of the first respondent was responsible for the accident, has mulcted joint liability on the respondents 1 and 2 and directed them to pay compensation at Rs.18,22,000/- with interest at 7.5% per annum from the date of petition till realization. Aggrieved by the quantum of compensation awarded, the claimants have preferred the above appeal seeking enhancement.

8. The only point that arises for consideration is whether the

quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law?

9. The learned counsel appearing for the appellants/claimants would submit that the deceased was the sole proprietor of M/s.Leaa Foods and was earning more than Rs.50,000/- per month through her avocation, that the deceased was aged 32 years at the time of accident, that the deceased was an Income Tax assessee, that the Tribunal has failed to consider the Income Tax Returns of the deceased under Ex.P.10 to Ex.P.12 and Ex.R.1 to Ex.R.3, that the deceased had regularly been remitting the Income Tax till her death, that the Tribunal, without assigning any reason, has fixed the monthly income of the deceased at Rs.10,000/-, that the Tribunal has also erred in not adding any amount towards future prospects, that the Tribunal ought to have considered the educational expenses and marriage expenses of the minor daughters of the deceased and that therefore, the quantum of compensation awarded on lesser side is liable to be interfered with.

10. As already pointed out, the appellants/claimants have produced the Income Tax Returns for the assessment years 2011-2012, 2012-2013

and 2013-2014 under Ex.P.10 to Ex.P.12 respectively and whereas, the second respondent/insurer, by summoning the Income Tax officer-R.W.1, has produced the Income Tax Returns for the assessment years 2012-2013, 2013-2014 and 2014-2015 under Ex.R.1 to Ex.R.3 respectively. The Tribunal, by relying on Ex.R.1-Income Tax Return Form IV, has rightly fixed the age of the deceased as 32 years at the time of alleged occurrence. The Tribunal, by assigning some reasons, has not taken the Income Tax Returns into consideration for fixing the income of the deceased.

11. The learned counsel appearing for the appellants/claimants has relied on the decision of the Hon'ble Division Bench of this Court in ***Sri Vidya and another Vs. Leal Enterprise represented by its Proprietor and another*** reported in ***2023 (1) TN MAC 306 (DB)***, wherein, the deceased was a Chartered Accountant by profession and he was an Income Tax assessee and that Rs.5,78,730/- has been disclosed as 6 months' income for the year 2013-2014 under Ex.P.17 and a sum of Rs.54,246/- has been paid as Income Tax. In that case also, the Income Tax Returns came to be filed subsequent to the accident. The Hon'ble Division Bench has referred the judgment of the Hon'ble Supreme Court in ***Anjali and others Vs.***

Lokendra Rathod and others reported in ***2023 (1) TN MAC 1 (SC)***, where also, the Income Tax Returns came to be filed subsequent to the death and failure to file the Returns of the previous years was found fault with, by the Hon'ble Supreme Court. In the above decision case, the Tribunal has taken Ex.P.17 as a guiding factor to assess the loss of income, but not accepted in toto and hence, the Tribunal has restricted the estimated income at Rs.6,60,000/- with 25% future prospects. It is pertinent to note that in the above judgment, the finding of the Tribunal not to accept the Income Tax Return under Ex.P.17 wholly, came to be accepted by the Hon'ble Division Bench of this Court. Considering the above, it is clearly evident that the Income Tax Return filed subsequent to the accident is to be considered very carefully.

12. In the case on hand, the accident was occurred on 01.04.2014 and the deceased had died on that day itself, that the motor accident claim petition came to be filed on 06.06.2014 and that the Income Tax Returns came to be filed on 18.01.2016. Admittedly, the appellants/claimants have not chosen to produce the Income Tax Returns for the year prior to the period under Ex.P.10. Though the P.W.1 has earlier alleged that he has

been in possession of all the accounts books of his wife and the previous Income Tax Returns, such documents have not been filed. P.W.1 in his evidence would say that he was having Income Tax Return for the previous year, that he was having Sales Tax related documents to prove the entire documents under Ex.P.10 to Ex.P.12 and that there are no other reasons for non-production of the said records before the Tribunal. The learned trial Judge, taking note of the fact that the books of accounts, Sales Tax records and Income Tax Return for the period from 2011-2012 have not been produced and thereby, the appellants/claimants have withhold the material documents, has observed that the non-production of documents shall give rise to draw adverse inference that the documents have been suppressed. In the absence of any supporting documents, the finding of the Tribunal that it is not safe to fix the income of the deceased on the basis of the Income Tax Returns under Ex.P.10 to Ex.P.12, cannot be found fault with.

13. It is further evident that the appellants/claimants have claimed that the deceased was getting annual rental income at Rs.1,20,000/- and agricultural income was at Rs.2,29,000/- under Ex.P.10, annual rental

income was arrived at Rs.1,20,000/- and whereas agricultural income at Rs.2,06,952/- under Ex.P.11 and the rental income was assessed at Rs.1,20,000/- and agricultural income at Rs.1,58,000/- under Ex.P.12. Admittedly, the appellants/claimants have not produced any iota of evidence to show that the deceased was deriving any income from her house and from agricultural source. As rightly observed by the Tribunal, even as per the Income Tax Returns under Ex.P.10 to Ex.P.12, average monthly income of the deceased comes to Rs.18,051/-. Even assuming that the deceased was getting rental income and also income from agricultural source, there would be no loss of earnings in respect of the same as the same would be received by the appellants/claimants even after the death of the deceased and as such, there can be no loss of income of the deceased in respect of the rental and agricultural income. In the absence of books of accounts, ledgers, Income Tax Returns for the previous year and Sales Tax Returns, the Tribunal has rightly fixed the monthly income of the deceased at Rs.10,000/-.

14. No doubt, the Tribunal, by taking note of some of the judgments of this Court as well as the Hon'ble Supreme Court, has refused to award

any future prospects. But the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC),*** has concluded 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 learned trial Judge, taking note of the Income Tax Return Form IV-Ex.R.1, has fixed the age of the deceased as 32 and the same is not disputed by the second respondent/insurer. Applying the above decision of the Hon'ble Apex Court, 40% of the income is to be added towards future prospects and it comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/- (40% of the income)).

15. As per the dictum laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104,*** the learned trial Judge has deducted one-fourth (1/4th) of her income towards personal and living

expenses (Rs.14,000/- - Rs.3,500/- = Rs.10,500/-) and also rightly applied multiplier 16. Hence, the compensation towards loss of dependency would be Rs.20,16,000/- (Rs.10,500/- x 12 x 16).

16. The Tribunal has awarded Rs.1,00,000/- for loss of consortium to the first appellant/first claimant, Rs.1,00,000/- each to the appellants 2 and 3/claimants 2 and 3 for loss of love, care, guidance and affection and Rs.25,000/- each to the appellants 4 and 5/claimants 4 and 5 for loss of love and affection. Our Hon'ble Supreme Court in ***Pranay Sethi's case*** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the 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. The Hon'ble 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, the 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. The first appellant/first claimant being the husband of the deceased is entitled to get Rs.40,000/- towards spousal consortium, the appellants 2 and 3/claimants 2 and 3 being the daughters of the deceased are entitled to get Rs.40,000/- each towards parental consortium and the appellants 4 and 5/claimants 4 and 5 being the parents of the deceased are entitled to get Rs.40,000/- each towards filial consortium. As per the legal dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma's*** case, the appellants/claimants are entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads. Hence, the appellants/claimants are entitled to get total compensation of Rs.22,46,000/-. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their

own costs and the above point is answered accordingly. The compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	14,40,000	20,16,000	Enhanced
2.	Loss of spousal consortium (1st appellant)	1,00,000	40,000	Reduced
3.	Loss of parental consortium (appellants 2 and 3)	2,00,000	80,000 (40,000 x 2)	Reduced
4.	Loss of filial consortium (appellants 4 and 5)	50,000	80,000 (40,000 x 2)	Enhanced
5.	Funeral expenses	25,000	15,000	Reduced
6.	Transport charge	2,000	Nil	Nil
7.	Loss of estate	5,000	15,000	Enhanced
	Total	**18,22,000**	**22,46,000**	**Enhanced by Rs.4,24,000/-**

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,22,000/- (Rupees

Eighteen Lakhs and Twenty Two Thousand only) is hereby enhanced to **Rs.22,46,000/- (Rupees Twenty Two Lakhs and Forty Six Thousand only)** together with interest at 7.5% per annum. The respondents 1 and 2 are directed to deposit the modified award amount with interest and costs to the credit of M.C.O.P.No.950 of 2014 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Madurai, after deducting 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 appellant/first claimant is entitled to get **Rs.4,46,000/- (Rupees Four Lakhs and Forty Six Thousand only),** the appellants 2 and 3/claimants 2 and 3 are entitled to get **Rs.7,00,000/- (Rupees Seven Lakhs only)** each and the appellants 4 and 5/claimants 4 and 5 are entitled to get **Rs.2,00,000/- (Rupees Two Lakhs only)** each. Accordingly, the first appellant/first claimant, the second appellant/second claimant, who has attained majority and the appellants 4 and 5/claimants 4 and 5 are permitted to withdraw their shares along with accrued interest and costs and the share of the minor third appellant/third claimant shall be deposited in any one of the Nationalised Banks till she attain majority. The first appellant/first claimant, who is the father of the minor third appellant/third claimant is permitted to withdraw the interest of minor once in three months directly from the Bank. 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/
III Additional District Judge (PCR), Madurai.

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.182 of 2018**

Dated : 07.08.2023