



C.M.A.(MD)No.676 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2024

Pronounced on : 28.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.676 of 2017

and

C.M.P.(MD)No.7035 of 2017

The Branch Manager
National Insurance Company Limited
Kumbakonam

... Appellant

Vs.

1. Valarmathi

2. Pradeep

3. Preethi

4. Aarthi

5. Kaliammal

6. Rajammal

... Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the



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Motor Accident Claims Tribunal, Special District Court, Thanjavur in
M.C.O.P.No.1495 of 2014 dated 07.10.2016.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1495 of 2014 dated 07.10.2016 on the file of the Motor Accident Claims Tribunal/Special District Court for MCOP cases, Thanjavur.

2. The appellant/insurer, who was made liable to pay compensation of Rs.42,96,298/- (Rupees Forty Two Lakhs Ninety Six Thousand Two Hundred and Ninety Eight only) with interest and costs to the respondents 1 to 5/claimants for the death of Kaliaperumal, consequent to an accident occurred on 04.07.2010, challenged the quantum of compensation awarded at, by the Tribunal.

3. It is pertinent to note that though the appellant/insurer, in the grounds of appeal, has challenged the finding of the Tribunal with regard



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to negligence aspects and the consequent liability mulcted on the appellant/insurer, the learned counsel appearing for the appellant would submit that they are only challenging the quantum of compensation.

4. The learned counsel appearing for the appellant would submit that the Tribunal erred in fixing the monthly income of the deceased at Rs.44,700/- in the absence of any corroboration so as to substantiate the salary certificate produced by the respondents 1 to 5/claimants, that the Tribunal erred in adding 15% of the income towards future prospects in violation of the dictum laid down by the Hon'ble Supreme Court, that since the deceased was aged 56 years, future prospects is not applicable, that since the deceased was aged 56 years, the Tribunal ought to have applied multiplier 9, but erred in applying multiplier 11, that the Tribunal has committed grave error in not applying the split multiplier as the deceased was having only two years of remaining service, that the amount awarded at Rs.1,00,000/- towards loss of consortium is excessive and that the total compensation awarded at Rs.42,96,298/- is highly excessive and improper and as such, the same is liable to be interfered with.



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5. Regarding age, in the PAN card of the deceased Kaliaperumal under Ex.P.11, his date of birth is shown as 07.07.1954 and as such, he was aged 55 years 11 months and 27 days on the date of accident i.e., on 04.07.2010. The learned trial Judge, by relying on the decision of the Hon'ble Supreme Court in *Shashikala and others Vs. Gangalakshamma and another* reported in **2015 (1) TN MAC 785**, wherein, the deceased was shown to be aged 45 years 5 months and 28 days on the date of accident, fixing the age of the deceased at 45 years was confirmed, has fixed the age of the deceased at 55 years. In the present case, as already pointed out, the deceased was only short of three days to complete 56 years. Hence, the decision of the trial Court fixing the age of the deceased at 55 years, cannot be accepted and is fixed at 56 years.

6. The respondents 1 to 5/claimants have examined the Divisional Engineer of Highways Department as P.W.3 and he would say that the deceased was working as an Assistant Divisional Engineer, Thanjavur and was getting monthly salary of Rs.44,700/- and thereby confirms the contents of the salary certificate under Ex.P.10. In the absence of other contra evidence, the Tribunal has rightly fixed the monthly income of the deceased at Rs.44,700/- and as such, nothing can be found fault with.



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7. Now turning to the future prospects, our 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 an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made, that the addition should be 30%, if the age of the deceased was between 40 to 50 years and that in case the deceased was between the age of 50 to 60 years, the addition should be 15%. Considering the above, addition of 15% towards future prospects cannot be found fault with and after such addition, the monthly income would be Rs.51,405/-. 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 Rs.38,554/-. After deducting income tax as done by the Tribunal, the annual income of the deceased would be Rs.3,70,118/-. Since this Court has fixed the age of the deceased as 56 years, as per the dictum laid down in *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in **AIR 2009 SC 3104**, the appropriate multiplier would be 9. Hence, the loss of dependency would be Rs.33,31,062/- {Rs.3,70,118 x 9}.



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8. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium to the first respondent/first claimant, Rs.50,000/- for loss of love and affection to the fifth respondent/fifth claimant, Rs.30,000/- for loss of love and affection to the respondents 2 to 4/claimants 2 to 4, Rs.25,000/- for funeral expenses, Rs.10,000/- for loss of estate and Rs.10,000/- for transport charges. 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



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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 respondent/first claimant being the wife is entitled to get Rs.40,000/- towards loss of spousal consortium, the respondents 2 to 4/claimants 2 to 4 being the children of the deceased are entitled to get Rs.40,000/- each towards loss of parental consortium and the fifth respondent/fifth claimant being the mother is entitled to get Rs.40,000/- towards loss of filial consortium. The respondents 1 to 5/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 respondents 1 to 5/claimants are entitled to get total compensation of Rs.35,61,062/- (Rupees Thirty Five Lakhs Sixty One Thousand and Sixty Two 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	40,71,298	33,31,062	Reduced
2.	Funeral expenses	25,000	15,000	Reduced
3.	Loss of estate	10,000	15,000	Enhanced
4.	Transport charges	10,000	Nil	Nil
5.	Spousal consortium (first respondent)	1,00,000	40,000	Reduced
6.	Loss of love and affection (fifth respondent)	50,000	Nil	Nil
7.	Filial consortium (fifth respondent)	Nil	40,000	Granted
8.	Loss of love and affection (respondents 2 to 4)	30,000	Nil	Nil
9.	Parental consortium (respondents 2 to 4)	Nil	1,20,000 (40,000 x 3)	Granted
	Total	42,96,298	35,61,062	Reduced by Rs.7,35,236/-

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.



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11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.42,96,298/- (Rupees Forty Two Lakhs Ninety Six Thousand Two Hundred and Ninety Eight only) is hereby reduced to **Rs.35,61,062/- (Rupees Thirty Five Lakhs Sixty One Thousand and Sixty Two only)** together with interest at 7.5% per annum and costs. The appellant/insurer is directed to deposit the modified award amount with interest and costs to the credit of M.C.O.P.No.1495 of 2014 on the file of the Motor Accident Claims Tribunal/Special District Court for MCOP cases, Thanjavur, 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. Out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.11,61,062/- (Rupees Eleven Lakhs Sixty One Thousand and Sixty Two only)** and the respondents 2 to 5/claimants 2 to 5 are entitled to get **Rs.6,00,000/- (Rupees Six Lakhs only)** each. On such deposit being made, the respondents 1 to 5/claimants are permitted to withdraw their shares as per the apportionment fixed by this Court together with interest and costs, on due application before the Tribunal. If the amount was already deposited, the balance amount shall be withdrawn by the



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appellant/insurer. Parties are directed to bear their own costs.

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Consequently, connected Miscellaneous Petition is closed.

28.03.2024

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

1. The Motor Accident Claims Tribunal/
Special District Court for MCOP cases,
Thanjavur.
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.676 of 2017
and
C.M.P.(MD)No.7035 of 2017

Dated : 28.03.2024