



C.M.A. (MD) No. 160 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.02.2024

Pronounced on : 26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.160 of 2017

M.Ramachandan (Died)

1. Kalaiselvi

2. Kamalraj

3. Kalpana

4. Kushbhu

... Appellants/
Petitioners

Vs.

1. Nagendran

2. Branch Manager,
The New India Insurance Company Limited,
No.66, Melappuli Ward Road,
Trichy – 620 008.

... Respondents/
Respondents

(RI dispensed with)



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to enhance the award amount of Rs.7,02,228/- (Rupees Seven Lakhs Two Thousand Two Hundred and Twenty Eight only) in the fair and decreetal order passed in M.C.O.P.No.138 of 2013 on the file of the Motor Accident Claims Tribunal – Chief Judicial Magistrate, Pudukkottai dated 22.04.2016.

For Appellants : Mr.P.Ganapathi Subramanian

For R2 : Mr.N.Dilip Kumar

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.138 of 2013 dated 22.04.2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Pudukkottai.

2. The appellants/claimants, who were awarded with compensation of Rs.15,37,315/- (Rupees Fifteen Lakhs Thirty Seven Thousand Three Hundred and Fifteen only) with interest at 7.5% per annum payable by the second respondent/insurer for the death of Ramachandran, consequent to an accident occurred on 08.02.2013, challenged the quantum of



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

3. It is not in dispute that the original claimant Ramachandran, who suffered injuries in the accident occurred on 08.02.2013, has laid the claim petition seeking compensation. Pending claim petition, he died and the appellants being the legal representatives got themselves impleaded as claimants 2 to 5 before the Tribunal and proceeded with the claim petition.

4. The case of the appellants/claimants is that on 08.02.2013, the deceased Ramachandran was proceeding in a two wheeler TVS XL bearing Registration No.TN-55-M-9354 and while turning from south to north towards Keeranur Bazaar street, one indica car bearing Registration No.TN-55-BB-8356, which came from south to north in a rash and negligent manner, had dashed against the two wheeler and as a result of which, the said Ramachandran had sustained grievous injuries all over his body, that he was immediately taken to KMC hospital and was taking inpatient treatment from 08.02.2013 to 10.04.2013 and that despite treatment, he succumbed to the injuries on 30.10.2013.



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5. It is their further case that the accident was occurred only due to the rash and negligent driving of the car driver and that therefore, FIR came to be registered against the car driver in Crime No.49 of 2013 for the offences under Sections 279 and 337 IPC on the file of Keeranur Police Station.

6. The second respondent/insurer has filed a counter statement that the accident was occurred only due to the two wheeler rider and the car driver was not at fault.

7. During trial, the appellants/claimants have examined the appellants 1 and 2/claimants 2 and 3 as P.W.1 and P.W.2 respectively and exhibited 25 documents as Ex.P.1 to Ex.P.25. The first respondent/first respondent had remained *ex-parte*. The second respondent/insurer has examined one witness as R.W.1 and exhibited 4 documents as Ex.R.1 to Ex.R.4.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has



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passed the impugned award dated 22.04.2016 by holding that the driver of the car was responsible for the accident and on that basis mulcted liability on the owner and insurer of the car and directed the second respondent/insurer to pay compensation of Rs.15,37,315/- (Rupees Fifteen Lakhs Thirty Seven Thousand Three Hundred and Fifteen only) with interest and costs. Aggrieved by the impugned compensation, the claimants have preferred the present appeal claiming enhancement.

9. The main contention of the appellants/claimants is that the Tribunal has fixed the monthly income of the deceased at Rs.4,500/- (Rupees Four Thousand and Five Hundred only), which is very low, that the Tribunal ought to have fixed the monthly income of the deceased at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) and that the Tribunal has not added any amount towards future prospects.

10. The learned counsel appearing for the second respondent would submit that the Tribunal, taking note of the job of the deceased, has rightly fixed the monthly income and rightly arrived at the total compensation of Rs.15,37,315/- (Rupees Fifteen Lakhs Thirty Seven Thousand Three Hundred and Fifteen only).



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11. It is the specific case of the appellants/claimants that the deceased was working as an agricultural coolie and was getting Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month. Admittedly, the accident was occurred on 08.02.2013. Considering the work done by the deceased and also the period of accident, the monthly income fixed at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) is on lower side and the same is fixed at Rs.6,500/- (Rupees Six Thousand and Five Hundred only).

12. As already pointed out, the Tribunal has not added any amount towards future prospects. The Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, has 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.



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Applying the above decision of the Hon'ble Apex Court, 25% of the income is to be added towards future prospects and after such addition, the monthly income would come to Rs.8,125/- (Rupees Eight Thousand One Hundred and Twenty Five only) {Rs.6,500/- + Rs.1,625/- (25% of the income)}. The Tribunal, taking note of the number of the claimants, has rightly deducted 1/4th of the income towards personal and living expenses of the deceased and after such deduction, the monthly income would be come to Rs.6,094/- (Rupees Six Thousand and Ninety Four only) {Rs.8,125/- - Rs.2,031/-}. The Tribunal, taking note of the postmortem certificate, has fixed the age of the deceased as 49 years and the same was not disputed by the second respondent/insurer. 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 13. Hence, the loss of dependency would be Rs.9,50,664/- (Rupees Nine Lakhs Fifty Thousand Six Hundred and Sixty Four only) {Rs.6,094/- x 12 x 13}.

13. The Tribunal, taking note of the medical bills under Ex.P.10 to Ex.P.17 and as the same was not disputed by the second respondent/



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insurer, has rightly awarded Rs.8,15,815/- (Rupees Eight Lakhs Fifteen Thousand Eight Hundred and Fifteen only) towards medical expenses.

14. The Tribunal has awarded Rs.25,000/- (Rupees Twenty Five Thousand only) for funeral expenses, Rs.20,000/- (Rupees Twenty Thousand only) for transport expenses, Rs.1,00,000/- (Rupees One Lakh only) for loss of love and affection and Rs.50,000/- (Rupees Fifty Thousand only) for loss of spousal consortium to the first appellant/second claimant. Our Hon'ble Supreme Court in *Pranay Sethi's case* 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 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



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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.

15. The first appellant/second claimant being the wife is entitled to get Rs.40,000/- (Rupees Forty Thousand only) towards loss of spousal consortium and the appellants 2 to 4/claimants 3 to 5 being the children of the deceased are entitled to get Rs.40,000/- (Rupees Forty Thousand only) each towards loss of parental consortium. The appellants/claimants are also entitled to get Rs.15,000/- (Rupees Fifteen Thousand only) for funeral expenses and Rs.15,000/- (Rupees Fifteen Thousand only) for loss of estate under the conventional heads. Considering the above, the appellants/claimants are entitled to get total compensation of Rs.19,56,479/- (Rupees Nineteen Lakhs Fifty Six Thousand Four Hundred and Seventy Nine only). Accordingly, 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 of dependency	5,26,500	9,50,664	Enhanced
2.	Medical expenses	8,15,815	8,15,815	Confirmed
3.	Loss of love and affection	1,00,000	Nil	Nil
4.	Spousal consortium (first appellant)	50,000	40,000	Reduced
5.	Parental consortium (appellants 2 to 4)	Nil	1,20,000 (40,000 x 3)	Granted
6.	Transport expenses	20,000	15,000	Reduced
7.	Funeral expenses	25,000	15,000	Reduced
	Total	15,37,315	19,56,479	Enhanced by Rs.4,19,164/-

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



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17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,37,315/- (Rupees Fifteen Lakhs Thirty Seven Thousand Three Hundred and Fifteen only) is hereby enhanced to **Rs.19,56,479/- (Rupees Nineteen Lakhs Fifty Six Thousand Four Hundred and Seventy Nine only)** together with interest at 7.5% per annum and costs. The second respondent/insurer is directed to deposit the modified enhanced amount with interest and costs to the credit of M.C.O.P.No.138 of 2013 from the date of claim petition till the date of deposit on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Pudukkottai, 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 and on such deposit being made, the first appellant is entitled to get **Rs.9,06,479/- (Rupees Nine Lakhs Six Thousand Four Hundred and Seventy Nine only)** and the appellants 2 to 4 are entitled to get **Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only)** each. Accordingly, the appellants are permitted to withdraw their shares along 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. The appellants are **directed to pay the court fee** for the enhanced



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compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

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26.02.2024

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

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court, Pudukkottai.
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 Order made in
C.M.A.(MD)No.160 of 2017**

Dated : 26.02.2024