BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.06.2025

Pronounced on : 04.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.831 of 2022
and
C.M.P.(MD)No.2180 of 2024

Cholamandalam M.S. General Insurance Company Ltd.,
D.No.2, II Floor,
NSC Bose Road, Chennai
through its Branch Manager ... Appellant/ 2nd Respondent

Vs.

1.P.Mariammal

2.Ponazhagu

3.Minor P.Krishnamoorthy
(R3 rep. by her mother R1 P.Mariammal)

4.Guruvammal ... Respondents 1-4/ Petitioners 1-4

5.P.Muthaiah ... Respondent No.5/ 1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No. 82 of 2014 on the file of the Motor Accident Claims Tribunal (Sub Court), Sivakasi, dated 04.10.2017.

For Appellant : Mrs.K.R.Shivashankari

For Respondents : M/s.S.Prabha for R1 to R4

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.82 of 2014 dated 04.10.2017 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Sivakasi.

2. The appellant/insurer, who was made liable to pay compensation of Rs.9,75,000/- (Rupees Nine Lakhs and Seventy Five Thousand only) with interest at 9% per annum and costs to the respondents 1 to 3/ claimants 1 to 3 for the death of Pitchaipandi, consequent to an accident occurred on 12.08.2014, challenged the quantum of compensation awarded at, by the Tribunal.

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

4. During trial, the claimants examined the first claimant Tmt.Mariammal as P.W.1 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The first respondent remained *ex-parte*. The insurer adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the pleadings and evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 04.10.2017 holding that the first respondent's driver was responsible for the accident mulcted liability on both the first respondent and the insurer jointly and severally and directed them to pay compensation of Rs.9,75,000/- (Rupees Nine Lakhs and Seventy Five Thousand only) to the claimants 1 to 3 with interest and costs. Aggrieved by the impugned award, the insurer has preferred the present appeal.

6. It is pertinent to note that the insurer has not challenged the negligence aspects and the consequent liability fixed but only challenged the quantum of compensation.

7. The learned counsel appearing for the insurer would submit that though the claimants have alleged that the deceased was doing piglet business and was earning Rs.30,000/- per month, they have not chosen to produce any evidence, that the Tribunal, without any basis, has fixed the monthly income of the deceased as Rs.7,500/-, which is on higher side, that when the claim petition was pending, mother of the deceased, who was shown as fourth claimant, had died but the Tribunal instead of deducting 1/3rd of the income, deducted 1/4th of the income for personal and living expenses of the deceased and is very much against the settled position, that the compensation awarded towards consortium and love and affection are also on higher side, that the Tribunal ought to have awarded interest at 7.5% per annum but awarded interest at 9% per annum, which is very much on higher side and that therefore the compensation awarded by the Tribunal is liable to be modified.

8. The learned counsel appearing for the claimants would submit that the Tribunal, considering the deceased as a coolie, has rightly fixed the monthly income at Rs.7,500/- and deducted 1/4th of the income towards personal and living expenses of the deceased, that the Tribunal

has awarded amounts under the other heads reasonably and that therefore there is nothing to interfere with the impugned award.

9. The points that arise for consideration are :

1) *Whether the Tribunal erred in fixing the monthly income at Rs.7,500/- despite non-production of any evidence to prove the avocation and income of the deceased?*
2) *Whether the Tribunal erred in deducting 1/4th of the income of the deceased towards personal and living expenses of the deceased, when admittedly, three claimants have proceeded with the claim petition?*
3) *Whether the compensation awarded at by the Tribunal is just and proper and is in accordance with law?*

10. The claimants, in their claim petition, have stated that the deceased was doing piglet business and used to buy piglets from pig farming owners at Sivakasi, Sattur, Kollapatti, Irukkankudi and Vembakkottai and sell the same to wholesale business men at Salem and Hosur and is getting Rs.1,000/- per day and that the deceased had also been running meat shop at Thayampatti and is getting good income.

11. As rightly contended by the learned counsel appearing for the insurer and as rightly observed by the learned trial Judge, the claimants have not produced any iota of evidence to substantiate their claim. Admittedly, the complainant Selvaraj, who accompanied the deceased at the time of accident, lodged a complaint, wherein, he has stated that the deceased was doing coolie work. The Tribunal, taking note of the postmortem certificate, has rightly fixed the age of the deceased as 56 years at the time of accident. Considering the fact that the deceased was working as a coolie and taking note of the age of the deceased, monthly income fixed by the Tribunal at Rs.7,500/- cannot said to be excessive and is very much reasonable.

12. Now turning to the deductions, the Tribunal has deducted 1/4th of the income towards personal and living expenses of the deceased. As rightly contended by the learned counsel appearing for the insurer, 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 deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent

family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six. In the case on hand, no doubt, originally four claimants including the mother of the deceased have laid the claim petition but during the pendency of the claim petition, mother of the deceased had died and as such, the claim petition was proceeded by other three claimants. Considering the above, the decision of the Tribunal in deducting $1/4^{th}$ of the income is not proper and $1/3^{rd}$ of the income is to be deducted towards personal and living expenses of the deceased and on such deduction, the monthly income would come to Rs.5,000/- [Rs.7,500/- - Rs.2,500/- (Rs.7,500/- * 1/3)].

13. As per the dictum laid down in ***Smt.Sarla Verma's case,*** the appropriate multiplier would be 9, but the Tribunal has taken multiplier 8. Hence, the loss of dependency would be Rs.5,40,000/- (Rs.5,000/- x 12 x 9).

14. The Tribunal has awarded loss of consortium at Rs.1,00,000/- and loss of love and affection for the claimants at Rs.3,00,000/-. The

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 Honourable Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130,*** and ***the New India Assurance Company Ltd., Vs. Smt.Somwati and others,*** passed in ***Civil Appeal No.3093 of 2020 and batch, dated 07.09.2020*** has permitted the spousal consortium to be awarded to the surviving spouse, parental consortium to be awarded to the children upon the premature death of their parents and filial consortium to be awarded to the parents for the loss of their children at the same amount that is fixed in ***Pranay Sethi's*** case. But the Tribunal, without considering the legal position, has granted more amounts towards consortium and love and affection. Considering the above, the first claimant being the wife is entitled to get Rs.40,000/- towards loss of spousal consortium and the claimants 2 and 3 being the children of the deceased are entitled to get Rs.40,000/- each towards parental consortium. Moreover, the claimants 1 to 3 are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads.

15. Considering the above, the claimants 1 to 3 are entitled to get total compensation of Rs.6,90,000/- (Rupees Six Lakhs and Ninety Thousand only) and 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	5,40,000	5,40,000	Confirmed
2.	Spousal consortium	1,00,000	40,000	Reduced
3.	Loss of love and affection	3,00,000	Nil	Nil
4.	Transport expenses	5,000	Nil	Nil
5.	Funeral expenses	25,000	15,000	Reduced
6.	Loss of estate	5,000	15,000	Enhanced
7.	Parental consortium	Nil	80,000	Granted
	Total	**9,75,000**	**6,90,000**	**Reduced by Rs.2,85,000/-**

16. As rightly contended by the learned counsel appearing for the insurer, the claimants 1 to 3 are entitled to get interest at 7.5% per annum. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

17. In the result, this Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal at Rs.9,75,000/- (Rupees Nine Lakhs and Seventy Five Thousand only) is hereby reduced to **Rs.6,90,000/- (Rupees Six Lakhs and Ninety Thousand only).** The appellant and the fifth respondent are directed to deposit the modified award amount together with interest at 7.5% per annum from the date of petition till realization jointly and severely to the credit of M.C.O.P.No.82 of 2014 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Sivakasi, 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 respondents 1 to 3 are entitled to the following shares together with interest:-

Respondents	**Amount**
First respondent (Wife of the deceased)	Rs.3,45,000/- + Interest
Second respondent (Daughter of the deceased)	Rs.1,72,500/- + Interest
Third respondent (Son of the deceased)	Rs.1,72,500/- + Interest
Total	**Rs.6,90,000/-**

The respondents 1 and 2 and the third respondent, who has attained majority, are permitted to withdraw their respective shares together with interest and costs, less any amount already withdrawn, by filing suitable application before the Tribunal. If the amount has already been deposited, the appellant shall withdraw the balance amount. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

04.08.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Subordinate Judge,
   Motor Accident Claims Tribunal,
   Sivakasi.

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

K.MURALI SHANKAR,J.

csm

Pre-Delivery Order made in
C.M.A.(MD)No.831 of 2022
and
C.M.P.(MD)No.2180 of 2024

Dated : 04.08.2025