



C.M.A.(MD)No.1033 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.08.2023

Pronounced on : 26.09.2023

CORAM:

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

C.M.A.(MD)No.1033 of 2016

and

C.M.P.(MD)No.9277 of 2016

The National Insurance Company Limited,
No.3, North Veli Street,
Madurai – 625 001.

... Appellant/
2nd Respondent

Vs.

1. P.Muthuramalingam

2. M.Mohanavalli

3. M.Sindhuja Devi @ Sindhuja

...Respondents 1 to 3/
Petitioners

4. S.Ramesh

... 4th Respondent/
1st Respondent

*(4th respondent exparte in Tribunal : Notice
dispensed with)*

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree in M.C.O.P.No.



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727 of 2009 dated 12.04.2016 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai and allow the appeal with costs.

For Appellant : Mr.J.S.Murali
For R1 & R2 : Mr.J.Sankarapandian
For R3 & R4 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.727 of 2009 dated 12.04.2016 on the file of the Motor Accident Claims Tribunal/District and Sessions Court (Communal Clash Cases), Madurai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.17,55,023/- (Rupees Seventeen Lakhs Fifty Five Thousand and Twenty Three only) with interest at 7.5% per annum to the respondents 1 to 3/claimants for the death of one Praveen, consequent to an accident occurred on 20.01.2009, challenged the quantum of compensation awarded at, by the Tribunal.



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3. Admittedly, the first respondent/first claimant is the father, the second respondent/second claimant is the mother and the third respondent/third claimant is the sister of the deceased Praveen.

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

5. The case of the respondents 1 to 3/claimants is that the deceased was studying 3rd year in Diploma course in Electronics and Communication Engineering at K.L.N. Polytechnic, Madurai and that he was aged 19 years at the time of accident.

6. The learned counsel appearing for the appellant/insurer would submit that the Tribunal erred in fixing the notional monthly income of the deceased at Rs.10,000/- (Rupees Ten Thousand only), which is on the higher side and the Tribunal ought to have fixed the notional monthly income of the deceased as Rs.6,000/- (Rupees Six Thousand only), that the Tribunal erred in taking the age of the deceased, instead of age of the mother for adopting the multiplier, that the Tribunal has also erred in



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adding 50% of the income towards future prospects and that the compensation awarded at Rs.17,55,023/- (Rupees Seventeen Lakhs Fifty Five Thousand and Twenty Three only) is highly excessive and without any basis.

7. Admittedly, the deceased was doing his 3rd year in Diploma course in Electronics and Communication Engineering at K.L.N. Polytechnic, Madurai. Admittedly, the accident was occurred on 20.01.2009. The Tribunal, by observing that since the deceased was studying Electronics and Communication Engineering, he had prospects of earning decent salary, has fixed the notional income of the deceased at Rs.10,000/- (Rupees Ten Thousand only) per month.

8. As rightly contended by the learned counsel appearing for the appellant/insurer, the notional monthly income fixed at Rs.10,000/- (Rupees Ten Thousand only) is certainly on higher side and taking note of the educational qualification and the age of the deceased, this Court fixes the notional monthly income of the deceased at Rs.9,000/- (Rupees Nine Thousand only).



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9. The Tribunal has added 50% of the income towards future prospects. Our Hon'ble Supreme Court, in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700***, 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 deceased was aged 19 years at the time of accident and the same is not disputed by the appellant/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.12,600/- (Rs.9,000/- + Rs.3,600/- (40% of the income)).

10. Since the deceased was a bachelor, the Tribunal has rightly deducted 50% of the income towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.6,300/- (Rs.12,600/- - Rs.6,300/-). The Tribunal, as per the dictum laid down in ***Sarla Verma and others Vs. Delhi Transport Corporation and***



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another reported in **AIR 2009 SC 3104**, has rightly applied the multiplier on the basis of the age of the deceased at 18. Hence, the loss of dependency would be Rs.13,60,800/- (Rs.6,300/- x 12 x 18).

11. The Tribunal, as per Ex.P.3-medical bills, has rightly awarded Rs.1,15,023/- (Rupees One Lakh Fifteen Thousand and Twenty Three only) towards medical expenses.

12. The Tribunal has not awarded any amount towards loss of consortium and under the conventional heads. 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



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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.

13. Considering the above, the respondents 1 and 2/claimants 1 and 2 being the parents and the third respondent/third claimant being the sister of the deceased are certainly entitled to get Rs.40,000/- (Rupees Forty Thousand only) each towards loss of consortium. The respondents 1 to 3/claimants are also entitled to get Rs.15,000/- (Rupees Fifteen Thousand only) for funeral expenses and Rs.15,000/- (Rupees Fifteen Thousand only) for loss of estate under the conventional heads. Considering the above, the respondents 1 to 3/claimants are entitled to get total compensation of Rs.16,25,823/- (Rupees Sixteen Lakhs Twenty Five Thousand Eight Hundred and Twenty Three only). Accordingly, the compensation awarded by the Tribunal is modified as follows:-



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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 dependency	16,20,000	13,60,800	Reduced
2.	Medical expenses	1,15,023	1,15,023	Confirmed
3.	For loss of love and affection	10,000	Nil	Nil
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Loss of consortium	Nil	1,20,000 (40,000/- x 3)	Granted
6.	Loss of estate	Nil	15,000	Granted
	Total	17,55,023	16,25,823	Reduced by Rs.1,29,200/-

14. 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.

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,55,023/- (Rupees Seventeen Lakhs Fifty Five Thousand and Twenty Three only) is hereby



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reduced to **Rs.16,25,823/- (Rupees Sixteen Lakhs Twenty Five Thousand Eight Hundred and Twenty Three only)** together with interest at 7.5% per annum and out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.4,00,000/- (Rupees Four Lakhs only)**, the second respondent/second claimant is entitled to get **Rs.9,75,823/- (Rupees Nine Lakhs Seventy Five Thousand Eight Hundred and Twenty Three only)** and the third respondent/third claimant is entitled to get **Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only)**. The appellant/insurer is directed to deposit the modified award amount with interest and costs to the credit of M.C.O.P.No.727 of 2009 on the file of the Motor Accident Claims Tribunal/District and Sessions Court (Communal Clash Cases), 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. On such deposit being made, the respondents 1 to 3/claimants are entitled to get their shares as per the apportionment fixed by this Court. The respondents/claimants are permitted to withdraw their shares together with interest and costs, on due application before the Tribunal. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer. Parties are



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directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/District and Sessions Court
(Communal Clash Cases), Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.1033 of 2016
and
C.M.P.(MD)No.9277 of 2016

Dated : .09.2023