BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.08.2023

Delivered on : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.440 of 2020
and
C.M.P.(MD)No.5161 of 2020

The Branch Manager,
Cholamandalam General Insurance Company Limited,
No.384, New Millenniun Complex,
Dindigul Main Road, Kalavasal,
Madurai. : Appellant/3rd Respondent

Vs.

1.Manimuthu (died)

2.Malliga

3.Kalaiselvi

4.Indumathi

5.Senthamarai : Respondents 1 to 5/Petitioners 1 to 5

6.R.Muthupandi

7.A.Nagaraj : Respondents 6 & 7 /Respondents1 & 2

(Memo dated 26.07.2023 presented before the Court on 02.08.2023, is recorded as R21 died and R2 to R5, who are already on record are recorded as Lrs of the deceased first respondent vide Court order dated 02.08.2023 made in C.M.A(MD)No.440/2020)

(R6 and R7 herein are set exparte before the Tribunal.
Notice may be given up against them.)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the fair and decreetal order dated 25.01.2019 made in M.C.O.P.No.23 of 2015 on the file of the Motor Accident Claims Tribunal/Sub Judge, Devakottai.

For Appellant : Mrs.K.R.Shiva Shankari
For Respondents : Mr.G.Thiruvartuselvan, for R2 to R5

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.23 of 2015, dated 25.01.2019 on the file of the Motor Accident Claims Tribunal/Sub Judge, Devakottai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.29,46,000/- with interest at 7.5% per annum to the respondents 1 to 5/ claimants 1 to 5, consequent to an accident occurred on 12.10.2014, challenged the quantum of compensation awarded at by the Tribunal.

3. Admittedly, the respondents 1 and 2/claimants 1 and 2 are parents and the respondents 3 to 5/claimants 3 to 5 are the sisters of the deceased Balamurugan. Pending appeal, the first respondent/first claimant had died.

4. The learned counsel for the appellant would submit that the Tribunal without any acceptable evidence has fixed the monthly income of the deceased at Rs.15,000/-, which is on higher side; that the Tribunal ought not to have fixed the monthly income of the deceased at Rs.15,000/- by relying Ex.P.6, when the same was not proved by examining the employer of the deceased; that the Tribunal erred in adding future prospects without any basis and that the quantum of compensation awarded at Rs.29,46,000/-, is excessive and exorbitant.

5. The only point that arises for consideration is as to whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law ?

6. The case of the claimants is that the deceased has studied B.E. Civil Engineering Course in Mahatma Institute of Engineering and

Technology; that he was working as an Engineer in MMM Foundation Civil Engineering Building Construction and Elevation Designer and that he was getting monthly salary at Rs.15,000/- per month.

7. In order to prove the avocation and income, the claimants have examined one Manikandan, friend of the deceased Balamurugan, who is also working in MMM Foundation Civil Engineering Building Construction and Elevation Designer and he would say that the deceased and himself were working in the said concern and that the deceased was getting Rs.15,000/- as monthly salary at that time. The claimants have also produced the transfer certificate and the provisional and degree certificates under Ex.P.10 to Ex.P.12 to show that the deceased has completed bachelor degree in Civil Engineering in 2013.

8. No doubt, the claimants have also produced and exhibited the salary certificate of the deceased under Ex.P.6. But, as rightly pointed out by the learned counsel for the appellant/insurer, the claimants have not chosen to examine the employer or any other officials of the said MMM Foundation Civil Engineering Building Construction nor taken steps to produce the salary bill or pay slip of the deceased.

9. In the case of **K.Bannarisamy and another Vs. Anbalagan and others** reported in ***CDJ 2018 MHC 4795***, Hon'ble Division Bench of this Court, taking note of the fact that the deceased after completing Bachelor of Science Degree in Computer Science, joined the engineering college as a lateral entry student and was pursuing his third year course, has fixed the monthly income at Rs.15,000/-.

10. In ***Royal Sundaram Alliance Insurance Company Limited Vs. Raja*** [C.M.A.Nos.2123 and 2124 of 2016, dated 19.09.2018] Hon'ble Division Bench of this Court, taking note of the fact that the deceased after completing the Diploma Course in Engineering and was also pursuing his Bachelor of Engineering degree at the time of the accident, has fixed the monthly income of the deceased at Rs.15,000/-.

11. Considering the above decisions, the fixation of the monthly income of the deceased at Rs.15,000/- by the Tribunal cannot be found fault with.

12. The Tribunal, taking note of the postmortem certificate under Ex.P.2, has fixed the age of the deceased at 23 years at the time accident.

13. As rightly pointed out by the learned counsel for the appellant, the Tribunal after deducting 50% of the amount towards personal living expenses, added 40% of the income towards future prospects and hence, the mode of calculation and the amount arrived at Rs.29,16,000/- towards loss of dependency is incorrect and untenable.

14. As per the decision of Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, the Tribunal has rightly added 40% of the income towards future prospects and after such addition, the monthly income would come to Rs.21,000/- [(15,000 x (40/100)]Since the deceased was a bachelor at that time, the Tribunal has rightly deducted 50% of the income towards personal living expenses of the deceased and after such deduction, income would come to Rs.10,500/- and the appropriate multiplier would be '18'. Hence, the loss of dependency would be Rs.10,500 x 12 x 18 = **Rs.22,68,000/-**.

15. The Tribunal has awarded a sum of Rs.15,000/- for funeral expenses and Rs.15,000/- towards ambulance charges. As rightly pointed out by the learned counsel for the respondents/claimants, the Tribunal has not awarded any amount towards loss of consortium.

16. 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.

17. Considering the above, the second claimant being the mother is entitled to get Rs.40,000/- towards filial consortium and the claimants 3 to 5 being the sisters of the deceased are also entitled to get **Rs.40,000/-** each. The claimants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads.

18. 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. 29,16,000/-	Rs. 22,68,000/-
Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
Transportation Charges	Rs. 15,000/-	-
Loss of consortium (4 x 40,000)	-	Rs. 1,60,000/-
Loss of estate	-	Rs. 15,000/-
Total	**Rs. 29,46,000/-**	**Rs. 24,58,000/-**

19. In view of the above, the claimants are entitled to get total compensation of **Rs.24,58,000/-.** 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.

20. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation amount is reduced from **Rs.29,46,000/- to Rs.24,58,000/-** with interest at 7.5% per annum. Out of the said compensation amount, the second claimant is entitled to get **Rs.10,00,000/-,** with accrued interest and costs and the claimants 3 to 5 are entitled to get **Rs.4,86,000/-** each. In case if the Appellant/Insurer has deposited entire amount, the insurer is hereby permitted to withdraw the balance amount together with interest accrued thereon by filing necessary application before the Tribunal and in case, if the amount has not been deposited, the Appellant is hereby directed to deposit the modified award amount within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the 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. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

08.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal/Sub Judge,
Devakottai.

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

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.440 of 2020

08.09.2023