BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2024

Pronounced on : 28.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.489 of 2017

1. B.Josephin Amali

2. J.Jeyasipriya

3. Minor J.Jeyasiyola
Minor represented by her mother and natural guardian the 1st appellant B.Josephin Amali ... Appellants/ Claimants

Vs.

1. M.Karuppaiah

2. United India Insurance Company Limited,
66, 67, Aranmanai Vasal,
Sivagangai Nagar,
Sivagangai District,
through its Branch Manager. ... Respondents/ Respondents

(R1 dispensed with)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to call for the records from the Motor Accident Claims Tribunal, Sivagangai (District Court, Sivagangai) dated 31.08.2016 made in M.C.O.P.No.136 of 2012 and enhance the award compensation amount by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr.P.Selvakamatchi

For R2 : Mr.I.Suthakaran

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.136 of 2012 dated 31.08.2016 on the file of the Motor Accident Claims Tribunal/District Court, Sivagangai.

2. The appellants/claimants, who were awarded with compensation of Rs.6,54,000/- (Rupees Six Lakhs and Fifty Four Thousand only) with interest and costs payable by the respondents 1 and 2 jointly and severely for the death of Johnpeter, consequent to an accident occurred on 12.03.2012, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

3. The learned counsel appearing for the appellants would submit that the Tribunal failed to consider the age of the first appellant, who is the wife of the deceased and also failed to award loss of consortium to the first

appellant, that the amount awarded at Rs.10,000/- is very low, that the deceased was running an oil mill and also coconut business and lorry service office business in the name of Micheal Ashok Lorry Service and he was cultivating the lands by lease under the Hutson and Agro products and he was earning more than Rs.35,000/- per month, but the Tribunal has erred in fixing the notional annual income at Rs.72,000/-, that the Tribunal has also failed to determine the additional future prospects of the deceased as the deceased was aged 47 years at the time of accident, that the Tribunal ought to have deducted 1/4 of the monthly income towards personal and living expenses of the deceased and that the total compensation awarded is very low and the same is liable to be enhanced.

4. The case of the appellants is that the deceased was doing oil business, coconut business and was also operating lorry service, that he was also cultivating the lands for Hutson and Agro products by owning 6 acres of land and that he was earning more than Rs.35,000/- per month.

5. No doubt, the appellants have produced the xerox copies of the income tax return for the assessment years 2009-2010 and 2010-2011, but

the same came to be exhibited subject to the objections raised by the other side. Despite objections, the appellants have not chosen to produce the authenticated copies of the income tax return nor the original acknowledgments nor taken any steps to summon the records from the concerned Department. Moreover, the appellants have not chosen to examine the auditor of the deceased to prove the income. As already pointed out, the Tribunal has fixed the monthly income of the deceased as Rs.6,000/-. As rightly contended by the learned counsel appearing for the appellants, considering the evidence available on record and the period of accident, fixing monthly income at Rs.6,000/- is on lesser side and hence, this Court is inclined to fix the monthly income at Rs.10,000/-.

6. As rightly pointed out by the learned counsel appearing for the appellants, the Tribunal has not added any amount towards future prospects. But 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. In the case on hand, the Tribunal, taking note of the postmortem certificate, has fixed the age of the deceased as 48 years and the same was not disputed by the other side. Since the deceased was aged 48 years and was self-employed, 25% of the income has to be added towards future prospects and on such addition, the monthly income comes to Rs.12,500/- {Rs.10,000/- + Rs.2,500/- (25% of the income)}.

7. Considering the number of claimants, the Tribunal has rightly deducted one-third (1/3rd) of the income towards personal and living expenses of the deceased and after such deduction, the monthly income comes to Rs.8,333/-{Rs.12,500/- - Rs.4,167/-}. As per the dictum laid down by the Hon'ble Supreme Court in ***Smt.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.12,99,948/- {Rs.8,333/- x 12 x 13}.

8. The Tribunal has awarded Rs.10,000/- for the first appellant towards consortium and awarded Rs.5,000/- for funeral expenses and

Rs.10,000/- to the appellants 2 and 3 for loss of love and affection and Rs.5,000/- for loss of estate. 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 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 first appellant being the wife of the deceased is entitled to get Rs.40,000/- towards spousal consortium and the appellants 2 and 3 being the daughters of the deceased are entitled to get Rs.40,000/- each towards parental consortium. The appellants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads. Hence, the appellants are entitled to get total compensation of Rs.14,49,948/-. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

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	6,24,000	12,99,948	Enhanced
2.	Loss of spousal consortium (1st appellant)	10,000	40,000	Enhanced
3.	Loss of love and affection (appellants 2 and 3)	10,000	Nil	Nil
4.	Loss of parental consortium (appellants 2 and 3)	Nil	80,000 (40,000 x 2)	Granted
5.	Funeral expenses	5,000	15,000	Enhanced
6.	Loss of estate	5,000	15,000	Enhanced
	Total	**6,54,000**	**14,49,948**	**Enhanced by Rs.7,95,948/-**

10. 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.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,54,000/- (Rupees Six Lakhs and Fifty Four Thousand only) is hereby enhanced to **Rs.14,49,948/- (Rupees Fourteen Lakhs Forty Nine Thousand Nine Hundred and Forty Eight only).** The respondents 1 and 2 are directed to deposit the modified award amount together with interest at 7.5% per annum from the date of petition till the date of realization excluding the default period, if any, jointly and severely to the credit of M.C.O.P.No.136 of 2012 on the file of the Motor Accident Claims Tribunal/District Court, Sivagangai, 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, the first appellant is entitled to get **Rs.6,49,948/- (Rupees Six Lakhs Forty Nine Thousand Nine Hundred and Forty Eight only)** and the appellants 2 and 3 are entitled to get **Rs.4,00,000/- (Rupees Four Lakhs only)** each. Accordingly, the appellants 1 and 2 and the third appellant, who has attained majority, are permitted to withdraw

their shares along with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The appellants are **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.

28.03.2024

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

1. The Motor Accident Claims Tribunal/
District Court, Sivagangai.

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

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.489 of 2017

Dated : 28.03.2024