

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.1472 of 2018 and
M.P.No.11682 of 2018

C.M.A.No.1472 of 2018

The Oriental Insurance Company Limited,
Parimalam Complex, 2nd Floor, E.V.N.Road,
Erode 638 011. Appellant/2nd Respondent

Vs

1. Karuppannan Respondents 1 & 2/Petitioners 1 & 2
2. Palaniammal
3. Jai Suryas Retail Vendors Private Limited
24, Sivashanmugam Street,
Erode 638 001. 3rd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the order and decree dated 17.03.2017 made in MCOP.No.1077 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem.

For Appellant : Mr.S.Manohar
For Respondents: Mr. C.Kulanthaivel
for Caveator fo R1 & R2

J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

The appellant/Insurance Company has preferred the present appeal, aggrieved by the order of Motor Accident Claims Tribunal, Special District Court, Salem in MCOP No.1077 of 2014 dated 17.03.2017 against the award of Rs.51,18,755/-

2. Heard Mr.S.Manohar, the learned counsel appearing for the appellant and Mr.C.Kulanthaivel, the learned counsel appearing for the respondents 1 & 2.

3. The brief facts of the case are as follows:-

On 04.06.2014, at about 3:45 p.m., Gopal was slowly riding the Honda Activa Bike bearing registration No.TN-78-A-6589 on the Coimbatore to Salem NH-47 main road, near Pachampalayam over

bridge, (near Sankari privu) from Dharapuram to Salem by following the traffic rules and regulations along with his friend Parvathi who was travelling as a pillion rider, at that time, the Eicher Lorry bearing registration No.TN-33-AK-7020 came from the same side, which was driven by its driver in a rash and negligent manner without following any traffic rules and regulations, with great speed and uncontrollable manner, all of sudden, hit behind the deceased bike and caused accident. Due to the accident Gopal and his friend Parvathy sustained serious fractures and blood injuries all over the body, immediately, the Gopal was taken to Sankari Government Hospital for first aid, and thereafter he was taken to G.M.K.M.C Hospital, Salem for better treatment, but he died on the way due to severe head fractures and inuries. The Post-mortem was done by Dr.N.Sangeetha, Government Mohankumaramangalam Medical College Hospital, Salem. The entire accident occurred only due to the rash and negligent driving of the driver of the Eicher Lorry bearing Registration No.TN-33-AK-7020. The lorry driver did not follow the traffic rules and regulations and he is responsible for the entire accident. The claimants further submitted that the above said accident was reported to Komarapalayam Police Station and registered a case in Crime No.345 of 2014 under Sections 279, 338 & 304 (A) IPC.

4. Per contra the second respondent/Insurance Company filed its counter statement stating that the Salem to Coimbatore NH 47 Road is a highly sensitive traffic area in which the deceased Gopal drove the Motor Cycle without driving license. According to the respondent the driver of the Eicher lorry bearing Reg.No.TN 33 AK 7020 drove his vehicle in an average speed, but the deceased due to lack of traffic and road driving sense darted from left side and moved beyond the mid of the said main road, without noticing the vehicles behind him. Further the deceased did not wear helmet at the time of accident. Therefore due to the negligent driving of the deceased the accident occurred.

5. The Tribunal after perusing the evidences and pleadings came to the conclusion that the negligence was on the part of the driver of the Eicher lorry and fixed compensation for a sum of Rs.51,81,755/-.

6. The Tribunal awarded a sum of Rs.51,81,755/- as compensation to the claimants, aggrieved over the said findings and award the appellant/Insurance Company has come forward with the present appeal.

7. Now the issue of consideration in this appeal by this Court are as follows:-

1. Whether the negligence fixed by the Tribunal on the part of the Eicher lorry driver is just and fair?

2. Whether the quantum fixed by the Tribunal is just and fair?

7.1.1. The deceased Gopal was riding his Hero Honda Active Bike bearing registration No.TN 78 A 6596 along with his friend Parvathi who was travelling as a pillion rider on Coimbatore to Salem NH 47 main road. When the deceased was driving near Pachampalayam over bridge from Dharapuram to Salem, at that time Eicher lorry bearing Reg.No.TN-33-AK-7020 was driven by its driver came from the same side in a rash and negligent manner and hit the deceased bike and caused the accident. Due to the accident both the deceased and the pillion rider sustained serious injuries. Immediately the deceased Gopal was taken to Sankakiri Government Hospital, Sankakiri for first aid and he was referred to G.M.K.C.Hospital, Salem for better treatment but the rider Gopal died on the way to the hospital. Post mortem was done by Dr.N.Sangeetha, Government Mohankumaramangalam Medical College Hospital, Salem.

7.1.2. The entire accident occurred due to the rash and negligent driving of the driver of the Eicher lorry bearing Reg.No.TN-33-AK-7020. Komarapalayam Police investigated and registered FIR in Crime No.345 of 2014 against the driver of the lorry and according to the Police investigation also the accident occurred due to the negligence on the part of the driver of the lorry.

7.1.3. On behalf of the claimants PW1 was examined and through PW1, Ex.P.1 to Ex.P.8 was marked. PW1 is the father of the deceased Gopal. Further PW2 who is the eye witness deposed that she was the pillion rider and the lorry driver drove the lorry in a rash and negligent manner and hit the deceased Motorcycle and thereby caused accident. So according to the eye witness the accident occurred due to the rash and negligent driving of the lorry driver. Therefore, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Reg.No.TN-33-AK-7020 and we also concur with the findings of the Tribunal in this regard.

7.2.1. The age of the deceased was 28 years at the time of death and in Ex.P.12, 10th Mark Sheet, Date of Birth was mentioned as 09.03.1987. The Post Mortem report, Ex.P.2, also states that the age of the deceased was 28 years. Therefore, the Tribunal fixed the age of the deceased as 28 years. Further Ex.P.9, B.E., degree completion certificate, Ex.P.10 M.E., degree completion certificate, Ex.P.12, 10th Mark Sheet, Ex.X1 to Ex.X6 was marked on behalf of the claimants with regard to the

employment and pay slip of the deceased. On perusal of these documents it is observed that the deceased Gopal was drawing a sum of Rs.33,759/- per month. The Tribunal also rightly took the salary of deceased as Rs.33,759/-. We also concur with the findings of the Tribunal in this regard.

8. Now, in order to calculate the future prospects it is necessary to refer the judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, in which the Hon'ble Apex Court held that if the deceased was having either self employment or fixed salary and below the age of 40 years, 40% of the monthly income to be added as future prospects, whereas in this case the deceased was working in a private concern which is not under permanent employment, therefore 40% of monthly income is added for calculating the pecuniary loss instead of 50% which was wrongly fixed by the Tribunal.

9. Now with regard to the multiplier, the Hon'ble Apex Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC held that if the person having the age of 26 to 30 years the multiplier of "17" to be taken into account for calculating the loss of dependency. Hence, we take the multiplier of "17" for the purpose of calculating the loss of earning of the deceased. In order to calculate the personal expenses, the Hon'ble Apex Court in the case of Sarla Verma (cited supra) has observed that if the deceased is a bachelor, 50% of the total income to be deducted towards the personal expenses of the deceased. Therefore, we decided to deduct 50% of the total annual income of the deceased.

10. Accordingly, we decided that the monthly income of the deceased would be Rs.33,759/-. Adding a component of 40% for future prospects, the income would stand at Rs.47,263/-. Deducting half of the amount towards personal expenses, the loss of dependency per month works out to Rs.23,632/- (47263 - 23631). Therefore salary per annum is Rs.2,83,584/-. In the said annual income, deduction of Rs.28,358/- towards income tax is to be made. Accordingly, Rs.283584 - Rs.28358 = Rs.2,55,226/-. The loss of dependency to the family of the deceased is Rs.43,38,842/- (2,55,226 x 17).

11. Further, the Tribunal awarded Rs.10,000/- each for the 1st and 2nd claimants towards loss of love and affection. However we feel, the said amount is too low. Hence, we incline to enhance the same to Rs.25,000/- each for the 1st & 2nd

claimants/respondents herein. As no amount awarded towards "Transportation" by the Tribunal, a sum of Rs.10,000/- is fixed under that caption. As no amount awarded towards "loss of estate" a sum of Rs.15,000/- is awarded under that caption as per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Under the head "Funeral expenses" this Court is inclined to reduce the amount from Rs.25,000/- to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India.

12. Hence the total compensation payable to the claimants is as hereunder

S. No	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court
1	Loss of Dependency	Rs.50,73,755/-	Rs.43,38,842/-
2	Funeral expenses	Rs.25,000/-	Rs.15,000/-
3	Loss of love and affection to the 1 st claimant	Rs.10,000/-	Rs.25,000/-
4	Loss of love and affection to the 2 nd claimant	Rs.10,000/-	25,000/-
5	Transportation	-	10,000/-
6	Loss of estate	-	15,000/-
7	Total	Rs.51,18,755/-	Rs.44,28,842/-

13. The total amount of compensation shall be shared by the claimants 1 & 2 in the following manner:-

The father of the deceased who is the first claimant/respondent herein shall receive a sum of Rs.20,00,000/- and the mother of the deceased who is the second claimant/respondent herein shall receive a sum of Rs.24,28,842/-.

14. The Insurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants

bank account through NEFT or RTGS within a period of one week thereon.

15. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.51,18,755/- is reduced to Rs.44,28,842/-. Consequently, the connected miscellaneous petition is also closed. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

dpq

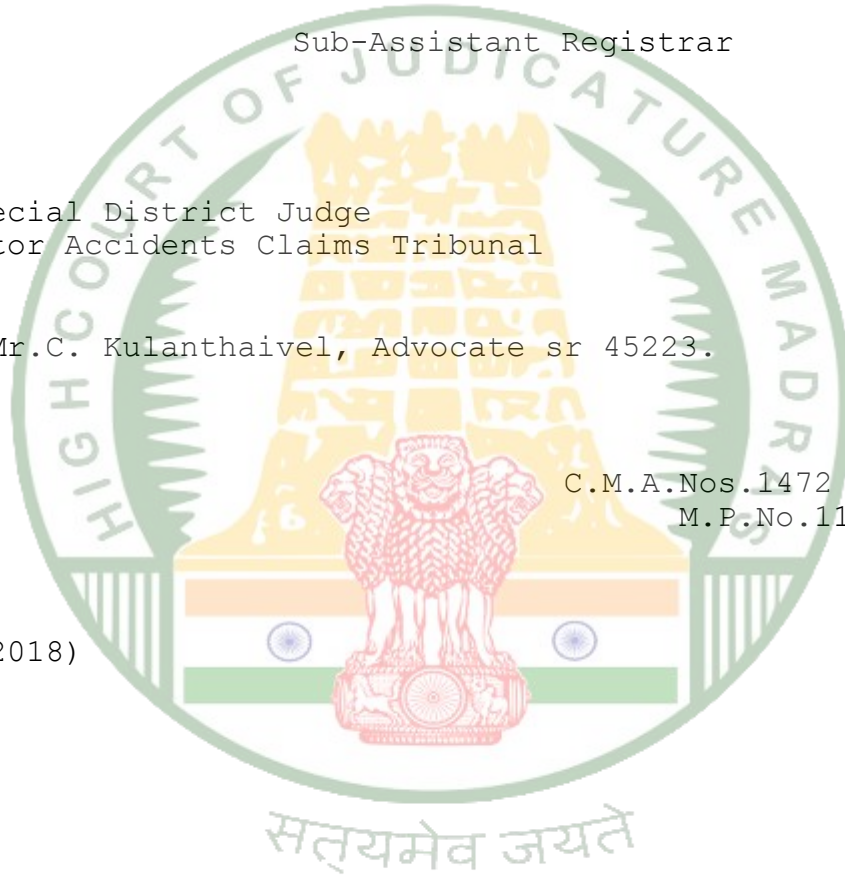
To

1. The Special District Judge
The Motor Accidents Claims Tribunal
Salem.

+1 CC to Mr.C. Kulanthaivel, Advocate sr 45223.

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M.P.No.11682 of 2018

RSY(CO)
SP(04/09/2018)



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