



C.M.A(MD)Nos.1063 of 2021 and 31 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 25.11.2022

PRONOUNCED ON: 24.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)Nos.1063 of 2021 and 31 of 2022
and
C.M.P.(MD)Nos.10107 of 2021 and 6142 of 2022

C.M.A.(MD)No.1063 of 2021:

- 1.The Principal Secretary,
Secretariat Office, Chennai.
 - 2.The Secretary to Government,
Home Department,
Chennai.
 - 3.The Director General of Police,
Office of the Director General of Police,
Chennai.
 - 4.The Deputy Inspector General of Police,
Office of the Deputy Inspector General
of Police,
Dindigul Range, Dindigul.
 - 5.The Superintendent of Police,
Superintendent Office,
Theni.
- : Appellants / Respondents 1 to 5



C.M.A(MD)Nos.1063 of 2021 and 31 of 2022

Vs.

1.G.Gajendran
2.R.Sivamani
3.K.Sivamurugan

: Respondents 1 to 3 / Claimants

4.Balasubramanian,
Driver cum Police,
Office of the Superintendent of Police,
Theni.

: 4th Respondent/6th Respondent

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.249 of 2019, on the file of the Motor Accident Claims Tribunal / Fast Track Mahila Court, Theni, dated 23.12.2020.

For Appellants : Mr.N.Muthu Vijayan
Special Government Pleader

For Respondents :Mr.C.Murugavel
for R.1 to R.3
: Mr.K.Muthurakkan
for R.4

C.M.A.(MD)No.31 of 2022:

1.G.Gajendran
2.R.Sivamani
3.K.Sivamurugan

: Appellants / Claimants

Vs.



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- 1.The Principal Secretary,
Secretariat Office, Chennai.
- 2.The Secretary to Government,
Home Department, Chennai.
- 3.The Director General of Police,
Office of the Director General of Police,
Chennai.
- 4.The Deputy Inspector General of Police,
Office of the Deputy Inspector General
of Police,
Dindigul Range, Dindigul.
- 5.The Superintendent of Police,
Superintendent Office,
Theni.
- 6.Balasubramanian,
Driver cum Police,
Office of the Superintendent of Police,
Theni. : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decretal order dated 23.12.2020, passed in M.C.O.P.No.249 of 2019, by the Motor Accident Claims Tribunal/Fast Track Mahila Court, Theni.

For Appellants : Mr.C.Murugavel

For Respondents :Mr.N.Muthu Vijayan
Special Government Pleader
for R.1 to R.5
:: Mr.K.Muthurakkan
for R.6



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COMMON JUDGMENT

Both the Civil Miscellaneous Appeals are directed against the award passed in M.C.O.P.No.249 of 2019, dated 23.12.2020, on the file of the Motor Accident Claims Tribunal/Fast Track Mahila Court, Theni.

2. The case of the claimants is that on 10.06.2019, at about 10.00a.m., when Jeevanantham was riding his motorcycle bearing Registration No.TN-60-AX-4335 for buying banian innerwear, his father was also following him in a separate two wheeler, that a police escort vehicle bearing Registration No.TN-60-G-0525 accompanying the vehicle of the Superintendent of Police, Theni District was proceeding towards Thevaram from Theni and at the place near Tombucheri to Nagalapuram, Kopalakrishnan Nagar plot, the sixth respondent, who had driven the police escort vehicle came in a rash and negligent manner and without sounding horn, dashed against the two wheeler and as a result of which, the said Jeevanantham was thrown out and sustained injuries on his back side, legs, nose, hip and abdomen portion and he died on that spot itself and that the accident was occurred only due to the rash and negligent driving of the police escort vehicle's driver and hence, F.I.R.,



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came to be registered in Cr.NO.286 of 2019, on the file of the Palanichettipatti Police Station under Section 279 and 304(A) I.P.C., against the sixth respondent – driver of the police escort vehicle.

3. It is the further case of the claimants that the deceased Jeevanantham was aged at 19 years at the time of accident, that he was studying first year B.Sc., Computer Science in Vivekanantha College, that he was hale and healthy at that time and that since the sixth respondent's driver had caused the accident in the course of his employment, the respondents 1 to 5 – Police Officials are vicariously liable for the claim.

4. The respondents 1 to 5 and 6th respondent have filed separate counter statements and their defence is that the deceased Jeevanantham was not possessing valid driving licence at the time of accident, that he was not wearing helmet at that time and that the said Jeevanantham had driven his two wheeler in a rash and negligent manner and without following traffic rules, had caused the accident. It is their further case that on 10.06.2019, the fifth respondent had visited Thevaram to see the occurrence place of causing death of a person by an elephant and in



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Tombucheri to Thevaram road, when their convoy was proceeding from East to West and after crossing the speed breaker by the fifth respondent's vehicle, the sixth respondent who was driving the police escort vehicle, had followed the fifth respondent's vehicle and at that time, the two wheeler came in a rash and negligent manner from West to East and on seeing the police convoy, he attempted to apply break, but lost his control and as a result, he was thrown away and he sustained injuries all over his body and died on the spot itself, that the vehicle after throwing the rider, again had dashed against the right portion of the escort vehicle, that the accident was not occurred due to the rash and negligent driving of the sixth respondent and that therefore, the respondents are not liable for the claim.

5. During trial, the claimants have examined the first and second claimants viz., Thiru.g.Gajendran and Tmt.R.Sivamani as P.W.1 and P.W. 2 respectively and one Karuppasamy as P.W.3 and exhibited 15 documents as Exs.P.1 to P.15. The sixth respondent has examined himself as R.W.1 and the respondents have exhibited 10 documents as Exs.R.1 to R.10. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides,



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has come to a decision that the deceased Jeevanantham and the sixth respondent are equally responsible for the accident and apportioned the liability at 50% each and directed the respondent police officials to pay a compensation of Rs.14,38,300/- with interest at 7.5% p.a., and costs. Aggrieved by the impugned award, the claimants as well as the respondents police officials have preferred the present appeals. The respondents 1 to 5 – Police Officials have filed the Civil Miscellaneous Appeal in C.M.A.(MD)No.1063 of 2021, whereas the claimants have preferred the Civil Miscellaneous Appeal in C.M.A.(MD)No.31 of 2022.

6. In C.M.A.(MD)No.1063 of 2021, the learned Counsel for the appellants would submit that the trial Court has failed to consider that on the same day, when F.I.R., came to be registered, another complaint was lodged by the sixth respondent and the same came to be registered in C.S.R.No.246 of 2019, that the accident was occurred, when the deceased crossed the speed breaker and while applying sudden break, he lost his control and fell down from the vehicle and sustained injuries and that since the deceased himself had invited the accident by driving his vehicle in a rash and negligent manner, the respondents 1 to 5 – police officials cannot vicariously be made liable.



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7. The learned Counsel for the respondents 1 to 5 would further contend that the claimants have not produced any acceptable or authentic materials to show that the deceased was at 19 years at that time, that the trial Court in the absence of any evidence, has fixed the deceased's monthly income at Rs.18,000/- and that the amount fixed as Rs.14,38,300/- as loss of dependency is excessive and without any basis.

8. In C.M.A.(MD)No.31 of 2022, the appellants' Counsel would submit that the trial Court erred in holding that the deceased was also responsible for the accident and he contributed to the accident and fixing the liability at 50% on him, that the trial Court has failed to consider that the original F.I.R. - Ex.P.1 was registered against the sixth respondent police driver, but subsequently, after completing the investigation, final report came to be filed by holding that the deceased Jeevanantham was responsible for the accident, that the trial Court has also failed to consider the evidence of P.W.1- father and P.W.3 – independent eye-witness and that the monthly income of the deceased fixed at Rs.12,600/- who is a college student is very meagre and as per the latest decision of the Hon'ble Supreme Court, the loss of income should be



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fixed atleast at Rs.16,000/- per month due to increase in the cost of living and economic conditions.

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9. The points for determination are:

(1) Whether the trial Court erred in rendering a finding that the deceased and the sixth respondent are equally responsible for the accident, despite showing that the sixth respondent's rashness and negligence was responsible for the accident and that is why F.I.R., came to be registered against him and that subsequently for the reasons best known to the respondent police officials, final report came to be filed by holding that the rash and negligent driving of the deceased was responsible for the accident?

(2) Whether the trial Court erred in fixing the monthly income of the deceased at Rs.18,000/-, who is a college student, in the absence of any iota of materials or evidence to substantiate the same?

(3) Whether the quantum of compensation awarded by the Tribunal is fair and proper and in accordance with law?



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Points 1 to 3:

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10. Admittedly the first claimant is the father, the second claimant is the mother and the third claimant is the brother of the deceased Jeevanantham. At the outset, it is pertinent to note that the accident and the involvement of a two wheeler ridden by the deceased and the police escort vehicle driven by the sixth respondent are not in dispute. In the appeal memorandum, the claimants as well as the respondents 1 to 5 – police officials have challenged the findings of the Tribunal apportioning the liability at 50:50 and the quantum of compensation awarded at by the Tribunal. But at the time of argumens, the claimants have not specifically disputed the quantum of compensation. But their challenge is only with respect to the contributory negligence mulcted on the deceased, whereas the respondents 1 to 5 – police officials have specifically challenged the quantum of compensation awarded by the Tribunal.

11. It is not in dispute that after the accident, F.I.R., came to be registered against the sixth respondent in Cr.No.286 of 2019, on the file of the Palanichettipatti Police Station under Section 279 and 304(A) I.P.C. It is also not in dispute that Palanichettipatti Police, after investigation, has filed the final report by holding that the accident was



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occurred only due to the rash and negligent driving of the deceased Jeevanantham and that since Jeevanantham had died, the charge has become abated.

12. It is the further case of both the parties that the deceased was proceeding in his two wheeler bearing Registration No.TN-60-AZ-4335 for purchasing banian innerwear and at that time, the fifth respondent's vehicle and the police escort vehicle were proceeding towards Thevaram from Theni and at the place near Tombuchery – Nagalapuram road, Gopalakrishnan Nagar plot, both the vehicles had dashed against each other.

13. According to the claimants, the sixth respondent drove the police escort vehicle in a rash and negligent manner and without sounding horn, dashed against the two wheeler, whereas according to the respondents, the deceased had driven the two wheeler in a rash and negligent manner, that the deceased without driving licence and without wearing helmet had driven the two wheeler from East to West and after noticing the police convoy, he suddenly applied break and lost the control of the vehicle, fell down on the road and sustained injuries and



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that in the meanwhile, the two wheeler had dashed against the right side of the escort vehicle and as a result of which, the police escort vehicle also toppled. The claimants, in order to prove the mode of accident, have examined the first claimant – father of the deceased and third party eye-witness. P.W.1 and P.W.3 in their evidence would reiterate the version of the claimants shown in the claim petition regarding the mode of the accident. The respondents – police officials have produced the photographs, observation mahazar, rough sketch, Motor Vehicle Inspection report, postmortem certificate, copy of the complaint and the receipt issued therefor, discharge summary and the copy of the final report.

14. As rightly observed by the trial Court, the accident road was having a width to allow two vehicles to ply at a time and the road nearby the occurrence place was proceeding towards left side as a bent. P.W.3, in his evidence would admit the same. As already pointed out, it is the specific stand of the respondents that the deceased was not possessing valid driving licence at that time. The claimants have not chosen to produce the driving licence of the deceased and it is not their case that the deceased was having driving licence and the same was subsequently



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lost. Moreover, it is evident from the records that the accident was occurred on the right side of the centre lane. It is not in dispute that after the accident, the police escort vehicle driven by the sixth respondent was also got toppled.

15. The learned trial Judge, after considering the evidence available on record, has assigned the following reasons for arriving at a decision that the deceased as well as the sixth respondent were equally responsible for the accident and the relevant paragraph is extracted hereunder:

“23. வேவழக்கில் றேந்து ுபான ஜீவானந்தத்திற்கு ஓட்டுநர் உரிமம் லேலை. ஓட்டுநர் உரிமம் ரூப்பதாக மனுதாரர்கள் தரப்பில் ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை. ரூசக்கர வாகனம் நடுக் ுகாட்டிற்கு வலதுபுறத்தில் ஏறிச்சென்று ுமாத் விபத்து ுநர்ந்துள்ளது புலனாகிறது. ுவகத்தடையை தாண்டி 6ம் எதிர்மனுதாரர் ஓட்டி வந்த வாகனம் வந்தாலும் 200 மீட்டர் கடந்து வந்திருப்பதால் மீண்டும் ுவகம் எடுத்திருக்க வாய்ப்புள்ளது. ஜீவானந்தம் வாகனத்தை மெதுவாக ஓட்டி வந்திருக்க வாய்ப்பில்லை. மெதுவாக வாகனத்தை ஓட்டி வந்திருந்தால் சாலை அகலமாக ரூப்பதால் டேதுபுறமாக விலகி சென்றிருப்பார்.

ஜீவானந்தமும் வாகனத்தை ுவகமாகத் தான் ஓட்டி வந்திருக்க ுவண்டும். ஜீவானந்தம் ஓட்டி வந்த வாகனம் 6ம் எதிர்மனுதாரர்



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ஓட்டி வந்த வாகனத்தின் வலதுபுறத்தில் ஸ்ரீமதி அவரது ரோக்கர வாகனம் சரிந்து ரோக்கர வாகனத்தின் பின்புற சக்கரத்தில் பாதுகாப்பு வாகன வலதுபுற சக்கரம் ஏறி பாதுகாப்பு வாகனம் டேதுபுறமாக கவிழ்ந்துள்ளது என்பது ரேண்டு வாகனங்களின் ஸ்தலம் அடிப்படையிலும், சம்பவ சாட்சிகளின் சாட்சியம் அடிப்படையிலும் விபத்து நடந்த சூழ்நிலை அடிப்படையிலும் அனுமானிக்க முடிகிறது. பாதுகாப்பு வாகனம் மெதுவாக வந்திருந்தால் கவிழ்ந்திருக்க வாய்ப்பு லேலை. சாலை அகலமானதாக ரேப்பதாலும், வாகனங்கள் எதிர்எதிர் திசைகளில் ரேந்து வந்திருப்பதாலும் ரே ஓட்டுநர்களும் கவனமாக வந்திருந்தால் விபத்தை தவிர்த்திருக்கலாம். ரே விபத்திற்கு ரேந்து ஸ்பான ஜீவானந்தமும், 6ம் எதிர்மனுதாரரும் சரிசமமாக பொறுப்பு என்று ரேந்தீதிமன்றம் கருதுகிறது. “

16. Considering the evidence and materials available on record and also the place at which the accident was occurred and mode of the accident, the finding of the trial Court that the deceased Jeevanantham and the sixth respondent were equally responsible for the accident cannot be found fault with and this Court is in entire agreement with the findings recorded by the trial Court and the decision of apportioning the liability at 50:50.

17. Now turning to the compensation, it is the specific case of the claimants that the deceased was aged 19 years and was studying in the



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first year B.Sc., Computer Science in Vivekanantha College. No doubt, the claimants have produced the records to show that the deceased was studying in B.Sc., Computer Science at the time of accident. The trial Court by relying on the transfer certificate of the deceased, has rightly fixed the age of the deceased at 18 years at the time of accident. The Tribunal has fixed the monthly income of the deceased at Rs.18,000/-. Admittedly, the accident was occurred on 10.06.2019. As already pointed out, the deceased was only studying first year in the Vivekanantha College. As rightly contended by the learned Counsel for the respondents police officials, the Tribunal without any basis, has fixed the monthly income at Rs.18,000/-, which is certainly excessive. Considering the age and education of the deceased, this Court fixes the monthly income of the deceased at Rs.15,000/-p.m., and by applying ***Pranay Sethi's case (National Insurance Company Ltd., Vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609***), 40% of the income has to be added towards future prospectus and by adding, it comes to Rs.21,000/-(Rs.15,000/-+Rs.6,000/-). Since the deceased was a bachelor, 50% of the income has to be deducted towards personal and living expenses of the deceased and after deduction, it comes to Rs.10,500/-. As per the decision of the Hon'ble Supreme Court in ***Smt.Sarla Verma***



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and Others Vs. Delhi Transport Corporation and another reported in **2009(5) LW 561**, the appropriate multiplier would be “18”. Hence, the loss of dependency comes to at Rs.22,68,000/- (Rs.10,500/-x18x12). The trial Court has rightly awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.5,000/- towards transport expenses under the conventional heads. The trial Court has also awarded Rs.40,000/- each towards loss of love and affection.

18. 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*



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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.

19. Considering the above, the claimants 1 and 2 being the parents of the deceased, are entitled to Rs.40,000/- each towards loss of filial consortium. Accordingly, the claimants are entitled to get the compensation as follows:



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Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of income	27,21,600	22,68,000	enhanced
2	Loss of estate	15,000	15,000	confirmed
3	Loss of love and affection	1,20,000	---	----
4	Loss of consortium	-----	80,000 (Rs.40,000/- x2)	granted
5	Funeral expenses	15,000	15,000	confirmed
6	For Transport expenses	5,000	5,000	confirmed
	Total	Rs.28,76,600	Rs. 23,83,000	
	Less 50% for the negligence of the deceased	Rs. 14,38,300/-	Rs.11,91,500	
	Compensation to be granted to the claimants	Rs. 14,38,300/-	Rs.11,91,500	

20. In the result, the Civil Miscellaneous Appeal in C.M.A. (MD)No.1063 of 2021 is partly allowed and the Civil Miscellaneous Appeal in C.M.A.(MD)No.31 of 2022 is dismissed. The compensation awarded by the Tribunal to the claimants is reduced from Rs.14,38,300/- to Rs.11,91,500/- along with interest at 7.5%pa., and costs. The appellants-police officials 1 to 5 are directed to deposit the entire award



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K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

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24.03.2023