



C.M.A(MD)No.552 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.02.2024

PRONOUNCED ON:22.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.552 of 2019

1.Gopal

2.Kousalya

: Appellants/ Petitioners

Vs.

1.S.Rethinambal(died)

2.The New India Assurance Company Ltd.,

Fort Station Road,

Trichirappalli-2.

: Respondents / Respondents

(1st Respondent was set ex-parte before the Tribunal. Hence, 1st Respondent may be dispensed with)

(Memo dated 06.11.2023 in USR No.38546 is recorded as R.1 died and there is no need to take steps, vide Court order dated 09.02.2024)



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PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree, dated 15.06.2015, in M.C.O.P.No.86 of 2013, on the file of the Motor Accident Claims Tribunal / Special District Judge, Trichirappalli and seeking further enhancement of compensation of Rs.6,00,000/-.

For Appellants : Mr.P.Prabhakaran
for Mr.N.Sudhagar Nagaraj

For Respondents :Ms.P.Malini
for R.2
: R.1 died – memo filed

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.86 of 2013, dated 15.06.2015, on the file of the Motor Accident Claims Tribunal/Special District Court, Trichirappalli.

2. The appellants/claimants, who were awarded with compensation of Rs.4,14,000/- with interest and costs payable by the respondents for the death of Sathish, consequent to an accident occurred on 25.07.2001, challenged the contributory negligence fastened on the deceased and the



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quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

3. The case of the claimants is that on 25.07.2001 at about 10.30 hours in Trichy-Karur NH road, at Sinthamani, Trichy, when the deceased Sathish was proceeding in his cycle from North towards South, one Mahindra Van bearing Registration No.TN-04-F-8709, which came behind the cycle, had dashed against the cyclist and as a result of which, the said Sathish had sustained multiple injuries, that he was immediately taken to Annai Gandhi Memorial Government Hospital, Tiruchirappalli and thereafter he was admitted in Seahorse Hospital, Tiruchirappalli and that despite treatment, he succumbed to injuries on 26.07.2001 and that the accident was occurred only due to the rash and negligent driving of the Mahindra Van driver.

4. The defence of the second respondent – Insurer is that there was no rashness and negligence on the part of the Mahindra Van driver, but on the other hand, it was only the deceased who drove his vehicle in a rash and negligent manner, without observing the traffic rules and dashed against the Mahindra Van, that the deceased was solely responsible for



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the accident, that the compensation claimed is excessive and is without basis and that therefore, the petition is liable to be dismissed.

5. During trial, the claimants have examined the first claimant – C.Gopal as P.W.1 and one V.Narayanan as P.W.2 and exhibited 11 documents as Exs.P.1 to P.11. The first respondent had remained exparte. The second respondent – Insurer has examined two witnesses and adduced no documentary evidence. Two witness documents came to be exhibited as Exs.X.1 and X.2. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned award dated 15.06.2015, by holding that the accident was occurred due to the rash and negligent driving of the Mahindra Van and that the deceased had also contributed by his negligence and fixed the same at 10% and directed the respondents to pay compensation of Rs.4,14,000/- with interest and costs. Aggrieved by the impugned award, the claimants have preferred the present appeal.

6. The learned Counsel for the appellants would submit that the Tribunal has wrongly fixed 10% contributory negligence on the deceased, that the Tribunal has not considered the evidence of P.W.2 –



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eye witness and that the evidence available on record has clearly proved that the accident was only due to the rash and negligent driving of the Mahindra Van driver and the deceased was not at fault.

7. No doubt, P.W.2 occurrence witness in his evidence before the Tribunal would reiterate the version of the claimants with regard to the mode of accident. But the second respondent/Insurer has examined the Mahindra Van driver as R.W.1 and the Special Sub-Inspector of Police as R.W.2. R.W.1, in his evidence would say that the deceased without noticing the on coming vehicle, suddenly entered into the road and that the deceased alone was responsible for the accident. D.W.2, in his evidence would say that the accident was occurred on the middle of the road as shown in the rough plan. Considering the evidence of P.W.2, R.W.1 and R.W.2 and also the rough plan preferred by the police during their investigation, the Tribunal has rightly mulcted the deceased with contributory negligence at 10% and as such, the same cannot be found fault with.



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8. Now turning to the quantum of compensation, the Tribunal, taking note of the mark sheet, has rightly fixed the age of the deceased at 20 years at the time of accident. According to the claimants, the deceased was doing II year B.Sc., at the time of accident. It is evident from Exs.P. 10 and P.11 that the deceased was studying B.Sc., Computer Science at that time. The Tribunal, taking note of the above aspects, has fixed the annual income of the deceased as Rs.30,000/- notionally.

9. Considering the fact that the present accident was occurred on 25.07.2001 and taking note of the fact that the deceased was studying II year B.Sc., Computer Science at that time, this Court fixes the monthly income of the deceased at Rs.6,000/-.

10. The learned Counsel for the appellants would submit that the Tribunal has failed to consider that the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi* reported in 2017(2) TNMAC 609 (SC), has permitted for addition of 40% of the income where the deceased was below the age of 40 years.

11. No doubt, as rightly pointed out by the learned Counsel for the appellants/claimants, the Hon'ble Supreme Court in *National Insurance*



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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 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.

12. In the case on hand, as already pointed out, the deceased was aged 20 years at the time of accident and as such, the Tribunal should have added 40% of the income as future prospects. Applying the dictum laid down in **Pranay Sethi's case**, taking note of the age of the deceased, this Court has no hesitation to hold that an addition of 40% of the established income should be added. After the addition towards future prospects, the monthly income would come to Rs.8,400/-(Rs.6,000/-+ Rs.2,400/-). Considering the fact that the claimants are parents of the deceased and taking note of the fact that the deceased was a bachelor, 50% of the income has to be deducted towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.4,200/-.



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13. As rightly pointed out by the learned Counsel for the appellants, the Tribunal by taking note of the age of the mother of the deceased, has applied the multiplier of “13” and the same cannot be sustained in view of the dictum laid down by the Hon'ble Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in **2009(2) TNMAC 1 (SC)**. As per the decision of the Sarla Verma's case, the proper multiplier would be “18”. Hence, the loss of dependency would be Rs.9,07,200/- (Rs.4,200/-x12x18).

14. The Tribunal has granted a sum of Rs.50,000/- for loss of love and affection and Rs.20,000/- towards funeral and transport expenses.

15. 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



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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.

16. Considering the above, the claimants are being the parents of the deceased are entitled to get Rs.40,000/- each towards filial 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	3,90,000/-	9,07,200/-	enhanced
2	Loss of love and affection	50,000/-	-----	----
3	Loss of consortium	-----	80,000/- (Rs.40,000/- x2)	granted
4	Funeral expenses and transport expenses	20,000	15,000/-	reduced
	Loss of estate	---	15,000/-	granted
	Total	Rs.4,60,000/-	Rs. 10,17,200/-	
	Less 10% for the negligence of the deceased	Rs.46,000/-	Rs.1,01,720/-	
	Compensation to be granted to the claimants	Rs.4,14,000	Rs.9,15,480/-	Enhanced by Rs.5,01,480

17. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal to the claimants is enhanced from Rs.4,14,000/- to Rs.9,15,480/- along with interest at 7.5%pa., and costs. The respondent/Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said



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M.C.O.P.No.86 of 2013, on the file of the Motor Accident Claims Tribunal / Special District Court, Trichirappalli, 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 appellant/claimant is entitled to withdraw Rs.3,15,480/- along with proportionate interest and costs and the second appellants/second claimant entitled to withdraw Rs.6,00,000/- along with proportionate interest and costs on due application before the Tribunal. The parties are directed to bear their own costs.

22.03.2024

Index : Yes : No
Internet : Yes : No
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To

- 1.The Motor Accident Claims Tribunal /
The Special District Court, Trichirappalli.
- 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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