



C.M.A(MD)No.738 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 14.08.2023

Pronounced On : 29.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

C.M.A(MD)No.738 of 2019

1.B.Pratheepa

2.Minor.B.Vasanth

3.Minor B.Dhanalakshmi

4.P.Karuppayee : Appellants/Petitioners

(Minor Appellants 2 and 3 are represented  
through their mother and next friend  
B.Pratheepa/1<sup>st</sup> appellant)

Vs.

M/s.Tamil Nadu State Transport Company Limited,  
Karaikudi,  
through its Managing Director. : Respondent/Respondent

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment, dated 27.07.2012 made in M.C.O.P.No.665 of 2011 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai.



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C.M.A(MD)No.738 of 2019

For Appellants : Mr.K.Mahendran

For Respondent : Mr.P.Prabhakaran

### **J U D G M E N T**

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.665 of 2011, dated 27.07.2012 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai.

2. The appellants/claimants, who were awarded with compensation of Rs.5,92,000/- with interest at 7.5% per annum payable by the respondent/Transport Corporation for the death of one Balasubramanian, consequent to an accident occurred on 12.12.2010, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

3. The case of the claimants is that the deceased Balasubramanian was aged 38 years at the time of accident; that he was doing private electrician contract work and cable TV Operator and that he was earning Rs.12,000/- per month.



C.M.A(MD)No.738 of 2019

WEB COPY

4. The learned counsel for the appellants would submit that the Tribunal has fixed the monthly income at Rs.3,000/- , which is very very low and ought to have fixed the monthly income at Rs.9,000/-. The Tribunal has also awarded only Rs.20,000/- towards loss of consortium and Rs.50,000/- for loss of love and affection to the minor children, which are also very low.

5. The learned counsel for the appellants would also submit that the amounts awarded under conventional heads are also in lower side.

6. 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 ?

7. Though the claimants have been alleging that the deceased was doing private electrician contract work and Cable TV Operator and that he was earning Rs.12,000/-, they have not produced any iota of evidence to substantiate the same. As rightly observed by the Tribunal, the claimants have produced the copy of the Form-3 Registration Certificate



C.M.A(MD)No.738 of 2019

under Ex.P.4, which is a license for Cable Operation valid for a period of 12 months. But at the same time, as rightly contended by the learned counsel for the appellants, monthly income fixed by the Tribunal, after deduction, at Rs.3,000/- is very low. The Tribunal by relying on Ex.P.2/Postmortem Certificate has rightly fixed the age of the deceased at 38 years.

8. Admittedly, the accident was occurred on 12.12.2010. Considering the nature of the job and age of the deceased, this Court fixes the monthly income of the deceased at Rs.6,000/-. In **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, the Hon'ble Apex Court have 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. Applying the above decision of the Honourable Apex Court, 40 % of the income is only to be added and after such addition, the monthly income would come to Rs. 8,400/-



C.M.A(MD)No.738 of 2019

WEB COPY

(Rs.6,000 x 40%). The Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, has held that where the deceased was married, the deduction of personal living expenses of the deceased should be  $\frac{1}{3}$  wherein member of defendants family members is to 3;  $\frac{1}{4}$  where member of defendants family members is 4 to 6 and  $\frac{1}{5}$  where the members of defendants family members exceed.

9. In the present case, considering the number of claimants,  $\frac{1}{4}$  of income is to be deducted towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.6,300/- ( $8,400 \times \frac{1}{4} = 2,100/-$ ) ( $8,400 - 2,100 = 6,300$ )]. The Tribunal has rightly fixed the multiplier '15' and as such, the loss of dependency would be **Rs.11,34,000/-**. [ $Rs.6,300 \times 15 \times 12 = 11,34,000/-$ ].

10. No doubt, the learned trial Judge has awarded Rs.20,000/- for loss of consortium; Rs.20,000/- for loss of love and affection; Rs.2,000/- for transportation charges; Rs.5,000/- for funeral expenses and Rs.5,000/- for loss of estate. As rightly contended by the learned counsel for the appellants, the amounts awarded under the above heads are on lower



C.M.A(MD)No.738 of 2019

WEB COPY

side. Our Honourable Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently Honourable 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, Honourable 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 separate head of loss of love and affection.



C.M.A(MD)No.738 of 2019

WEB COPY

11. Considering the above, the first claimant being the wife is entitled to get Rs.40,000/- towards loss of spousal consortium, the second and third claimants being the children of the deceased are entitled to get Rs.40,000/- each towards parental consortium and the 4<sup>th</sup> claimant being the mother of the deceased is entitled to get Rs.40,000/- towards filial consortium. The claimants are also entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/- under the conventional heads.

12. Considering the above, this Court decides that the claimants are entitled to get compensation under the following heads:

| Head of compensation                          | Amount awarded by the tribunal | Amount confirmed/ modified by this Court |
|-----------------------------------------------|--------------------------------|------------------------------------------|
| Loss of income                                | Rs. 5,40,000/-                 | Rs. 11,34,000/-                          |
| Loss of consortium (Spousal Consortium)       | Rs. 20,000/-                   | Rs. 40,000/-                             |
| Parental Consortium (claimants 2 & 3 )        | -                              | Rs. 80,000/-                             |
| Filial Consortium (4 <sup>th</sup> claimant ) | -                              | Rs. 40,000/-                             |
| Loss of Love and affection                    | Rs. 20,000/-                   | -                                        |
| Transportation Charges                        | Rs. 2,000/-                    | -                                        |
| Funeral Expenses                              | Rs. 5,000/-                    | Rs. 15,000/-                             |
| Loss of Estate                                | Rs. 5,000/-                    | Rs. 15,000/-                             |
| Total                                         | <b>Rs. 5,92,000/-</b>          | <b>Rs. 13,24,000/-</b>                   |



C.M.A(MD)No.738 of 2019

WEB COPY

13. In view of the above, the claimants are entitled to get total compensation of **Rs.13,24,000/-**. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation amount is enhanced from **Rs.5,92,000/-** to **Rs.13,24,000/-** with interest at 7.5% per annum. Out of the said compensation amount, the first claimant is entitled to get **Rs.5,00,000/-**, minor claimants 2 and 3 are to be given **Rs.3,00,000/-** each and the fourth claimant is entitled to get **Rs.2,24,000/-**. The respondent/Transport Corporation is directed to deposit the modified/enhanced award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the first and fourth claimants are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The Tribunal is directed to deposit



C.M.A(MD)No.738 of 2019

WEB COPY

the share of the minor claimants in any one of the Nationalized Bank in a fixed deposit scheme, till they attain majority. The mother and guardian of the minor claimants is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minors. Parties are directed to bear their own costs.

**29.08.2023**

NCC : Yes\No  
Index : Yes\ No  
Internet : Yes\ No  
das

To

- 1.The Motor Accident Claims Tribunal cum  
IV Additional District Judge, Madurai.
- 2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.

**K.MURALI SHANKAR,J.**



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C.M.A(MD)No.738 of 2019

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Pre-delivery order made in  
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