



C.M.A(MD)No.1204 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.08.2023

PRONOUNCED ON:11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**C.M.A(MD)No.1204 of 2016
and
C.M.P.(MD)No.10559 of 2016**

Bharti Axa General Insurance Company Ltd.,
1st Floor, Diviya trade centre,
Salem. : Appellant/2nd Respondent

Vs.

1.Sakayarani
2.Minor Lakshana
(Minor represented by her next friend
guardian and mother first respondent)

3.Annavi
4.Valarmathy : Respondents 1 to 4 /
Petitioners 1 to 4

5.Mathu : 5th Respondent/1st Respondent

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.271 of 2014, on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Kulithalai, dated 07.12.2015.



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For Appellant : Mr.P.Pethu Rajesh

For Respondents :Mr.M.Saravanan
for R.1 to R.4

: No Appearance for R.5-

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.271 of 2014, dated 07.12.2015, on the file of the Motor Accident Claims Tribunal / Subordinate Court, Kulithalai.

2. The appellant/Insurer, who was made liable to pay the compensation of Rs.17,84,670/- with interest at 7.5%p.a., to the respondents 1 to 4 / claimants for the death of one Krishnamoorthy, consequent to an accident occurred on 02.03.2014, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. When the matter was taken up for hearing, though the appellant-Insurer has challenged the liability mulcted on it, the learned Counsel for



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the appellant would submit that they are only disputing the quantum of compensation awarded at by the Tribunal.

4. Admittedly, the first respondent/first claimant is the wife, the second respondent/second claimant is the daughter and the respondents 3 and 4/claimants 3 and 4 are the parents of the deceased Krishnamoorthy.

5. The case of the claimants is that the deceased Krishnamoorthy was aged about 24 years at the time of accident, that he was working as an electrician under the chief electrician Subramanian, son of Periyasamy residing at Marudur, Marudur Village, Kulithalai Taluk and he was earning Rs.22,500/- per month and batta at Rs.50/- per day and that they are entitled to get compensation of Rs.25,00,000/-.

6. The appellant/Insurer has disputed the age, employment and income of the deceased. The claimants have examined the first claimant Sahayarani as P.W.1 and three other witnesses as P.W.2 to P.W.4 and exhibited 13 documents as Exs.P.1 to P.13. The first respondent has remained exparte. The appellant/Insurer has examined one witness Mathu as R.W.1 and adduced no documentary evidence. The learned



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trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned order dated 07.12.2015, directing the appellant/Insurer to pay the compensation of Rs.17,84,670/- with interest at 7.5%p.a., from the date of petition till the date of payment. Aggrieved by the impugned award, the Insurer has come forward with the present appeal.

7. 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?

8. The learned Counsel for the appellant would submit that the deceased had no permanent job or permanent income and he was in self-employment, that the Tribunal without taking note of the decisions of the Hon'ble Supreme Court, has added 50% of the income towards future prospects and as such, the awarding of future prospects is legally unsustainable, that the award of Tribunal on the heads of loss of love and affection, loss of consortium are all excessive and that the total compensation awarded at by the Tribunal is also excessive and exorbitant.



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9. The claimants, in order to prove the avocation and income of the deceased, have chosen to examine one Balamurugan as P.W.4, who is the son of one Subramanian, allegedly the chief electrician, under whom the deceased was working as an electrician. The claimants have not even chosen to examine the said chief electrician Subramanian. Except examining P.W.4, the claimants have not produced any iota of evidence to prove the avocation and the income of the deceased.

10. Though the claimants have alleged that the deceased was getting monthly salary of Rs.22,500/- and batta of Rs.50 per day, they have not produced any evidence to substantiate the same. In the absence of any evidence, the Tribunal, taking note of the job of the electrician and also the fact that the deceased had completed 10th std., and his age, has rightly fixed the monthly income at Rs.6,500/-. The Tribunal, taking note of the postmortem certificate, has fixed the age of the deceased at 24 years and the same was not specifically disputed by the Insurer.

11. As rightly pointed out by the learned Counsel for the appellant, the Tribunal has added 50% of the income towards future prospects. But



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according to the learned Counsel for the appellant, since the deceased was not having any permanent job or permanent income and he was only in self-employment, no amount can be added towards future prospects. 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. In the case on hand, the age of the deceased was fixed at 25 years and the same was not disputed.

12. Considering the above, an addition of 50% of the income towards future prospects is not proper and after addition of 40%, the monthly income would come to Rs.9,100/-. The Tribunal has rightly deducted 1/4th of the income towards personal and living expenses of the deceased and after such deduction, it would come to Rs.6825/-. As per the dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in



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2009(2) TNMAC 1 (SC), the Tribunal has rightly applied the multiplier “18” and hence, the loss of dependency would be Rs.14,74,200/- (Rs. 6,825/- x 18x12).

13. The Tribunal has awarded Rs.30,000/- for loss of consortium and for loss of love and affection to the first claimant and Rs.30,000/- for the loss of love and affection for the minor child and Rs.10,000/- each for the claimants 3 and 4 towards loss of love and affection.

14. The learned Counsel for the appellant would submit that all the claimants are entitled to get Rs.40,000/- towards loss of consortium. But the learned Counsel for the respondents has relied on the decision of the Three Judges Bench of the Hon'ble Supreme Court in United India Insurance Company Ltd., Vs. Satinder Kaur @Satwinder Kaur and others reported in 2020(2) TN MAC 1 (SC), whereunder the Hon'ble Apex Court, on the basis of the judgments in Pranay Sethi's case and Magma General Insurance Company Ltd, case, has awarded Rs.40,000/- each to the claimants towards loss of consortium.



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15. 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. Subsequently, 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.



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16. The learned Counsel for the respondents has relied on the decision of the Hon'ble Supreme Court in *Anjali and others Vs. Lokendra Rathod and others* reported in **2023(1) TN MAC 1 (SC)**, wherein the Hon'ble Apex court has directed to add an increment of 10% to the conventional heads, as per the dictum laid down in *Pranay Sethi's* case.

17. Considering the above, the first claimant being the wife of the deceased is entitled to get Rs.44,000/- towards loss of spousal consortium, the second claimant being the daughter of the deceased is entitled to get Rs.44,000/- towards parental consortium and the claimants 3 and 4 being the parents of the deceased are entitled to get Rs.44,000/- each towards loss of 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. The Tribunal, taking note of the medical bills, has rightly awarded Rs.88,550/- towards medical expenses. Accordingly, the claimants are entitled to get the compensation as follows:



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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	15,81,120	14,74,200	reduced
2	For pain and suffering	10,000	-----	-----
3	Loss of love and affection	80,000 (30,000+30,000 +10,000+10,000)	---	----
4	Loss of consortium	-----	1,76,000 (Rs. 44,000/-x4)	granted
5	Funeral expenses	25,000	15,000	reduced
6	For Medical Bills	88,550	88,550	confirmed
7	Loss of estate		15,000	granted
	Total	Rs. 17,84,670/-	Rs. 17,68,750	reduced

18. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal to the claimants is reduced from **Rs.17,84,670/-/- to Rs.17,68,750/-** along with interest at 7.5%pa., from the date of petition till the date of realization and costs. The appellant– 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.271 of 2014, on the file of the Motor Accident Claims



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Tribunal / Subordinate Court, Kulithalai, 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.8,00,000/- along with proportionate interest and costs, the third claimant is entitled to withdraw Rs.1,00,000/- along with proportionate interest and costs and the fourth claimant is entitled to withdraw Rs.2,68,750/- along with proportionate interest and costs on due application before the Tribunal. The second claimant is entitled to get Rs.6,00,000/- along with proportionate interest and costs. The second claimant being a minor, the minor's share shall be deposited in any Nationalized Bank till she attains majority and till then, the first claimant/mother is entitled to withdraw the interest once in six months directly from the Bank, for the maintenance of the minor. Consequently, the connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

11.08.2023

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

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To

- 1.The Motor Accident Claims Tribunal/
Subordinate Court, Kulithalai.
- 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 JUDGMENT MADE IN

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