



*C.M.A.(MD)No.647 of 2018
& Cros. Obj(MD)No.10 of 2024*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.02.2024

Pronounced on : 15.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.647 of 2018
and
Cros.Obj.(MD)No.10 of 2024

C.M.A.(MD)No.647 of 2018

The Branch Manager,
Shriram General Insurance Company Ltd.,
Nagasundaram Complex,
II Floor, Suguna Stores Stop,
Anna Nagar,
Madurai-625 020.

...Appellant/
Respondent No.2

Vs.

1. Muthulakshmi

...1st Respondent/
Petitioner

2. E.Murugan

...2nd Respondent/
Respondent No.1



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Cros.Obj.(MD)No.10 of 2024

Muthulakshmi

...Cross objector

Vs.

1. The Branch Manager,
Shriram General Insurance Company Ltd.,
Naga Sundaram Complex,
II Floor, Suguna Stores Stop,
Anna Nagar,
Madurai-625 020.

2. E.Murugan

... Respondents

Prayer in C.M.A.(MD)No.647 of 2018 : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Srivilliputtur in M.C.O.P.No.96 of 2010 dated 24.11.2017.

Prayer in Cros.Obj.(MD)No.10 of 2024 : This Cross Objection filed under Order 42 Rule 22(1) of Civil Procedure Code, to allow the Cross-Objection in C.M.A.(MD)No.647 of 2018 by way of enhancing the compensation amount awarded by the Motor Vehicle Accident Claims Tribunal (Sub Court), Srivilliputtur in M.C.O.P.No.96 of 2010 on 24.11.2017.

(in C.M.A.(MD)No.647 of 2018)

For Appellant : Mr.D.Sivaraman

For R1 : Mr.M.Jothi Basu

For R2 : No appearance



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(in Cros. Obj. (MD) No. 10 of 2024)

For Cross-objector : Mr. M. Jothi Basu

For R1 : Mr. D. Sivaraman

COMMON JUDGMENT

The Civil Miscellaneous Appeal and the Cross Objection are directed against the award passed in M.C.O.P.No.96 of 2010 dated 24.11.2017 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Srivilliputtur.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.17,42,872/- (Rupees Seventeen Lakhs Forty Two Thousand Eight Hundred and Seventy Two only) with interest at 7.5% per annum and costs to the first respondent/claimant for the death of Muthukalai consequent to an accident occurred on 24.06.2010, challenged the quantum of compensation awarded at, by the Tribunal.

3. The Cross Objector/claimant, who was awarded with compensation of Rs.17,42,872/- (Rupees Seventeen Lakhs Forty Two



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Thousand Eight Hundred and Seventy Two only), challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the Tribunal.

4. It is pertinent to note that though the Insurer in the appeal grounds has challenged the negligence aspects and the consequent liability mulcted on it, the learned counsel appearing for the Insurer would submit that they are only challenging the quantum of compensation awarded at, by the Tribunal.

5. The learned counsel appearing for the Insurer would submit that the Tribunal, in the absence of any substantial evidence, has fixed the monthly income of the deceased at Rs.8,000/-, that since the deceased was a student, who completed 12th standard, the loss of income fixed by the Tribunal is excessive, that addition of 40% future prospects is erroneous, that the Tribunal ought to have deducted 50% towards personal and living



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expenses of the deceased instead of $1/3^{\text{rd}}$, that the fixation of multiplier at 18 is erroneous as the mother of the deceased was aged 44 years and the proper multiplier would be 14, that the award of Rs.1,00,000/- towards loss of love and affection is excessive and contrary to the law laid down by the Hon'ble Supreme Court and that the total compensation awarded at Rs.17,42,872/- is highly excessive and improper.

6. The learned counsel appearing for the claimant would submit that the claimant had lost her only son in the accident and as such, the loss sustained by her cannot be calculated in terms of money, that the Tribunal has failed to note that the deceased was a bright student, that before the accident, the deceased received a call letter to enter B.E. counseling, that there is every possibility that the claimant's son may get a B.E. seat and have a bright future, that the monthly income fixed at Rs.8,000/- is very low and that the total compensation awarded is also very low, inadequate and liable to be enhanced.

7. It is the specific case of the claimant that her son Muthukalai has completed 12th standard and applied for B.E. course and that he has



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received a call letter from Anna University for taking part in counseling.

The claimant has produced 10th and 12th mark sheet, transfer certificate and conduct certificate issued by the school authorities under Ex.P9 to Ex.P12 and also produced the call letter issued by Anna University under Ex.P14.

The learned trial Judge, taking note of the call letter sent by Anna University, but at the same time considering the fact that the deceased had obtained average marks in 10th and 12th standard, has fixed the monthly income at Rs.8,000/-. As rightly contended by the learned counsel appearing for the claimant, marks obtained in 10th and 12th by itself cannot be taken as a criteria to fix the monthly income of the deceased. The Tribunal, taking note of the school records, has fixed the age of the deceased as 19 years at the time of accident and the same was not disputed by the Insurer. Considering the age of the deceased at 19 years and also the fact that he has completed 12th standard and he was called for counseling for joining in B.E. course and also the period of accident, this Court is inclined to fix the monthly income of the deceased at Rs.12,000/-. Applying the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, 40% of the income has to be added towards



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future prospects and by addition, it comes to Rs.16,800/- {Rs.12,000/- + Rs.4,800/- (40% of the income)}. Since 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, it comes to Rs.8,400/- {Rs.16,800/- - Rs.8,400/-}. As per the decision of the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the Tribunal has rightly applied multiplier 18. Hence, the loss of dependency comes to Rs.18,14,400/- (Rs.8,400/- x 12 x 18).

8. The Tribunal has awarded Rs.1,00,000/- for loss of love and affection. Our Hon'ble Supreme Court in **National Insurance Company Ltd., vs. Pranay Sethi and others** reported in **2017 ACJ 2700** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the 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. The Hon'ble Supreme Court interpreted



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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, the 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.

9. The claimant being the mother of the deceased is certainly entitled to get Rs.40,000/- towards loss of filial consortium. The Tribunal has also awarded Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads. Considering the above, the claimant is entitled to get total compensation of Rs.18,84,400/- (Rupees Eighteen Lakhs Eighty Four Thousand and Four Hundred only) and the compensation awarded by the Tribunal is modified as follows:-



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S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss dependency of	16,12,872	18,14,400	Enhanced
2.	Loss of love and affection	1,00,000	Nil	Nil
3.	Loss consortium of	Nil	40,000	Granted
4.	Loss of estate	15,000	15,000	Confirmed
5.	Funeral expenses	15,000	15,000	Confirmed
	Total	17,42,872	18,84,400	Enhanced by Rs.1,41,528/-

10. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs.

11. In the result, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed and the compensation awarded by the Tribunal at Rs.17,42,872/- (Rupees Seventeen Lakhs Forty Two Thousand Eight Hundred and Seventy Two only) is hereby enhanced to **Rs.18,84,400/- (Rupees Eighteen Lakhs Eighty Four Thousand and**



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Four Hundred only). The first respondent/Insurer in Cros.Obj(MD)No.10 of 2024 is directed to deposit the modified enhanced amount with interest at 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.96 of 2010 on the file of Motor Accident Claims Tribunal/Subordinate Court, Srivilliputtur, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the cross objector/claimant in Cros.Obj(MD)No.10 of 2024 is permitted to withdraw the amount together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The cross objector/claimant in Cros.Obj(MD)No.10 of 2024 is **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee. Parties are directed to bear their own costs.

15.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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To

1. The Motor Accident Claims Tribunal /
Subordinate Court, Srivilliputtur.
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
C.M.A.(MD)No.647 of 2018
and
Cros.Obj.(MD)No.10 of 2024**

Dated : 15.03.2024