



C.M.A(MD)No.899 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.07.2023

PRONOUNCED ON: 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.899 of 2019

and

C.M.P.(MD)No.12032 of 2019

National Insurance Company Ltd.,
D.O.II No.127, Aruvi Block 1st Floor,
St.Paul's Complex, Bharathiyar Salai,
Trichy-1.

: Appellant/2nd Respondent

Vs.

1.Kosalram

2.Keethika

3.Minor Kaviya

(Minor represented by his guardian

and father of the first respondent) : Respondents /Petitioners 1 to 3

4.Felix Paul Raj

: 4th 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.847 of 2017, dated 04.07.2019, on the file of the Motor Accident Tribunal/Special District Court, Tiruchirappalli.



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For Appellant : Mr.N.S.Ramakrishnadass

For Respondents :Mr.N.Sudhagar Nagaraj
for R.1 and R.2
: R.3 minor represented by R.1
: No Appearance for R.4

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.847 of 2017, dated 04.07.2019, on the file of the Motor Accident Claims Tribunal / Special District Court, Tiruchirappalli.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.13,81,512/- with interest at 7.5% p.a., to the respondents 1 to 3 / the claimants 1 to 3 for the death of one Vidhya consequent to the accident occurred on 18.05.2017, challenged the quantum of compensation awarded at by the Tribunal.



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3. Admittedly, the first respondent/first claimant is the husband, the respondents 2 and 3/claimants 2 and 3 are the daughters of the deceased Vidhya. In the said accident, the second claimant had also sustained injuries and hence, she has filed a claim petition in M.C.O.P.No.848 of 2017. The Tribunal, after joint enquiry, has passed a common award dated 04.07.2019, directing the appellant/Insurer to pay Rs.13,81,512/- to the respondents 1 to 3/claimants 1 to 3 herein and Rs.25,000/- to the second claimant for the injuries suffered by her.

4. The case of the claimants is that the deceased Vidhya was aged 45 years at the time of accident and that she was employed as ladies tailor and was earning a sum of Rs.20,000/- p.m. The appellant/Insurer has denied and disputed the above averments. The claimants have examined the claimants 1 and 2 as P.W.1 and P.W.2 respectively and exhibited 8 documents as Exs.P.1 to P.8. The appellant/Insurer has adduced neither oral nor documentary evidence.

5. 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?



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6. The learned Counsel for the appellant would submit that the Tribunal without any evidence, has wrongly fixed the monthly income of the deceased at Rs.6,500/-, that when the claimants have alleged that the deceased was doing tailoring work and was getting Rs.20,000/-p.m., they have not produced any evidence to prove the same, that the deceased was only a house wife and was not doing any work, that the Tribunal instead of adding 25% of the income towards future prospects, has wrongly added 30% and that the claimants have also not proved the age of the deceased, but the Tribunal, without considering the same, has fixed the age of the deceased at 45 years and applied multiplier “14”.

7. The learned Counsel would further submit that the Tribunal has granted Rs.2,00,000/- for love and affection, which is very much against the decision of the Hon'ble Supreme Court and that therefore, the amount awarded by the Tribunal is liable to be interfered with.

8. As already pointed out, though the claimants have alleged that the deceased was doing tailoring work and was earning Rs.20,000/- p.m.,



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they have not produced any iota of evidence to prove the tailoring work done by the deceased and the income earned by her. But the Tribunal has specifically observed that P.W.1 and P.W.2 have given categorical evidence that the deceased was doing tailoring work. Considering the above and also the fact that the accident was occurred on 18.05.2017, the fixation of monthly income of the deceased at Rs.6,500/- cannot be found fault with.

9. The Tribunal, taking note of the postmortem certificate, has fixed the age of the deceased as 45 years. As rightly contended by the learned Counsel for the appellant, the Tribunal has added 30% of the income towards future prospects.

10. 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



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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 45 years and the same was not disputed.

11. Considering the above and the legal dictum laid down by the Hon'ble Supreme Court in ***Pranay Sethi's case***, an addition of 25% of the income is to be added towards future prospects and as such, the monthly income would come to Rs.8,125/-. Considering the number of claimants, the Tribunal has rightly deducted 1/3rd of the income towards personal and living expenses of the deceased. After such deduction, the monthly income would come to Rs.5,417/-. The Tribunal as per the dictum laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC)***, has rightly applied the multiplier "14". Hence, the loss of dependency would be Rs.9,10,056/- (Rs.5,417/-x12x14)



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12. The Tribunal, considering the medical bills under Exs.P.6 and P.7, has rightly awarded Rs.1,80,000/- towards medical expenses. The Tribunal has further awarded Rs.40,000/- towards of loss of consortium for the first claimant and Rs.1,00,000/- each for the claimants 2 and 3 towards loss of love and affection and Rs.15,000/- for funeral expenses and transport expenses.

13. 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



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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.

14. Considering the above, the first claimant being the husband of the deceased is entitled to get Rs.40,000/- towards spousal consortium and the claimants 2 and 3 being the children of the deceased are entitled to get Rs.40,000/- each towards parental 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. 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	9,46,512	9,10,056	reduced
2	Loss of estate		15,000	granted
3	Loss of love and affection	2,00,000	---	----
4	Loss of consortium	40,000	1,20,000 (Rs.40,000/- x3)	Enhanced
	For Medical Bills	1,80,000	1,80,000	confirmed
5	Funeral expenses and transport expenses	15,000	15,000	confirmed
	Total	Rs. 13,81,512	Rs. 12,40,056/-	reduced

15. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal to the claimants is reduced from **Rs.13,81,512/-** to **Rs.12,40,056/-** along with interest at 7.5%pa., from the date of petition till the date of realization and costs. The second 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.847 of 2017, on the file of the Motor Accident Claims Tribunal / Special District Court, Tiruchirappalli, less the amount already deposited, if any, within a period of four weeks from the date of receipt



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of a copy of this Judgment and on such deposit, the first claimant is entitled to withdraw Rs.3,40,056/- along with proportionate interest and costs, the second claimant is entitled to withdraw Rs.4,25,000/- along with proportionate interest and costs and the third claimant is entitled to withdraw Rs.4,75,000/- along with proportionate interest and costs on due application before the Tribunal. The 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/
The Special District Court, Tiruchirappalli.
- 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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