



C.M.A.No.3020 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

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1.Dhanabakyyam

2.Minor Kiruthanyaa

Minor represented by her next friend
guardian mother Dhanabakyyam

3.Govindhammal

4.Venkatachalam

... Appellants/Petitioners

Vs.

1.Chinnappan

2.Ibrahim

3.The Manager,
Oriental Insurance Co. Ltd.,
T.H.Tower, 1st Floor,
Stadium Road,
Market Post, Muvattupuzha,
Ernakulam District,
Kerala-686673

4.The Manager,
Oriental Insurance Co. Ltd.
Mettur Road, Erode.

(Policy No.441700/31/2015/15539) ... Respondents/Respondents
(Respondents 1 and 2 remained ex parte before the
tribunal, hence, notice may be dispensed with for respondents 1 and 2)



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Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgement and decree dated 19.11.2020 made in M.C.O.P.No.310 of 2017 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Perundurai and consequently, award compensation by allowing the Civil Miscellaneous Appeal.

For Appellant : Mr.M.Guruprasad

For Respondents : Mr.K.Vinod (For R3 & R4)
Notice Dispensed with (For R1
& R2)

JUDGMENT

The above appeal has been filed to set aside the judgement and decree dated 19.11.2020 made in M.C.O.P.No.310 of 2017 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Perundurai.

2. It is the case of the appellant that on 12.10.2016 at about 7.00 p.m., the deceased Kathirvel, the husband of first appellant, drove his motor cycle bearing Reg.No.TN 52 V 1689 from North to South direction at Ellaimedu, on the extreme left side of Perunthurai to Thenimalai main road. At that time, the first respondent/driver drove his



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lorry bearing Reg.No.KN 17 F 2984 from South to North direction in a rash and negligent manner and ran over the motor cyclist. As a result, the head of the motorcyclist was crushed, and he died on the spot. The second respondent is the owner of the vehicle, and the third and fourth respondents are the insurer of the vehicles. The wife, daughter and parents of the deceased filed a claim petition before the Claims Tribunal, claiming compensation of Rs.30,45,000/-. However, the claim was rejected. Challenging the same, the present appeal has been filed.

3. The learned counsel for the appellants/claimants, in order to prove negligence as against the respondents, examined P.W.2 and P.W.3, who were eye witnesses present at the scene of occurrence. Though they did not provide any information to the law enforcing agency for registering the case, the first respondent, the driver of the lorry, took advantage of the situation and made a complaint before the law enforcing agency. Consequently, the law enforcing agency registered a case in Crime No.490 of 2016 for the offence under Section 294 and 304A IPC, which is marked as Ext.P1. However, there are independent eye witnesses available on behalf of the appellants/claimants before the



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Claims Tribunal. In order to disprove the same, the respondents did not examine any independent eyewitnesses, except R.W.1, who is the driver of the lorry. R.W.1 is an entrusted person, and even on perusal of his deposition, it is clear that the deceased tried to overtake the lorry moving in front of him. Upon seeing the lorry of R.W.1, he slowed down his bike and thereafter hit the rear side of the lorry, which was heading in the same direction. He then fell under the wheels of the R.W.1's lorry, which was coming from the opposite direction, and thereby the said accident occurred, for which the law enforcing agency registered a criminal case against the deceased. When independent eyewitnesses are available, no independent witnesses are available on behalf of the third respondent to disprove the same. However, the Claims Tribunal fastened the entire liability as against the appellants, which is not sustainable. He also submitted that this Court may fix a reasonable compensation for the death of the deceased. Accordingly, he prays to allow the appeal.

4. Per contra, the learned counsel appearing for the respondents 3 and 4 submitted that in order to disprove the evidence of P.W.1 to P.W.3, the respondents examined two witnesses, R.W.1 and R.W.2.



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respondent claims that the deceased dashed against the rear side of the moving lorry and fell down in the lorry of R.W.1. In order to ascertain the negligence, this Court perused the depositions of P.W.2 and P.W.3. Upon reviewing the same, they categorically stated that the first respondent's lorry came from the opposite direction in a rash and negligent manner and dashed against the deceased. Thereby, the head of the deceased was crushed on the spot, and he died due to the head injury. In order to disprove the evidence of P.W.2 and P.W.3, the respondents have examined R.W.1 and R.W.2. This Court perused the evidence of R.W.1 and the relevant portions are as follows:

"நான் தெற்கில் இருந்து வடக்கு நோக்கி லாரி ஓட்டி வந்த போது நெத்தி மேடு என்ற இடத்தில் ஐயங்கார் பேக்கரி முன்பாக நான் எனது லாரியை மெதுவாக சாலை விதிகளை மதித்து ஓட்டி வந்தேன். அப்போது வடக்கிலிருந்து தெற்கு நோக்கி ஒரு லாரி வந்தது. அந்த லாரிக்கு பின் ஒரு இரு சக்கர வாகனம் வந்தது. அந்த இரு சக்கர வாகனம் வேகமாக வந்தது, அது அவருக்கு முன்பு வந்த லாரியை ஓவர் டேக் செய்ய முயற்சித்தார். எதிரே எனது லாரி வருவதை பார்த்துவிட்டுவேகத்தை குறைத்தார். அதனால் அந்த இரு சக்கர வாகனம் அவருக்கு முன்பு வந்த லாரி மீது மோரி எனது லாரியில் மோதி விட்டார். எனது லாரியின் வலது புறம் பின் புற சக்கரத்தில் அவர் விழுந்து விட்டார். நான் உடனடியாக காவல் நிலையத்திற்கு தகவல் கொடுத்தேன். அடுத்த நாள் காலை எழுத்து மூலமாக பெருந்துறை காவல் நிலையத்தில் புகார் எழுதி கொடுத்தேன். இரு சக்கர வாகனத்தில் வந்தவர் இறந்து போனதற்கு அவர் தான் காரணம். என்னை பெருந்துறை போலீசார் விசாரித்தார்கள்.



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நான் மேடில் இருந்து இறக்கி கொண்டிருந்தேன். இறந்து போன நபர் இரு சக்கர வாகனத்தில் மேடான பகுதியில் மெதுவாக தான் வந்தார் என்றால் சரியல்ல. எனக்கு முன்பாக ஒரு லாரி சென்றதா என்றால் இல்லை. எனக்கு முன்பாக ஒரு லாரி சென்று கொண்டிருந்தது என்றும், நான் அதை ஓவர் டேக் செய்தபோது தான் விபத்து நடந்தது என்றால் சரியல்ல. நான் விபத்து நடந்த உடனே காவல் நிலையத்திற்கு சென்றேன். அன்றைய தினம் கொடுக்கவில்லை. அடுத்த நாள் கொடுத்தேன். விபத்து நடந்த உடன் போன் மூலம் காவல் துறையினருக்கு தகவல் சொன்னேன். அவர்கள் உடனே அங்கு வந்து நான் சொன்னதை எழுதி கொண்டார்கள். நான் அதில் கையெழுத்து செய்து கொடுத்தேன். பின் நான் அடுத்த நாள் காவல் நிலையம் சென்று புகார் எழுதி கொடுத்தேன். விபத்து நடந்த இடம் மக்கள் நடமாட்டம் உள்ள பகுதி என்றால் அன்று மக்கள் நடமாட்டம் இல்லை. எதிரே வந்ததாக கூறும் லாரியின் பதிவு எண் தெரியாது. அந்த லாரி லோடுடன் வந்ததா, ஏன்ன லாரி என்று தெரியாது."

7. On perusal of the evidence of R.W.1, it is clear that R.W.1 deposed that the deceased tried to overtake the ongoing lorry. On seeing the lorry of R.W.1, he slowed down his vehicle. However, that unknown vehicle dashed against him and thereafter, he fell under R.W.1's lorry. Consequently, the rear side of the lorry ran over the deceased. Subsequently, the very same R.W.1 made a complaint before the law enforcing agency, stating that the deceased dashed against the unknown lorry and fell under the lorry of R.W.1. However, R.W.1 did not reveal



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the lorry which was hit by the deceased. Since P.W.2 and P.W.3 did not make a complaint before the law enforcing agency, R.W.1 was the only one available at the scene of occurrence, and he made a complaint as against the deceased. When there is independent evidence, P.W.2 and P.W.3 were present before the trial Court, and the evidence of R.W.1 also clarifies that the manner in which the accident occurred, the Claims Tribunal rejected the claim petition, which is not sustainable. Hence, this Court inclined to fix the entire liability against the respondents 3 and 4. Accordingly, the third and fourth respondents are directed to bear the entire compensation.

8. Regarding the quantum of compensation, at the time of accident, the age of the deceased was 34 years, adopting the multiplier of 16 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the notional income is fixed at Rs.13,000/- as the incident occurred in the year 2016 and after adding 40% future prospectus and deducting 1/4th towards personal expenses, the total income is arrived at Rs.13,650/-. Therefore the loss of income of



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the deceased is Rs.13,650/- * 12 * 16 = Rs.26,20,800/-.

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9. Insofar the compensation awarded under the head loss of love and affection is concerned, the same is on the lower side. Hence, the said head is enhanced to a sum of Rs.1,60,000/-, in which each of the claimants are entitled to a sum of Rs.40,000/-. No amount has been awarded under the heads “funeral expenses” and “loss of estate”, hence a sum of Rs.15,000/- each have been awarded under the said heads.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income	-	Rs.26,20,800/- (enhanced)
2	Loss of love and affection	Rs.50,000/-	4 x 40000 =Rs.1,60,000/- (enhanced)
3	Funeral expenses	-	15,000/- (enhanced)
4	Loss of Estate	-	Rs.15,000/-
	Total	Rs.50,000/-	Rs.28,10,800/-



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11. Accordingly, this appeal is allowed and the compensation amount is enhanced from **Rs.50,000/- to Rs.28,10,800/-** and the respondents 3 and 4 / Insurance Company are directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.310 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants /claimants through RTGS within a period of two weeks thereafter. The enhanced compensation awarded by this Court shall be apportioned among the appellants / claimants as per the order of the Tribunal.

12. Further, the Tribunal is also directed to deposit the share of the 2nd appellant in an interest yielding fixed deposit with any one of the



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Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until he attains majority and interest derived from out of the said deposit shall be paid to the mother of the 2nd appellant /Dhanabakyyam every quarter to be utilised for the welfare of the said minor claimant. After attaining majority, it is open to the 2nd appellant to file necessary application to establish the majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the 2nd appellant through RTGS within a period of two (2) weeks thereafter. It is made clear that the appellants will not entitled to any interest for the delay period. No costs.

04.12.2024

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

Anu

To

1. Motor Accidents Claims Tribunal / Subordinate Court, Perundurai
2. The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

Anu

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