



Cross.Obj.(MD)No.25 of 2023
in C.M.A(MD)No.1028 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.09.2023

Delivered on : 26.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Cross.Obj.(MD)No.25 of 2023
in
C.M.A(MD)No.1028 of 2013

1.Rajayyan

2.Rosammal

3.Anitha

4.Bindhu

5.Sivakumar

S/o.Rajayyan

: Cross Appellants/ Respondents 1 to 5

Vs.

1.The National Insurance Co.Ltd.,
Divisional Office,
Rep.by its Branch Manager,
Trivadrur.

: 1st Respondent/Appellant

2.Sivakumar

: 2nd Respondent/6th Respondent

3.Anamol

: 3rd Respondent/7th Respondent



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For Cross objectors : Mr.K.P.Narayanakumar

For 1st Respondent : Mr.S.Srinivasa Raghavan

Prayer: This Cross objection is filed under Order 41 Rule 22 of the Civil Procedure Code, to call for the records relating to the decree and judgment passed by the Motor Accident Claims Tribunal cum (Sub Court) Padmanabhapuram in M.C.O.P.No.26 of 2012, dated 01.12.2012 and set aside the same.

J U D G M E N T

The Cross Objection is directed against the award passed in M.C.O.P.No.26 of 2012, dated 01.12.2012 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Padmanabhapuram.

2. Originally, the third respondent/insurer has filed an appeal in C.M.A(MD)No.1028 of 2013, challenging the quantum of compensation awarded at by the Tribunal.



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3. It is not in dispute that at the instance of the insurer, the matter was referred to Lok Adalat and since the insurer has agreed to satisfy the award passed by the Tribunal, recording the submission made by the learned counsel for the insurer, Civil Miscellaneous Appeal was disposed of vide judgment dated 14.12.2019. Subsequently, the claimant has preferred the above cross objection, seeking enhancement of compensation.

4. As rightly contended by the learned counsel for the cross objectors, the claimants were not parties to the award passed in the Lok Adalat and as such, the cross objections filed by them is perfectly maintainable. The learned counsel for the insurer would fairly concede the above position.

5. The Tribunal has taken the age of the mother of the deceased for calculating compensation. But, as rightly contended by the learned counsel for the cross objector and the learned counsel for the insurer, the age of the deceased alone has to be taken into account. In Ex.P.12/Transfer certificate, date of birth of the deceased Murugesh is shown as 13.02.1980. In Ex.P.5/Post mortem certificate, the age of the deceased is shown as 30 years.



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6. It is evident from Ex.P.10/Identity Card issued by the District Employment Office, Nagercoil that the date of birth of the deceased is shown as 13.02.1980. Considering the Ex.P.10 and Ex.P.12, the age of the deceased is fixed as 31 years at the time of accident.

7. Now turning to the quantum of compensation, the case of the claimants is that the deceased studied upto B.A.; that he was running R.M.S stores in Nagercode, Kulasekharam at the time of accident and that he was getting monthly income of Rs.20,000/-. Admittedly, the claimants have not produced any material or evidence to prove the avocation and income of the deceased. The Tribunal, taking note of the fact that no material has been produced, has fixed the monthly income of the deceased at Rs.4,500/- per month.

8. The learned counsel appearing for the appellant/claimant would submit that the Hon'ble Supreme Court in ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TN MAC 459** has fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 and that the Hon'ble Division Bench



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of this Court in *Andal and others Vs. Avinav Kannan and another* reported in **2019 1 TN MAC 54 (DB)**, by taking into the amount fixed by the Hon'ble Supreme Court in *Syed Sadiq's case* at Rs.6,500/-, has applied the cost of inflation index issued by the Central Board of Direct Tax and fixed the notional monthly income of the deceased. As per the said index, the cost of inflation index for the year 2008 – 2009 is '137' and for the year 2011-2012 is '184'. Taking notional income fixed by the Hon'ble Apex Court for the vegetable vendor at Rs.6,500/-, during the year 2007 – 2008, this Court fixes the monthly income of the deceased at Rs.8,729/- rounded to **Rs.8,700/-** (Rs.6,500 x 184 /137).

9. Admittedly, the Tribunal has not awarded any amount towards future prospects. The Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has concluded that the deceased was self employed or on a fixed salary, an addition at 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where 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,



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40 % of the income is only to be added towards future prospects and it comes to **Rs.12,180/-** per month.

10. Since the deceased was a bachelor, 50 % of the income is to be deducted for personal and living expenses of the deceased and after such deduction, the income would be Rs.6,090/-. As per the decision of the Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the appropriate multiplier would be '16'. Hence, the loss of dependency would be **Rs.11,69,280/-** (Rs.6,090 x 12 x 16).

11.The Tribunal has awarded Rs.50,000/- for loss of love and affection; Rs.10,000/- for ambulance charges; Rs.10,000/- for funeral expenses and Rs.10,000/- for loss of estate. 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



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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.

12. Considering the above, the first and second claimants being the parents, the claimants 3 and 4 being the sisters and the fifth claimant being the brother of the deceased are entitled to get Rs.40,000/- each towards loss of consortium. The claimants are also entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/- under the conventional heads.



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13. 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. 3,96,000/-	Rs. 11,69,280/-
Loss of love and affection	Rs. 50,000/-	-
Loss of consortium claimants 1 to 5	-	Rs. 2,00,000/-
Transportation Charges	Rs. 10,000/-	-
Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
Loss of Estate	-	Rs. 15,000/-
Loss of income	Rs. 10,000/-	-
Total	Rs. 4,76,000/-	Rs. 13,99,280/-

14. In view of the above, the claimants are entitled to get total compensation of **Rs.13,99,280/-**. 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.

15. In the result, the Cross Obj.(MD)No.25 of 2023, is partly allowed. The compensation amount is enhanced from **Rs. 4,76,000/- to Rs. 13,99,280/-** with interest at 7.5% per annum. The first respondent/Insurance Company is



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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 claimant/father of the deceased is entitled to get **Rs.3,59,280/-** lakhs and the second claimant/mother of the deceased is entitled to get **Rs.8,00,000/-** and the claimants 3 to 5/sisters and brother of the deceased are entitled to get **Rs.80,000/-** each, 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.

26.09.2023

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

- 1.The Motor Accident Claims Tribunal cum (Sub Court),
Padmanabhapuram
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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