BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.09.2023

PRONOUNCED ON:24.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.940 of 2018

1.Leela
2.Sudalamani
3.Valli
4.Uchimahali
Gomathy(died) : Appellants/Petitioners

Vs.

1.Balasubramanian

2.Shri Ram General Insurance Company Ltd.,
through its Branch Manager,
2nd Floor, 25, B2/1S, SRC Complex,
North Block, S.N.High Road,
Tirunelveli.

3.Durairaj
(R.3 given up vide Court order dated 16.08.2023)

4.Iffco-Tokio General Insurance Company Ltd.,
through its Branch Manager,
No.335/1-A, V.V.Complex,
North Bye-pass road,
Vannarapettai,
Tirunelveli. : 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.1189 of 2012, on the file of the Motor Accident Claims Tribunal, (III Additional District Judge), Tirunelveli, dated 08.04.2013.

For Appellant : Mr.T.Selvakumaran

For Respondents :Mr.D.Sivaraman
for R.2
:Mr.V.Sakthivel
for R.4
: No Appearance for R.1
: R.3- given up

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1189 of 2012, dated 08.04.2013, on the file of the Motor Accident Claims Tribunal / III Additional District Court, Tirunelveli.

2. The appellants/claimants who were awarded with compensation of Rs.3,65,000/- with interest at 8% p.a., payable by the second respondent/Insurer consequent to an accident occurred on 05.08.2013, 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 wife, the second appellant/second claimant is the son and the claimants 3 to 5 are the daughters of the decesed Krishnan. Pending appeal, the fifth claimant Gomathi had died. The case of the claimants is that the deceased Krishnan was a driver by profession and was working as a driver in Sri Ganapathy Motors, Tirunelveli and that he was earning monthly income of Rs.15,000/- and batta.

4. During trial, the claimants have examined the first claimant as P.W.1 and exhibited 7 documents as Exs.P.1 to P.7. The respondents 1 and 2 had remained exparte. On the side of the fourth respondent, their Executive Officer was examined as R.W.1 and their investigation report was exhibited as Ex.R.1. 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 08.04.2013 by holding that the first respondent's driver was responsible for the accident, mulcted the liability on the second respondnet and thereby directed the second respondnet / Insurer to pay the compensation of Rs.3,65,000/- with interest and costs and dismissed the claim petition as against the respondents 3 and 4. Aggrieved by the quantum of compensation, the claimants have preferred the present appeal.

5. The learned Counsel for the appellants would submit that the Tribunal ought to have fixed the monthly income of the deceased as Rs.15,000/-, as he was possessing heavy vehicle licence at that time, that the Tribunal ought to have calculated the loss of dependency as Rs.12,15,000/-, that the Tribunal ought to have granted Rs.1,00,000/- for loss of love and affection and Rs.1,00,000/- for the first claimant for loss of companion and Rs.25,000/- for funeral expenses and Rs.1,00,000/- under the head of guidance and that the compensation awarded by the Tribunal is on the lower side and that therefore, the claimants were constrained to prefer the present appeal seeking enhancement.

6. The claimants have produced the driving licence of the deceased Krishnan as Ex.P.7, wherein it is evident that he was authorised to drive transport vehicle with Badge Number. But as rightly contended by the learned Counsel for the respondents, the claimants have not produced any iota of evidence to prove the income of the deceased.

7. As rightly pointed out by the learned Counsel for the appellants, the Hon'ble Supreme Court in ***Syed Sadiq Vs. United India Insurance***

Co., Ltd., reported in ***2014(1) TNMAC 459***. has notionally fixed the monthly income of a vegetable vendor at Rs.6,500/-. The Hon'ble Division Bench of this Court, by taking the notional income of Rs. 6,500/- fixed by the Hon'ble Apex Court during the year 2008, has calculated the notional income of the deceased by applying the cost of inflation index issued by the Central Board of Direct Tax, dated 13.06.2008. As per the above said index, the cost of inflation index for the year 2008-2009 is 137 and for the year 2012-2013 is 200. Applying the above, the notional income of the deceased would come to Rs.9,500/- (Rs.6500/-x200/137=9498 rounded of to Rs.9,500/-)

8. It is evident from Ex.P.7 driving licence that the deceased was born on 06.10.1952 and the accident was occurred on 05.08.2012 and on that basis, the trial Court has fixed the age of the deceased as 60. But as rightly contended by the learned Counsel for the appellants / claimants, since he was born on 06.10.1952 , he has not completed 60 years of age on the date of accident. The Tribunal has deducted 1/3rd of the income towards personal and living expenses of the deceased. But as per 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), considering the number of claimants, 1/4th of the income has to be deducted for personal and living expenses and after such deduction, the monthly income would be Rs.7,125/-. As per the decision of the Sarla Verma's case, the proper multiplier would be "9" and as such, the loss of dependency would be Rs.7,69,500/-. The Tribunal has awarded Rs.10,000/- for funeral expenses and Rs.60,000/- for loss of love and affection and loss of consortium.

9. 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.

10. Considering the above, the first claimant being the wife, is entitled to Rs.40,000/- towards loss of spousal consortium and the claimants 2 to 4 being the children of the deceased are entitled to Rs.40,000/- each towards loss of parental consortium and the 5th claimant, who was very much alive at the time of passing of the award by the Tribunal and being the daughter, is also entitled to get Rs.40,000/- towards loss of parental consortium. The claimants are entitled to get Rs. 15,000/- each towards loss of estate and funeral expenses respectively under the conventional heads. 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	2,95,000	7,69,500	enhanced
2	Loss of estate	......	15,000	granted
3	Loss of love and affection	60,000	---	----
4	Loss of consortium	-----	1,60,000 (Rs.40,000/- x4)	granted
5	Funeral expenses	10,000	15,000	Enhanced
	Total	**Rs. 3,65,000/-**	**Rs. 9,59,500/-**	**enhanced**

11. Though the claimants have restricted their appeal to the value of Rs.3,00,000/-, this Court is inclined to enhance the compensation as per the dictum laid down by the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others (C.A.No.476 of 2020 dated 21.01.2020)*** wherein, the Hon'ble Apex Court has held as follows:-

> *"2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-*

Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants."

12. In the result, the Civil Miscellaneous Appeal is allowed. The compensation awarded by the Tribunal to the claimants is enhanced from **Rs.3,65,000/- to Rs.9,59,500/-** along with interest at 7.5%pa., from the date of petition till the date of realization and costs, excluding the default period if any. 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.1189 of 2012, on the file of the Motor Accident Claims Tribunal / III 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.6,59,500/-

along with proportionate interest and costs and the claimants 2 to 5 are entitled to 75,000/- each along with proportionte interest and costs on due application before the Tribunal. Since the fifth claimant died, her legal heirs are entitled to get the amount from the Tribunal by filing necessary application on proof of their entitlement. The parties are directed to bear their own costs. The appellants/claimants are directed to pay the balance Court fees for the enhanced amount, as per the existing Rules.

24.11.2023

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

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To

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

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

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.940 of 2018

24.11.2023