



C.M.A.No.105 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.3.2023

CORAM:

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Civil Miscellaneous Appeal No.105 of 2020
C.M.P.No.734 of 2020

The Branch Manager,
Shriram General Insurance Co. Ltd.,
Sitapura, Jaipur - 302 022.

... 2nd Respondent/Appellant

..Vs..

- | | |
|--|---|
| 1. Indira | |
| 2. Brinda | |
| 3. Minor Priya rep. by her next friend | |
| Guardian and mother Indira | ... Petitioners 1 to 3/Respondents-1 to 3 |
| 4. Kannan | ... Respondent - 1 /Respondent - 4 |

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the Judgment and decree dated 31.1.2018 made in M.C.O.P.No.113 of 2016
on the file of II Additional District Court (Motor Accidents Claims Tribunal)
Tindivanam.

For Appellant	: Mr.Dhakshnamoorthy
For Respondents 1 to 3	: Mr.G.Mohammed Aseef
For Respondent-4	: No appearance



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JUDGMENT

(Judgment of the Court was made by **K.GOVINDARAJAN THILAKAVADI, J.**)

The Insurance Company/Second respondent in M.C.O.P.No.113 of 2016 (Tindivanam Sub Court M.C.O.P.No.570 of 2013) on the file of Motor Accident Claims Tribunal (II Additional District Court), Tindivanam is the appellant in this appeal.

2. In the impugned award, the tribunal has granted compensation for a sum of Rs.24,26,000/-. Aggrieved by the said award, the appellant Insurance Company questioning the liability and quantum of compensation awarded by the tribunal, preferred the instant appeal.

3 The case of the claimants before the tribunal is that on 11.2.2013 at about 14.00 hours, when the deceased Sekar was riding his two wheeler bearing registration No.TN 19-X 7484 from Marakkanam to Tindivanam direction with extreme left side on the road, a TATA ACE belonging to the first respondent bearing registration No.TN-32-P 7643 came from same direction in a rash and negligent manner without following the traffic rules, dashed on the deceased Sekar's vehicle. Immediately, the deceased was taken to the Government hospital at Tindivanam and referred to Government hospital, Chennai where he died at the hospital due to the injuries succumbed to him. The claimants have filed the claim



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petition claiming compensation of Rs.99,00,000/- for the death of the deceased Sekar in the accident. To prove their contention, the claimants have examined P.W.1 to P.W.2 and marked documents Ex.P1 to P9.

4. On the other hand, appellant/Insurance Company in their counter affidavit resisted the claim of the petitioners stating that there is no negligence on the part of the driver/first respondent before the tribunal, it is a collision where two vehicles were involved in the accident. It is further stated that two wheeler driven by the deceased was also at fault contributing to the accident. Hence, the award ought to have been apportioned according to the contribution. Therefore, claim petition is liable to be dismissed.

5. On the side of the respondents, R.W.1 and R.W.2 were examined. Ex.R1 and R2 were marked.

6. The tribunal upon perusing the records and arguments advanced by both sides, awarded a sum of Rs.24,26,000/- as compensation to the claimants. Aggrieved by this, the Insurance Company is on appeal. In the appeal grounds, it is stated that the F.I.R. registered against the driver, fourth respondent herein has been closed as "Mistake of Fact" and as per the report of the police, the fault is



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solely on the part of the rider of the two wheeler. Thus, the deceased was also at fault. The complaint was registered only after a lapse of 10 days goes to show that the deceased was only at fault and there is no negligence on the part of the first respondent driver. Hence, the tribunal wrongly concluded that negligence is only on the part of the first respondent driver is erroneous and therefore, the order of the tribunal is liable to be set aside.

7 Heard the learned counsel appearing for the appellant/Insurance Company, learned counsel appearing for the claimants/respondents and perused the materials available on record.

8 The learned counsel appearing for the appellant takes us to the evidence adduced by R.W.1 and R.W.2. R.W.1 is none other than the Inspector of Police who had closed the F.I.R. as "Mistake of Fact". R.W.2 is an Officer who investigated the case. However, before the tribunal, driver of the offending vehicle was not examined to prove the manner of the accident. Moreover, R.W.1, in his cross examination, categorically admitted that factum of closure of F.I.R. was not intimated to the complainant and the same was forwarded to the Judicial Magistrate Court. He also admitted that case was not registered by him. He had not conducted any investigation about the accident. Further, the evidence of



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R.W.2 would support the case of the appellant. R.W.2 had filed a investigation report marked as Ex.R2 wherein it is stated that the accident caused when the deceased vehicle hit against a tree. In his cross examination, R.W.2 made a categorical admission that the driver of the insured vehicle had forwarded a letter to his company stating that when he was driving the vehicle viz., TATA ACE bearing registration No.TN-32-P 7643 on the occurrence date and place, a two wheeler bearing registration No.TN 19 X 7484 which was driven in front of the TATA ACE vehicle in a rash and negligent manner, without following the traffic rules and applied sudden break which caused TATA ACE vehicle hit against the two wheeler. The relevant portion of the statement made by R.W.2 in his cross examination, is extracted hereunder:

"எ.ம.த.சா.ஆ.2 அறிக்கையில் வாகனத்தின் உரிமையாளர் ஆன 1ம் எதிர்மனுதாரர் கண்ணன் என்பவர் கிளை மேலாளர் ஸ்ரீராம் ஜனரல் இன்கூரன்ஸ் கம்மெனி கடலூருக்கு எழுத்துபூர்வமான கடிதம் கொடுத்துள்ளார் அதில் "கடந்த 21.2.2013 மாலை 06.00 மணியளவில் நான் எனக்கு சொந்தமான TATA ACE bearing registration No.TN 19 X 7484 என்ற எண் கொண்ட வாகனத்தை மரக்காணத்தில் இருந்து திண்டிவனம் நோக்கி வந்து கொண்டு இருந்தபோது சொக்கந்தால் பஸ் நிலையம் அருகில் எனக்கு முன்னால் TN 19 X 7484 என்ற எண் உள்ள இருசக்கர வாகனத்தை ஓட்டிக் கொண்டு சென்ற நபர் எந்த



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விதமான சாலை விதிகளையும் பின்பற்றாமல்
தாறுமாறாக ஓட்டிக் கொண்ட நபர் திடீர் என்று பிரேக்
போட்ட காரணத்தினால் வேறு வழியின்றி நான்
இருசக்கர வாகனத்தின் பின்னால் மோத
வேண்டியதாகி விட்டது, இதில் என் தவறு ஏதும்
இல்லை"

Therefore, Ex.R2 investigation report cannot be taken into consideration. Hence, on the question of negligence, the tribunal has rightly fixed the liability on the first respondent/driver and accordingly, the tribunal has directed the respondents 1 and 2 jointly and severally liable to pay compensation to the claimants. Therefore, no interference is called for.

9 The next challenge made by the appellant is about the quantum of compensation awarded by the tribunal. According to the learned counsel appearing for the appellant, as per the principles laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi and others reported in 2017(16) SCC 680**, compensation awarded by the tribunal under the head, "Loss of Love and affection and Consortium, i.e. Rs.1,00,000/- each, which seems to be on the higher side. Taking into consideration of the above contention of the learned counsel appearing for the appellant as well as the principles laid down by the Hon'ble Supreme Court in **Pranay Sethi** case, a sum of Rs.80,000/- is awarded for loss of Love and affection and Rs.40,000/- towards Consortium. In addition to that,



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Rs.15,000/- is awarded towards loss of estate and Rs.25,000/- awarded by the tribunal towards funeral expenses is reduced to Rs.15,000/-. In respect of pecuniary benefits, award of the tribunal is not under challenge and therefore, the claimants are entitled for compensation awarded by the tribunal. Therefore, this Court is of the view that the award passed by the tribunal is required to be modified as follows:

Heads	Compensation modified by this Court Rs.
Loss of Pecuniary benefits	22,00,800/-
Loss of Love and affection	80,000/-
Consortium	40,000/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Total	23,50,800/-

The same is rounded off as Rs.23,51,000/-

10. The compensation awarded by the tribunal is modified/reduced to Rs.23,51,000/-. Except the above modification, the award passed by the tribunal is confirmed.

11. The claimants/respondents are entitled to compensation of Rs.23,51,000/-(Rupees twenty three lakhs and fifty one thousand only) along with



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interest at the rate of 7.5% p.a. from the date of petition till realization. The appellant/Insurance company is directed to deposit the said compensation to the credit of M.C.O.P.NO.113 of 2016 on the file of Motor Accident Claims Tribunal (II Additional District Court) Tindivanam less the amount already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till realization, within a period of eight weeks from the date of receipt of copy of the judgment. On such deposit being made by the appellant/Insurance Company, the claimants/respondents are entitled to withdraw their proportionate share as apportioned by the tribunal by filing appropriate application.

12 As far as the third respondent minor's share is concerned, the share amount shall be deposited in any one of the nationalised bank at Tindivanam till the minor attains majority. The first petitioner who is mother of the minor, is permitted to withdraw the accrued interest once in six months for the benefit of the minor.

13. Consequently, the appeal stands partly allowed. No costs. Connected miscellaneous petition is closed.

(D.K.K.J. K.G.T.J.)
30.03.2023

Speaking/Non Speaking order
Index: Yes/No
Internet: Yes/No



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To

1. The II Additional District Court (Motor Accidents Claims Tribunal) Tindivanam.
2. The Branch Manager, Shriram General Insurance Co. Ltd., Sitapura,
Jaipur - 302 022.
3. The Section Officer, V.R. Section, Madras High Court, Chennai-104.



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