BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.06.2025

PRONOUNCED ON: 04.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1084 of 2022

1.Mathina
2.Minor.Micheal
3.Minor.Suganya
4.Aachiammal
5.Minor.Nithya : Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Express Transport Corporation Ltd.,
Chennai-2. : Respondent /Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Judgment and Decree passed in M.C.O.P.No.96 of 2017, dated 22.04.2022, on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Kumbakonam.

For Appellant : Mr.K.Abiya

For Respondent :Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.96 of 2017, dated 22.04.2022, on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Kumbakonam.

2. The appellants/claimants who were awarded with compensation of Rs.10,85,000/- for the death of Tamilselvan consequent to an accident occurred on 02.02.2017, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement.

3. During enquiry, the claimants have examined the claimants 1 and 5 as P.W.1 and P.W.2 respectively and exhibited 4 documents as Exs.P.1 to P.4. The respondent Transport Corporation examined one witness – Thiru.Palanisamy as R.W.1 and produced no documentary evidence. The learned Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned award dated 22.04.2022, holding that the respondent driver was responsible for the accident, directed the

respondent to pay compensation of Rs.10,85,000/- with interest and costs to the appellants/claimants. Aggrieved by the impugned award, the claimants 1 to 4 and 7 have preferred the present Civil Miscellaneous Appeal seeking enhancement.

4. The learned Counsel for the appellants/claimants would submit that the deceased was selling needles and algae and was earning Rs.20,000/-p.m., and it is not possible to survive along with five dependents even without earning Rs.10,000/- as monthly income and that the Tribunal without considering the above has mechanically fixed the monthly income as Rs.7,000/- per month which is on lesser side.

5. The learned Counsel for the respondent would submit that though the claimants have alleged that the deceased was selling needls and algae and was earning Rs.20,000/-p.m., they have not chosen to produce any evidence and that in the absence of any evidence to prove the income, the Tribunal has rightly fixed the notional income at Rs.7,000/- per month.

6. No doubt, as rightly pointed out by the learned Counsel for the claimants, in the claim petition they have stated that the deceased was selling needles and algae and was earning Rs.20,000/- per month. Admittedly, the claimants have not produced any evidence and as rightly observed by the learned trial Judge, there could not be any income proof for the same. The Tribunal taking note of the postmortem certificate and death certificate, has fixed the age of the deceased as 35 years at the time of death. Considering the nature of business and taking note of the age of the deceased, the monthly income fixed at Rs.7,000/- is certainly on the lesser side and this Court fixes the monthly income at Rs.8,000/-

7. The learned Counsel for the claimants would further submit that the Tribunal ought to have deducted the personal expenses of the deceased at 20%, not at 25%, because the deceased had five dependents and that if the number of dependants is more than 4 to 6 persons, the ratio of personal expenses would be 20%. As per the dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC)***, the ratio towards personal expenses should be 1/3 where the number of dependent family members is 2 to 3, 1/4th where the number

dependent family members is 4 to 6 and 1/5th where the number of dependent family members exceeds six. In the case on hand, the Tribunal has accepted the parents as claimants and as such, the deducting 1/4th of the income of the deceased towards his personal living expenses cannot be found fault with. The learned Counsel for the appellants would further submit that the trial Court after fixing the monthly income at Rs.7,000/-, has failed to include the future prospects and the Tribunal ought to have granted the future prospects at 40% to the claimants as the deceased was aged 35 years at that time.

8. The Hon'ble Supreme Court in ***National Insurance Company Vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609 (SC),*** has specifically held that if the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be warranted, where the deceased was below the age of 40 years. In the case on hand, since the deceased was aged 35 years at the time of accident, as rightly contended by the learned Counsel for the appellants, 40% of the income is to be added towards future prospects and after such addition, the monthly income would come to Rs.11,200/- (Rs.8,000/- + 40%).

9. The Tribunal, as already pointed out, has rightly deducted 1/4th of the income and after such deduction, it comes to Rs.8,400/-. The Tribunal applying the dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma's case,*** has rightly applied the multiplier of 16. Hence, the loss of dependency would be Rs.16,12,800/-. (Rs.8,400/- x 12x16).

10. The Tribunal has awarded Rs.44,000/- towards loss of spousal consortium and failed to award consortium to mother and children of the deceased. Our Hon'ble Supreme Court in ***Pranay Sethi***'s case has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, 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. Honourable 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, 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.

11. Considering the above, the first claimant being the wife, is entitled to Rs.44,000/- towards loss of spousal consortium and the claimants 2, 3 and 5 being the children of the deceased are entitled to Rs. 44,000/- each towards loss of parental consortium and the fourth claimant, being the mother of the deceased is also entitled to get Rs. 44,000/- towards loss of filial consortium. The Tribunal has rightly awarded Rs.16,500/- for funeral expenses and Rs.16,500/- towards loss of estate. Hence, the claimants are entitled to get total compensation of Rs.18,65,000/- as follows:

Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of dependency	10,08,000	16,12,800	enhanced
2	Loss of consortium	44,000	2,20,000 (Rs.44,000/- x5)	enhanced
3	Loss of estate	16,500	16,500	confirmed
5	Funeral expenses	16,500	16,500	confirmed
	Total	**Rs. 10,85,000**	**Rs. 18,65,800**	**enhanced**

12. Though the claimants have restricted their appeal to the value of Rs.12,00,000/-, this Court is inclined to enhance the compensation as per the dictum laid down by the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others (C.A.No.476 of 2020 dated 21.01.2020)*** wherein, the Hon'ble Apex Court has held as follows:-

> *"2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely*

on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants."

13. In the result, the Civil Miscellaneous Appeal is allowed. The compensation awarded by the Tribunal to the claimants is enhanced from **Rs.10,85,000/- to Rs.18,65,800/-** along with interest at 7.5%pa., from the date of petition till the date of realization and costs, excluding the default period if any. The respondent – Transport Corporation is directed to deposit the entire award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.96 of 2017, on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Kumbakonam, less 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 claimant is entitled to withdraw Rs.8,65,800/- along with proportionate interest and costs and the claimants 2, 3 and 5 are entitled

to get 2,50,000/- each along with proportionte interest and costs and the fourth claimant – mother of the deceased is permitted to withdraw Rs.2,50,000/- along with proportionte interest and costs. The shares of the minor claimants 2, 3 and 5 shall be deposited in any one of the Nationalised Banks till the minors attain majority and the first claimant, who is the mother of the minor claimants is permitted to withdraw the interest once in three months directly from the Bank, until the minors attain majority. The parties are directed to bear their own costs. The appellants/claimants are directed to pay the balance Court fees for the enhanced amount, as per the existing Rules.

04.08.2025

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. The Motor Accident Claims Tribunal /
Principal Subordinate Court, Kumbakonam.

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

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.1084 of 2022

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