



C.M.A(MD)Nos.935 to 937 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)Nos.935 to 937 of 2019
and
C.M.P(MD)Nos.12593 to 12595 of 2019

C.M.A.(MD).No.935 of 2019

National Insurance Company Ltd.,
Divisional Office,
Promenade Road,
Cantonment, Trichy.

... Appellant

Vs.

1.Latha

2.Karthikeyan

3.Narmatha Devi

Sivakumar (died)

4.Anubama

5.Balaj Alliance General Insurance Company Ltd.,
Tamil Nadu Sarvodaya Sangh,
Kahdi Gramodaya Bhavan,



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108, Second Floor, T.P.K.Road,
Madurai-625 001.

6.Vadivel

7.Bharathidhasan

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the judgment and decree dated 29.04.2019 in M.C.O.P.No.514 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellant :Mr.J.S.Murali

For Respondents :Mr.K.Benjamin for R1 to R3
:R4 to R7 dispensed with

C.M.A.(MD).No.936 of 2019

National Insurance Company Ltd.,
Divisional Office,
Promenade Road,
Cantonment, Trichy

... Appellant

Vs.

1.Jayanthi

2.Minor Jishnu

3.Minor Karunya

2/17



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Sivakumar (died)

4.Anubama

5.Balaj Alliance General Insurance Company Ltd.,
Tamil Nadu Sarvodaya Sangh,
Kahdi Gramodaya Bhavan,
108, Second Floor, T.P.K.Road,
Madurai-625 001.

6.Vadivel

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the judgment and decree dated 29.04.2019 in M.C.O.P.No.515 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellant :Mr.J.S.Murali

For Respondents :Mr.K.Benjamin for R1 to R3
:R4 to R7 dispensed with

C.M.A.(MD).No.937 of 2019

National Insurance Company Ltd.,
Divisional Office,
Promenade Road,
Cantonment, Trichy

... Appellant

Vs.

3/17



C.M.A(MD)Nos.935 to 937 of 2019

1.Sundar

Sivakumar (Died)

2.Anubama

3.Balaj Alliance General Insurance Company Ltd.,
Tamil Nadu Sarvodaya Sangh,
Kahdi Gramodaya Bhavan,
108, Second Floor, T.P.K.Road,
Madurai-625 001.

4.Vadivel

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the judgment and decree dated 29.04.2019 in M.C.O.P.No.875 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellant :Mr.J.S.Murali

For Respondents :Mr.K.Benjamin for R1 to R3
:R4 to R7 dispensed with



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COMMON JUDGMENT

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

Being aggrieved over the awards passed by the Motor Accident Claim Tribunal/Special District Court Trichirappalli in M.C.O.P.Nos.514, 515 and 875 of 2013, dated 29.04.2019 the appellant insurance company has filed the present appeals.

2. Since the insurance company has not challenged the contributory negligence fixed by the learned Tribunal Judge in the ratio of 70 : 30, this Court is not inclined to go into the issue of the negligence aspects, even though, the insurance company raised appeal.

3. Facts of the case:

On 20.09.2010 at about 09.15.am., on Kathikaranpatti road in Trichy-Dindigul Main Road, one Dhamodara Kannan, Veeramani, Sundar and Ravindran were travelling in the car bearing registration No.TN 45 AR 0769, and proceeding towards Dindigul to Trichy driven by the owner of the said car. When the car reached the Kathikaranpatti, the appellant insured vehicle/Passenger bus bearing



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registrtion No.TN 45 AD 6675 dashed against the above said car, which was also driven by its driver in a rash and negligent manner in high speed. Due to the said accident, the driver of the car, Dhamodarakannan and Veeramani died on the spot and sundar sustained injury. All were working in the postal department. The legal heirs of the Dhamodarakannan and Veeramani have filed a petition in M.C.O.P.Nos.514 and 515 of 2013 claiming the compensation of Rs.5,00,000/- in each case. The injured claimant, namely, Sundar also filed M.C.O.P.No.875 of 2013 claiming compensation of Rs.5,00,000/-.

4. The appellant insurance company filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the appellant insured vehicle/passenger bus. The driver of the car was solely responsible for the accident and prayed for dismissal of the claim petitions.

5. Before the Tribunal, on the side of the claimants P.W.1 to P.W.9 were examined and marked 16 documents as Ex.P1 to Ex.P16. On the side of the appellant R.W.1 to R.W.5 were exmined and marked 6 documents as Ex.R1 to



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Ex.R6 and on the side of the injured witness, list of documents were marked as Ex.X1 to Ex.X9 and also marked Ex.C.1 as Court documents.

6. Finding of the Tribunal

The learned Tribunal Judge considering the pleadings, oral and documentary evidence and arguments of the learned counsel for the appellant and the claimants and applied the theory of contributory negligence and fixed the negligence on the part of the appellant insured vehicle as 70% and the claimant as 30% and awarded the following compensation on the basis of the salary certificate issued by the department and other medical documents:

6.1.C.M.A.(MD).No.935 of 2019

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rupees</i>
1	Monthly Income	35,932/-
2	Future Prospects since the deceased is aged 58 years 15% to be added	$35,932 \times 15\% = 5389.80$ rounded of Rs.5390 $35932 + 5390 = \mathbf{41,322/-}$
3	Deduction for personal expenses deceased with four dependents	$41322 \times \frac{1}{4} = 10330$ $41322 - 10330 = \mathbf{30992/-}$
4	Loss of Income	$30992 \times 12 \times 9 = \mathbf{33,47,136/-}$
5	Loss of consortium	40,000/-



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6	Loss of Funeral Expenses	15,000/-
7	Loss of Estate	15,000/-
Total		34,17,136/-

6.2.C.M.A.(MD).No.936 of 2019

Sl.No.	Head	Amount in Rupees
1	Monthly Income	28,232/-
2	Future Prospects since the deceased is aged 43 years 30% to be added	$28,232 \times 30\% = 8469.60$ rounded off = 8470 $28,232 + 8470 = \mathbf{36,702/-}$
3	Deduction for personal expenses deceased with four dependents	$36,702 \times 1/3 = 12,234/-$ $36,702 - 12,234 = \mathbf{24,468/-}$
4	Loss of Income	$24,268 \times 12 \times 14 = \mathbf{41,10,624/-}$
5	Loss of consortium	40,000/-
6	Loss of Funeral Expenses	15,000/-
7	Loss of Estate	15,000/-
Total		41,80,624/-

6.3.C.M.A.(MD).No.937 of 2019

Sl.No.	Head	Amount in Rupees
1	Disability – 3500 X 49	1,71,500/-
2	Pain and Sufferings	2,00,000/-
3	Extra Nourishment	50,000/-
4	Transportation	50,000/-
5	Attendant Charges	50,000/-



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Total

5,21,500/-

7. Submissions of the learned counsel for the appellant:

Even though, the insurance company raised the appeal on the negligence, they confined their submission relating to the quantum. The learned counsel for the insurance company submitted that in C.M.A.(MD).No.935 of 2019, the learned Tribunal Judge without considering the dependents are 3, wrongly applied $\frac{1}{4}$ deduction for the personal expenditure. Therefore, he seeks to apply the correct deduction and reduce the amount.

8. Submission of the learned counsel for the respondents/claimant:

The learned counsel for the respondents/claimants submitted that it is true that the learned Tribunal Judge applied $\frac{1}{4}$ by wrongly assuming four dependents and he further submitted that no amount was awarded under the head of love and affection to the remaining dependents and hence, he seeks to award Rs.80,000/- as per the “*Pranay Sethi Case*”.



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9. We have heard the learned counsel appearing for the appellant insurance company and the learned counsel appearing for the respondents/claimants and also perused all the materials available on record.

10. The following points arise for consideration of this appeal:

10.1. Whether the learned Tribunal Judge has correctly applied the contributory negligence?

10.2. Whether the compensation granted is in accordance with law?

11. Discussion on the negligence:

It is clear from the records and evidence of P.W.2 and R.W.2 that at the time of the accident, there was a maintenance work near the accident place. Therefore, it is pertinent to note that the bus was driven in the opposite direction of the car by taking diversion and this Court is of the view the driver of the bus should have driven the bus carefully and cautiously and the injured petitioner who was P.W.2 has also admitted the fact that while he was travelling in the car, his car also was driven by its driver in a rash and negligent manner. From the overall analysis of the evidence and documents, the learned Tribunal Judge has correctly awarded



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the contributory negligence as 70 : 30 and directed the appellant insurance company to pay 70% of the award amount. Therefore, there is no need to interfere with the finding of the learned tribunal Judge.

12. Discussion of quantum in C.M.A.(MD).No.935 of 2019:

The deceased was working as the Assistant Superintendent of Postal Department and he is aged about 58 years and his salary and his service register was marked as Ex.X5. His salary is Rs.35,932/- and no contra evidence was let in to disbelieve the above monthly income. Considering his age 58 and he being the Central Government Employee, as per the *Pranay Sethi Case* 15% of Future Prospect was added and his income was calculated as Rs.41,332/-. In this case, only three dependents, are there but, the learned Tribunal Judge deducted the $\frac{1}{4}$ for his personal expenses and adopted multiplier of 9 and granted compensation as Rs.34,17,136/-. This Court does not agree with the finding of the learned Trial Judge in applying the $\frac{1}{4}$ for the personal deduction as per the *Sarala Verma and other Vs. Delhi Transport Corporation* and another judgment in *2009 2 TNMAC 1(SC)* $\frac{1}{3}$ alone is to be deducted for the personal expenditure of the deceased. Therefore, this Court redetermined the compensation. The age of the deceased is



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58 years and since there are three dependents, 1/3rd is deducted for personal expenses and applying the multiplier of “9” the amount comes around as follows:

$$41,322 \times \frac{2}{3} \times 12 \times 9 = \text{Rs.}29,75,184/-$$

The non pecuniary damages as per the *Pranay Sethi Case* is calculated as follows:

Loss of consortium for the wife of the deceased is calculated as Rs.40,000/-

Loss of Love and Affection =Rs.40,000/- X 2 = Rs.80,000/-

Funeral Expenses =Rs.15,000/-

Loss of Estate =Rs.15,000/-

S. No.	Heads	Amount awarded by the Tribunal (in Rupees)	Re-quantified amount by this Court (in Rupees)	Status
1	Loss of income	33,47,136/-	29,75,184/-	Reduced
2	Loss of consortium	40,000/-	40,000/-	Confirmed
3	Loss of love and affection	----	(40,000 X 2) 80,000/-	Awarded
4	Funeral Expenses	15,000/-	15,000/-	Confirmed
5	Loss of Estate	15,000/-	15,000/-	Confirmed
Total		34,17,136/-	31,25,184/-	Reduced



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12.1. Accordingly, this Civil Miscellaneous Appeal in C.M.A.(MD).No.935 of 2019 is partly allowed. The compensation awarded in M.C.O.P.No.514 of 2013 on the file of the Motor Vehicle Accidents Claims Tribunal/Special District Court, Tiruchirappalli, dated 29.04.2019 is hereby reduced from Rs.34,17,136/- to Rs. 31,25,184/-. Considering the submission of the learned counsel for the appellant, that the entire award amount was already deposited, if there is any excessive, they are permitted to withdraw. The respondents/claimants are entitled to withdraw their award amount as per order and apportionment made by the Tribunal by filing necessary application before the tribunal

13.Discussion of quantum in C.M.A.(MD).No.936 of 2019:

13.1.The deceased/Veeramani also worked in the postal department and his salary certificate was marked as Ex.X2 and service register also marked and one witness P.W.4 was also examined and the learned Tribunal Judge fixed his monthly salary as Rs.28,232/-. His age was 43 years and hence, as per the Pranay Sethi case 30% of the Future Prospect was taken and the learned Tribunal Judge has awarded the compensation as follows and this Court finds no merit in the



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contention of the learned counsel for the insurance company that the award was highly excessive. This Court finds no infirmity in the amount arrived by the Tribunal.

S. No.	Heads	Amount awarded by the Tribunal (in Rupees)	Re-quantified amount by this Court (in Rupees)	Status
1	Loss of income	41,10,624/-	41,10,624/-	Confirmed
2	Loss of consortium	40,000/-	40,000/-	Confirmed
3	Funeral Expenses	15,000/-	15,000/-	Confirmed
4	Loss of Estate	15,000/-	15,000/-	Confirmed
Total		41,80,624/-	41,80,624/-	Confirmed

13.2. Accordingly, this Civil Miscellaneous Appeal in C.M.A.(MD).No.936 of 2019 is dismissed and the judgment and award passed by the Motor Accidents Claims Tribunal/Special District Judge, Tiruchirappalli in M.C.O.P.No.515 of 2013, dated 29.04.2019 is hereby confirmed.



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14. Discussion of quantum in C.M.A.(MD).No.937 of 2019:

14.1. According to the injured claimant/sundar, he sustained the injuries in the Bicolumn Acetabulum Fracture right side, Distal Radius Fracture right side and admitted in the Ganga Hospital and have taken the treatment for more than 15 days and also has undergone surgeries and suffering unbearable pain in view of the operation done in the hip. The learned Tribunal Judge, considering the above facts, granted compensation as Rs.5,21,500/- under the following heads and this Court finds no infirmity in the above said judgment and hence, the award of compensation as Rs.5,21,500/- is hereby confirmed.

S. No.	Heads	Amount awarded by the Tribunal (in Rupees)	Re-quantified amount by this Court (in Rupees)	Status
1	Loss of Disability - 3,500 X 49	1,71,500/-	1,71,500/-	Confirmed
2	Pain and Sufferings	2,00,000/-	2,00,000/-	Confirmed
3	Extra Nourishment	50,000/-	50,000/-	Confirmed
4	Transportation	50,000/-	50,000/-	Confirmed
Total		5,21,500/-	5,21,500/-	Confirmed



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14.2. Accordingly, this Civil Miscellaneous Appeal in C.M.A.(MD).No.937 of 2019, is dismissed and the judgment and award passed by the Motor Accidents Claims Tribunal/Special District Court, Tiruchirappalli, in M.C.O.P.No.875 of 2013 dated 29.04.2019 is hereby confirmed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[P.V.,J.] [K.K.R.K.,J.]
25.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
sbm

To

- 1.The Motor Accident Claims Tribunal/Special District Court,
Tiruchirappalli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

AND

K.K.RAMAKRISHNAN, J.

sbn

C.M.A(MD)Nos.935 to 937 of 2019

and

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