BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.07.2023

PRONOUNCED ON:19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.60 of 2016

1.Karuthapandian
2.Mallika : Appellants/Petitioners

Vs.

1.Pugalanthi

2.The New India Assurance Company Ltd.,
through its Branch Manager,
No.1449, Tenkasi Road,
Rajapalayam. : 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.851 of 2013, on the file of the Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli, dated 12.08.2014.

For Appellant : Mr.T.Selvakumaran

For Respondents :Mr.J.S.Murali
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.851 of 2013, dated 12.08.2014, on the file of the Motor Accident Claims Tribunal / II Additional District Court, Tirunelveli.

2. The claimants, who were awarded with compensation of Rs.6,93,000/- with interest at 8%p.a., payable by the second respondent for the death of one Senthilkumar, consequent to an accident occurred on 09.05.2013, challenged the quantum of compensation awarded and prayed for enhancement of compensation.

3. The main contention of the appellants/claimants is that the Tribunal ought to have fixed the monthly income at Rs.12,000/-, that the Tribunal ought to have granted Rs.1,00,000/- under the head of love and affection for the parents, that the award granted by the Tribunal is very low and that therefore, the claimants are constrained to prefer the present Civil Miscellaneous Appeal seeking enhancement.

4. 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?

5. The learned Counsel for the appellant would submit that the deceased was a MBA graduate and was working in Shri Ram Chit Fund (P) Ltd., at Kovilpatti and that he was getting a monthly salary of Rs.15,000/-. It is evident from the records that the claimants have produced the professional certificate of the deceased to show that he had completed B.Com., course in 2009. They have also produced the statement of the accounts maintaining with City Union Bank, Kovilpatti Branch as Ex.P.4. But as rightly pointed out by the learned Counsel for the Insurer, the Bank statement does not contain any entry with regard to

the credit of salary from his employer Shri Ram Chit Fund (P) Ltd.,

6. Admittedly, the claimants have not produced any iota of materials to prove the avocation and the income of the deceased. Though the claimants have alleged that the deceased was a MBA graduate, they have not produced any record to show that he had completed MBA. But on the other hand, as already pointed out, they have produced professional certificate under Ex.P.3, wherein it has been shown that he has completed B.Com., course. The Tribunal, by relying on Ex.P>2 – postmortem certificate, has fixed the age of the deceased as 25 years at the time of alleged occurrence. Neither the appellants nor the second respondent has disputed the said finding.

7. The learned Counsel for the claimants would submit that the Tribunal ought to have followed the method of calculating the income by using cost of inflation index.

8. Considering the above facts and circumstances and also the fact that the deceased was a B.Com., graduate and was working in a Chit Fund company and taking note of his age, the monthly income fixed by

the Tribunal at Rs.7,000/- is on the lower side and hence, this Court is inclined to fix the monthly income at Rs.9,000/-. 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.

9. Considering the above and the legal dictum laid down by the Hon'ble Supreme Court in ***Pranay Sethi's case,*** an addition of 40% of the income is to be added towards future prospects and as such, the monthly income would come to Rs.12,600/- Since the deceased was a bachelor, 50% of the income has to be deducted towards personal expenses of the deceased. On deduction of 50%, the monthly income comes to Rs.6,300/-p.m. As rightly contended by the learned Counsel appearing on either side, the Tribunal has rightly applied the multiplier of

"18". Hence, the loss of dependency would be at Rs.13,60,800/- (Rs.6,300/-x12x18)

10. In the case on hand, the Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection and for funeral expenses at Rs.25,000/-.

11. 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.

12. Considering the above, the claimants 1 and 2 being the parents of the deceased, are entitled to Rs.40,000/- 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. As rightly contended by the learned Counsel for the second respondent, the claimants are entitled to get interest at 7.5% p.a., from the date of petition till the date of realization. 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	6,48,000	13,60,800	enhanced
2	Loss of estate	......	15,000	granted
3	Loss of love and affection	20,000	---	----
4	Loss of consortium	-----	80,000 (Rs.40,000/- x2)	granted
5	Funeral expenses	25,000	15,000	reduced
	Total	**Rs. 6,93,000/-**	**Rs. 14,70,800/-**	**enhanced**

13. In the result, the Civil Miscellaneous Appeal is partly allowed The compensation awarded by the Tribunal to the claimants is enhanced from **Rs.6,93,000/- to Rs.14,70,800/-** 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.851 of 2013, on the file of the Motor Accident Claims Tribunal / II Additional District Court, Tirunelveli, 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.4,70,800/- along with proportionate interest and costs and the second claimant is entitled to withdraw Rs.10,00,000/- along with proportionte interest and costs on due application before the Tribunal. The parties are directed to bear their own costs.

19.07.2023

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

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To

1.The Motor Accident Claims Tribunal/
II Additional District Court, Tirunelveli.

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.60 of 2016

19.07.2023