



C.M.A.Nos.404 & 936 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE Mrs.JUSTICE R. KALAIMATHI

C.M.A.Nos.404 & 936 of 2014
and Cros.Obj.No.64 of 2015
and Cros.Obj.No.62 of 2014
and C.M.P.No.2681 of 2016

IN C.M.A.No.404 of 2014

National Insurance Co.Ltd.,
Sathi Road,
Coimbatore

... Appellant

vs.

1. N.Radhakrishnan
2. Padmavathi
3. T.Muthukumar
4. Dr.N.Geetha

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.1358 of 2007 on 19.08.2013 on the file of the learned Motor Accident Claims Tribunal (III Additional District Sessions Judge) at Coimbatore.



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For Appellant : Mr.J.Chandran

For R1 & R2 : Mr.R.Kannan

Cros.Obj.No.64 of 2015

1. N.Radhakrishnan

2.R.Padmavathy

.... Cross Objectors

Vs.

1.M/s.National Insurance Company Ltd.,

Sathyamangalam Road, Coimbatore – 641 012.

2. T.Muthukumar

3. Dr.N.Geetha

...Respondents

Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, to modify the judgment and decree dated 19.08.2013 passed in M.C.O.P.No.1265 of 2008 on the file of the Motor Accident Claims Tribunal Cum III Additional District Judge, Coimbatore.

For Cross objectors : Mr.R.Kannan

For Respondents : Mr.J.Chandran



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In C.M.A.No.936 of 2014

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National Insurance Co.Ltd.,
Sathi Road,
Coimbatore

... Appellant

vs.

1.T.R.Ramprakash
2.T.Muthukumar
3.Dr.N.Geetha

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.1265 of 2008 on 19.08.2013 on the file of the learned Motor Accident Claims Tribunal (III Additional District Sessions Judge) at Coimbatore.

For Appellant : Mr.J.Chandran

For R1 : Mr.R.Kannan

Cros.Obj.No.62 of 2014

1. T.R.Ram Prakash

.... Cross Objector

Vs.

1.M/s.National Insurance Company Ltd.,
Sathyamangalam Road, Coimbatore – 641 012.

2. T.Muthukumar

3. Dr.N.Geetha

...Respondents



C.M.A.Nos.404 & 936 of 2014

Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, to modify the judgment and decree dated 19.08.2013 passed in M.C.O.P.No.1358 of 2007 on the file of the Motor Accident Claims Tribunal Cum III Additional District Judge, Coimbatore.

For Cross objector : Mr.R.Kannan

For R1 : Mr.J.Chandran

J U D G M E N T

Questioning the liability, the Insurance Company has preferred these Civil Miscellaneous Appeals against the common judgment and decree passed in M.C.O.P.No.1265 of 2008 and M.C.O.P.No.1358 of 2007 dated 19.08.2013 on the file of Motor Accident Claim Tribunal / III Additional Court, Coimbatore.

2.The claimant/claimants in both claim petitions have also preferred cross objections to the above said Civil Miscellaneous Appeals for enhancements.



3. The claim petitions were filed under Section 166 of Motor Vehicles Acts, 1988 claiming compensation of Rs.25 lakhs for the injuries suffered by claimant Ramprakash in the road accident that occurred on 14.10.2008.

4. The legal representatives of one Prem Shankar have also filed claim petition under Section 166 of Motor Vehicles Act, claiming compensation of Rs.20 lakhs in the death of the said persons in the same accident as mentioned supra.

5. 1. In (M.C.O.P.No.1265 of 2008) .

The learned Tribunal after hearing both sides and upon considering the oral and documentary evidences, passed an award for a sum of Rs.3,47,960 with 7.5% p.a., from the date of the petition till the date of deposit.



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5.2 In (M.C.O.P.No.1358 of 2007) .

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The learned Tribunal Court after hearing both sides and upon considering the oral and documentary evidences, passed an award for a sum of Rs.9,70,000/- with 7.5% p.a., from the date of the petition till the date of deposit.

6. The learned counsel appearing for the appellant Insurance Company in both Civil Miscellaneous Appeals would vehemently argue that, a perusal of the FIR would clearly reveal the fact that, it is only because of rash and negligent driving of the lorry, accident had happened and because of the negligent driving of driver of the said unknown lorry, rider of Motor Cycle bearing Reg.No.TN27 F 2345 died and Pillion rider Ram Prakash injured. It is his argument that, the FIR was filed by the claimant side as Ex.P1. When the document is marked by claimant side, they cannot go beyond the details found in the FIR. He would further contend that, as per the FIR, it is only because of rash and negligent driving of driver of the lorry (unknown), the accident had happened and



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fastening the liability on the Maruthi Car, which came behind the lorry has nothing to do with the accident and the award passed in both the claims are totally incorrect.

7. The learned counsel appearing for the appellants/injured in Cros.Obj.No.64 of 2015 and injured in Cros.Oj.No.62 of 2014 would strenuously contend that, in the Ex.P1 (FIR) over the page, an endorsement is found that FIR மாற்ற சொல்லி மனு தருகிறார். FIR விவரங்களை மாற்றம் செய்ய மனு தந்ததால் கையொப்பம் செய்ய மறுத்துவிட்டார். The said details would go to show that, FIR was registered with totally incorrect facts. In Ex.P13 also ie., the order passed by the learned Judicial Magistrate, Coimbatore in M.P.No.634 of 2007 dated 18.07.2007. The operative portion is extracted hereunder:

மேற்சொன்ன காரணத்தினால் உச்சநீதிமன்ற உத்தரவின்படி நீதித்துறை உத்தரவின்படி நீதித்துறை நடுவர் மன்றம் செயல்பட வேண்டிய வழிகாட்டுதலை பின்பற்றியும் உயர்நீதிமன்றம் சி.ஆர்,எல்.ஓ.பி.2895 /2006 படி வழி பாட்டுதலை பின்பற்றியும் உயர்நீதிமன்றத்தில் பரிகாரம் தேடிக்கொள்ள மனுதாரருக்கு உத்தரவு கொடுத்திருப்பதில் பேரிலும் இம்மனுவை ஆராய்ந்து பார்த்ததில் போலீசாரின் இறுதி அறிக்கை ஏற்றுக்கொள்ளத்தக்கதல்ல என்று இந்நீதிமன்றம்



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முடிவு செய்கிறது. ஆகவே இவ்வழக்கில் மாருதி கார் ஓட்டி வந்த முத்துக்குமார் என்பவருக்கு எதிராக மேற்சொன்னவாறு போதிய ஆதாரங்கள் இருப்பதாக கூறப்படுவதால் மனுதாரரை கு.வி.மு.ச பிரிவு 200 பிரகாரம் இந்நீதிமன்றத்தில் மனுதாரர் சத்திய பிரமாணவாக்குமூலம் அளிக்கவும் இவ்வழக்கிற்கு தகுந்த சாட்சி பட்டியல் மற்றும் சான்றாவணப்பட்டியல் தாக்கல் செய்து சாட்சி விசாரிக்குமாறும் உத்தரவிடப்படுகிறது.

8. It was further contended that the injured Ram Prakash is examined as PW2 and Boopalan, who was the Pillion rider in the Motor Cycle bearing Reg.No.TN 38 P3337, who was the complainant have spoken exactly how the accident happened. Though, the driver of the Maruthi Car has been examined as RW2 (Muthu Kumar), he has stated that, he did not lodge the complaint. It is pertinent to note that, he was not the summoned witness. Had the version of RW2 is true, he should have lodged the complaint. The Motor Vehicle Inspection report of the Maruthi Car also proves the fact that, it has involved in the accident.

9.1 It is his further argument that, in Cros.Obj.No.62 of 2014, the claimant has produced the discharge summary and it shows that there are



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two fractures on his right hand below the elbow and right hand below the elbow was amputated. The Tribunal based on the Ex.P8 (Disability Certificate issued by the Department for Rehabilitation of the Disabled, Government of Tamil Nadu and assessed the disability as 60%, No amount was granted for future medical expenses and attender charges. The amounts awarded for extra nourishment, transport expenses and for pain and sufferings are less and prayed for enhancement.

9.2. In Cros.Obj.64 of 2015, pertaining the claim with regard to deceased Prem Shankar, the learned Counsel appearing for the Claimants would strenuously contended that, he was working as a Risk Executive in Bharathi Cellular Ltd, Pappanayakanpalayam and he was earning Rs.3,310/-p.m., as a trainee. It is the evidence of his father Radhakrishnan that, he completed B.Sc., degree and thereafter, pursued his M.C.A degree and he was under probation at the time of death. After probation, he was entitled for a salary of Rs.12,000/-p.m., To support the said details, one RamaSubramaniam (PW3) who was the contractor of



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G.S.Vidyut Finance was examined. P12 Salary Certificate was issued by their company. The learned counsel would stress upon the fact that the salary fixed by the Tribunal at Rs.10,000/- is very less. The future prospects was not added by the tribunal. He would further contend that, for transport expenses and for loss of consortium, no amount was granted and prayed for enhancement of the compensation.

10. Heard the arguments of the learned counsels appearing for both sides and perused the entire material records.

11.1. As regards C.M.A.No.404 of 2014 (in M.C.O.P.No.1358 of 2007/ death claim) at trial, on the Claimants' side, PW1 to PW3 have been examined. Ex.P1 to Ex.P17 were marked. On the respondent side, RW1 to RW5 have been examined and Ex.R1 to Ex. R9 have been marked.

11.2 In C.M.A.No.936 of 2014 (M.C.O.P.No.1265 of 2008) on the Claimants' side, PW1 & PW2 have been examined and Ex.P1 to P15 have

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been marked. On the Insurance Company Side and RW1 to RW5 have been examined and Ex.R1 to R6 have been marked.

12. The prime issue in this case is that, Maruthi Car is not at all involved in the accident and fastening of the liability on the owner of the Maruthi Car and its insurer is questioned. The connected FIR is marked as Ex.P1. To understand the contents of the FIR, one has to go through the FIR very seriously. The complaint was lodged by the Pillion Rider of the Motor Cycle bearing Reg.No.TN 38 P 3337. When the Motor Cycle bearing Reg.No.TN 38 P 3337, which was driven by Prakash with the Pillion Boopalan and another motor cycle bearing Reg.No.TN 27 F 2345, which was driven by Prem Shankar with the pillion Ram Prakash were proceeding from west to east. The lorry which came in a rash and negligent manner hit the motor cycle bearing Reg.No.TN 27 F 2345 and proceeded towards western side and the Maruthi Car came behind the lorry. It is relevant to note that, in the FIR, said complainant refused to sign on the ground that, the details of the accident has been narrated in a

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different way. In Ex.P13, which is the Order passed by the learned Judicial Magistrate also supports the stand of the claimants.

13. The learned counsel appearing for the Insurance Company strenuously contended that, when the FIR is marked as P1, it is not open to the claimants to plead contra to the FIR. In support of the same, judgment rendered by this Court in **Nagammal Vs.Muthiraiyan and other reported in C.M.A (MD).No.773 of 2017** was referred to. In that judgement, judgement rendered in **Oriental Insurance Co.Ltd., V.K.Balasubramanian** reported in 2007(2) TN MAC 399 has been referred to. It has been held as follows:

It is a well settled proposition of law that the judgements of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal no relevant in a Civil Case or a claim for compensation under the Motor Vehicles Act, except fro the limited purpose of showing that there was a criminal prosecution which ended in conviction of acquittal.



14. In M.C.O.P.No.1358 of 2007, complainant Boopalan has been examined as PW2. It is his evidence that, when two Motor Cycles were proceeding from West to East direction along Karumathampatti - Kovai Avianashi Road, a Maruthi Car came from the opposite direction in a rash and negligent manner and hit on the Motor Cycle bearing Reg.No.TN 27 F 2345 and due to the impact, Prem Shankar died and Ram Prakash sustained serious injuries and due to the rash and negligent driving of the driver of Maruthi Car, accident has happened.

15. A very important piece of evidence to fix the liability at the first instance is the Motor Vehicle Inspection report of the Maruthi Car, which is marked as Ex.P3 (it is mistakenly mentioned in the list of documents as P4 instead of P3). Motor Vehicle Inspection report pertaining to Car was inspected on 27.09.2004 within 10 days from the date of the accident. Registration number of the Maruthi Car is TN 38 J 7014. Owner of the car is Dr.N. Geeetha. Driver's name is T.Muthu Kumar. In column 13 of MVI report of Maruthi Car, it is mentioned that, front bumper plastic is broken



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and other damage details have been mentioned. Crime No.354 of 2004 is mentioned in the said MVI Report. The driver of the Maruthi Car namely Muthukumar has been examined as RW2 in M.C.O.P.No.1265 of 2008. It is his evidence that, an unknown lorry hit the two wheeler and proceeded towards West and he came behind the lorry and he has nothing to do with the accident. But RW2 Muthukumar, who is the driver of Maruthi Car did not lodge the complaint. Had his version been true, complaint should have been lodged. It is well established principle that, FIR is not a substantial piece of evidence. It can be used for the purpose of contradiction and for corroboration. Since because, FIR is marked on the claimant's side, the contents of FIR has to be taken in toto is untenable for the reason that, on information given by one person is registered and called as First Information Report. Therefore, Court is expected to consider the totality of the circumstances and come to the conclusion. In this case, based on the evidence of PW1, Ram Prakash PW2 Boopalan and RW2 Muthu Kumar driver of the Maruthi Car, Ex.P1 FIR and Ex.P3 MVI report of Maruthi Car, it has to be concluded that, because of the rash and negligent driving of the



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Maruthi Car, accident had happened and fastening the liability on the insurer of Maruthi Car by the Tribunal is a well reasoned order. Therefore, the owner of the Maruthi Car and its insurer and the liable to compensate the injured and the legal representatives of the deceased.

16. As regards the Cros.Obj.64 of 2015, it is evidence of his father PW1 Radhakrishnan that his son aged about 21 years while he was working as a Risk Executive in Bharathi Cellular Limited, he was earning Rs.3,310/- at the relevant point of time. It is the further evidence of PW1 Radhakrishnan that, his son was in probation period and after the completion of probation, he was eligible for a salary of Rs.12,000/-p.m. To strengthen his evidence, PW3, one Ramasubramniam, who was the Director of Vidyut Finance has been examined as PW3. It is his evidence that, he knows Prem Shankar and the salary is disbursed through their company and they reimburse from the Bharathi Cellular Company and the Salary Certificate is Ex.P12. Based on the above said oral and documentary evidence, Tribunal has fixed the notional income at

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Rs.10,000/- . From perusal of Ex.P9 and Ex.P16, it is clear that, deceased has completed B.Sc degree and also completed M.C.A degree. Relying upon the above said documents and the oral evidence of PW3, this Court deems fit to fix the income of the deceased at Rs.12,000/-p.m.,

17. As per the law laid down by the Hon'ble Supreme Court of India in **National Insurance Co. Ltd. Vs. Pranay Sethi and others** reported in (2017) 2 TN MAC 609 (SC) reported in (2017) 2 TN MAC 609 (SC) for the persons aged below 40 years, who is not in the permanent job, for future prospects 40% should be added.

18. As per **Smt. Sarla Verma & Others Vs. Delhi Transport Corporation** reported in 2009 (2) TN MAC 1 (SC), the proper multiplier to be adopted is '18'. The deduction towards personal and living expenses of the deceased is one-half (50%) of the income, since the deceased is a bachelor.

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19. Based on the aforesaid details for the loss of dependency, following formula emerges:

Age of the deceased = 21 years

Notional Income Fixed = Rs.12,000/-

Future prospects to be added = 40%

Multiplicand to be adopted = 18m

Deduction for Personal and
Living Expenses = 50%

Loss of dependency

$\text{Rs.12,000} + 40\% = \text{RS.16,800/-}$

$\text{Rs.16,800} \times 50\% = \text{Rs.8,400/-}$

$\text{Rs.8,400} \times 12 \times 18 = \text{Rs.18,14,400/-}$

20. For the loss of consortium, parents are entitled to Rs.40,000/- each, as per the law laid down by the Hon'ble Supreme Court of India in **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in (2017) 2 TN MAC 609 (SC). For the loss of Estate an amount of Rs.15,000/- is granted. For transport expenses an amount of Rs.11,000/- is



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granted. In all other aspects, the award of the Tribunal appears to be reasonable and it needs no interference. The compensation details is revoked and tabulated as follows:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of dependency	Rs.9,00,000/-	Rs.18,14,400/-	enhanced
2.	For Loss of Consortium	--	Rs.80,000/-	granted
3.	For transport expenses	--	Rs.11,000/-	granted
4.	For love and affection	Rs.50,000/-	Rs.50,000/-	confirmed
5.	For Mental Agony	Rs.10,000/-	Rs.10,000/-	confirmed
6.	For Funeral expenses	Rs.10,000/-	Rs.10,000/-	confirmed
7.	For Loss of estate	---	Rs.15,000/-	granted
	Total	Rs.9,70,000/-	Rs.19,90,400/-	enhanced
	Rounded Of		Rs.19,90,000/-	



21. In Cros. Obj.No.62 of 2014 (M.C.O.P.No.1265 of 2005) , it is the evidence of PW2 T.R.Ram Prakash that on 18.09.2004 at about 0.45 hrs, from Gandhipuram proceeding to Karumathampattii from west along Avinashi – Gandhipuram Main Road to East direction, he along with Premshankar in TN 37 2345 YAMAHA Motor Cycle and Mr. Jayaprakash with Boobalan as pillion were riding YAMAHA Motor Cycle bearing Reg.No.TN 38 B 3337. Near Thottipalayam Junction, a Maruthi Car bearing Reg.No.TN 38 J 7014 suddenly came from the opposite side and hit the motor cycle bearing Reg.No.TN 38 B 3337 and also hit on his Motor Cycle. Ram Prakash sustained fracture over his right fore arm and also on his right thigh bone. Prem Shankar died on the spot. It is his further evidence that, Ram Prakash was taken to Kovai Medical Centre, where surgery was performed on his right hand elbow and below right elbow was amputated.

22. As per Ex.P.5, Discharge summary, he was admitted in the hospital on 18.09.2004 and was discharged after 10 days. He further submitted that, he was admitted with severe crushing with partial



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disarticulation of right elbow with fracture of radius and ulna and the fracture on his right femur. From careful perusal of the discharge summary, it appears that, on the date of admission itself, his right hand below elbow was amputated. P8 is the disability certificate issued by the Department for Rehabilitation of the Disabled, Government of Tamil Nadu, wherein for the claimant Ramprakash, percentage of the disability is assessed as 60%. Disability was neither assessed by an Orthopedician or by the Medical Board. Based on the disability details found in P8 as mentioned Supra, the Tribunal has taken the disability as such and Rs.2000/- per percentage is granted. Therefore, disability assessment made by the Disability Certificate issued by the Department for Rehabilitation of the Disabled, Government of Tamil Nadu, namely P8 is not correct. Therefore, the original petition is remitted back to Trial Court with a direction to refer the Claimant to the Medical Board for the assessment of disability and thereafter after hearing both sides, the learned Tribunal is required to pass an award preferably within a period of three months from the date of receipt of copy of this judgment.

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23. In the result,

(i) The Civil Miscellaneous Appeals are dismissed. The **Cros.Obj.No.62 of 2014** is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The **Cros. Obj. No.64 of 2015** is partly allowed. The quantum of compensation awarded by the Tribunal is enhanced from Rs.9,70,000/- to Rs.19,90,000/-.

(iii) The 1st respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e.,Rs.19,90,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of numbering of the petition till the date of deposit to the credit of M.C.O.P.No.1358 of 2007 on the file of the Motor Accident Claims Tribunal, Chennai (III Additional District Judge, Coimbatore), within a period of *eight weeks* from the date of receipt of a copy of this Judgment.



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(iv) On such deposit being made, parents of Cros. Objector in Cros.Obj.No.64 of 2015 are at liberty to withdraw the enhanced amount along with interest costs, less the amount, if any already withdrawn, by making necessary cheque application before the tribunal. The claimants are required to pay the requisite Additional Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

30.08.2023

Sma

To

Motor Accident Claims Tribunal, Chennai
(III Additional District Judge, Coimbatore).



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R. KALAIMATHI,J.

Sma

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