

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
C.M.A.Nos.2646 of 2015 and 145 of 2016
and

C.M.P.No.1232 of 2016

C.M.A.No.2646 of 2015

1.Mageshwari

2.Minor Boss

3.Minor Mouli

4.Rajammal

(The minor 2nd and 3rd petitioners herein are
represented by their next friend

1st appellant/mother) ... Appellants/Petitioners

Vs

1.M/s.Malar Electricals,
Rep. by its Proprietor R.Arumugam,
No.25/16, E-3, Vasantham Nagar,
Bye-Pass Road, Hosur - 635 109

2.The Oriental Insurance Company Ltd.,
Branch Office,
Arunagiri Complex,
3rd Floor, 25-C, Bye-Pass Road,
Hosur 635 109.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the judgment
and decree dated 30.09.2010 made in MCOP.No.447 of 2008 on the
file of Motor Accident Claim Tribunal (Principal District
Judge), Dharmapuri.

For Appellant : Mr.M.Elango

For Respondents : Mr.S.Sathiaselvan (for R1)

Mrs.R.Sreevidhya (for R2)

C.M.A.No.145 of 2016

M/s.Malar Electricals,
Rep. by its Proprietor R.Arumugam,
No.25/16, E-3, Vasantham Nagar,
Bye-Pass Road, Hosur - 635 109 ... Appellant/1st Respondent

Vs

1.The Oriental Insurance Company Ltd.,
Branch Office,
Arunagiri Complex,
3rd Floor, 25-C, Bye-Pass Road,
Hosur 635 109.

2.Mageshwari

3.Minor Boss

4.Minor Mouli

5.Rajammal
(The Minor 3rd and 4th respondents herein are represented
by their next friend the 2nd respondent, mother)
... Respondents/2nd Respondent & Petitioner)

PRAYER : Civil Miscellaneous Appeal filed against the judgment
and decree dated 30.09.2010 made in MCOP.No.447 of 2008 on the
file of Motor Accident Claims Tribunal (Principal District
Judge), Dharmapuri.

For Appellant : Mr.S.Sathiaseelan

For Respondents : Mrs.R.Sreevidhya (for R1)

Mr.M.Elango (for R2 to R5)

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

CMA.No.2646 of 2015 has been preferred by the claimants
aggrieved over the quantum of compensation of Rs.6,42,000/-
awarded for the death of one R.Mani, who is the 1st claimant's
husband, aged about 33 years, working as supervisor in Malar
Electricals Company, earning about Rs.10,850/- per month, in the
accident, which occurred on 04.05.2008, when the deceased was
travelling in the Tempo belonging to the 1st respondent owner as
a representative of the owner of the goods dashed against the
lorry, which was going ahead of the tempo.

2. Another appeal has been filed in CMA.145 of 2016 by the owner of the vehicle, questioning the pay and recovery order passed by the Tribunal. In view of the two appeals having been as against the same award, this Court is inclined to describe the parties as claimants, owner and insurance company.

3. Heard Mr.M.Elango, learned counsel appearing for the claimants; Mr.S.Sathiaseelan, learned counsel appearing for the owner and Mrs.R.Sreevidhya, learned counsel appearing for the insurance company.

4. It is evident from the records that the Tribunal, based on the.P.1 - FIR, filed against the driver of the van and evidence of PW2 eyewitness, found that the tempo traveller was driven rashly and negligently by its driver and dashed against the back side of the lorry, which was going in front of the said vehicle. There is no rebuttal evidence on the side of the insurance company. Therefore, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the tempo. Though the claimants stated that the deceased travelled as representative of the owner of the goods in the vehicle, there is no positive evidence adduced by the insurance company. Mere denial is not enough. In the counter statement, positive assertion has to be made, supported by evidence on the side of the insurance company. In view of the above, the Tribunal ordered pay and recovery, without giving any finding. Therefore, pay and recovery ordered against the owner of the vehicle has to be set aside and accordingly, CMA.No.145 of 2016 filed by the owner has to be allowed.

5. With regard to the compensation, the Tribunal took only Rs.4,000/- as monthly income. When the claimant exhibited salary certificate - Ex.A.11, supported by Ex.A.15 - attendance register and salary certificate Ex.A.14 - salary register for the period from January 2006 to May 2008 maintained by PW3/representative of the employer of the deceased, the determination of the Tribunal at Rs.4,000/- as monthly income is not sustainable. A representative of the company has been examined as PW3. In the absence of any contra evidence, the Tribunal ought to have fixed the monthly income at Rs.10,850/-. Therefore, based on the above documentary evidence and evidence of PW1 and PW3, this Court re-determines the monthly income at Rs.10,850/-.

6. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects, as the deceased was aged about 33 years as proved by Ex.A.2 - Post mortem

certificate. After adding 40% towards future prospects, the monthly income would be at Rs.15,190/- (Rs.10850 + 40% of 10850).

7.The size of the family is four. Therefore, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), 1/4th has to be deducted towards personal expenses. After deducting 1/4th, the monthly contribution of the deceased would be at Rs.11,392.50/- (Rs.15190 -1/4 of 15190).

8.As per Ex.A.2 - Post mortem certificate and Ex.A.10, School Transfer certificate, the age of the deceased is 33 years. Therefore, appropriate multiplier based on the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is 16 and the loss of income caused to the family of the deceased would be at Rs.21,87,360/- (Rs.11,392.50/- x 12 x 16).

9.Loss of consortium:

As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), Rs.40,000/- has to be awarded to the widow towards loss of consortium, whereas the Tribunal has awarded only a sum of Rs.5,000/-. Hence, a sum of Rs.40,000/- is awarded towards loss of consortium.

10.Loss of love and affection:

Similarly, the minors are granted only a sum of Rs.5,000/- for loss of love and affection. The age of the children at the time of accident was only 9years and 7years and they lost the love and affection of their father throughout their life and therefore, for loss of love and affection, a sum of Rs.50,000/- is awarded to each of the minor children and a sum of Rs.25,000/- is awarded to the 4th claimant.

11.Funeral Expenses and Transport expenses:

The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses and transport expenses. Instead, this Court awards a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.10,000/- towards transport expenses.

12.Loss of estate:

No amount was awarded by the Tribunal towards loss of estate. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC) a sum of Rs.15,000/- is awarded towards loss of estate.

13.Hence, the total compensation payable in this case is Rs.23,92,360/-, rounded of to Rs.24,00,000/-

Head	Amount (Rs.)
Loss of Income	2187360
Loss of consortium	40000
Loss of love and affection	125000
Loss of estate	15000
Funeral expenses	15000
Transport charges	10000
	2392360

14.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Out of the award amount, the 1st claimant is entitled to get Rs.10,00,000/-, minor claimants 2 and 3 are entitled to get Rs.6,00,000/- each and the 4th claimant is entitled to get Rs.2,00,000/-. The claimants are directed to pay the requisite court-fee, if any, within a period of one week from the date of receipt of a copy of this order.

15.The insurance company is directed to deposit the entire award amount along with interest and costs 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. On such deposit being made, the Tribunal is directed to transfer the respective shares of the claimants 1 and 4 along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon. As far as minor claimants 2 and 3 are concerned, their shares shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st claimant/mother is permitted to withdraw interest accruing on such deposit once in three months.

16.Accordingly, CMA.No.2646 of 2015 is allowed, enhancing the award of the Tribunal from Rs.6,42,000/- to Rs.24,00,000/- with interest. Similarly, CMA.No.145 of 2016 filed by the owner is also allowed, setting aside pay and recovery ordered by the Tribunal. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sai

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

2. The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

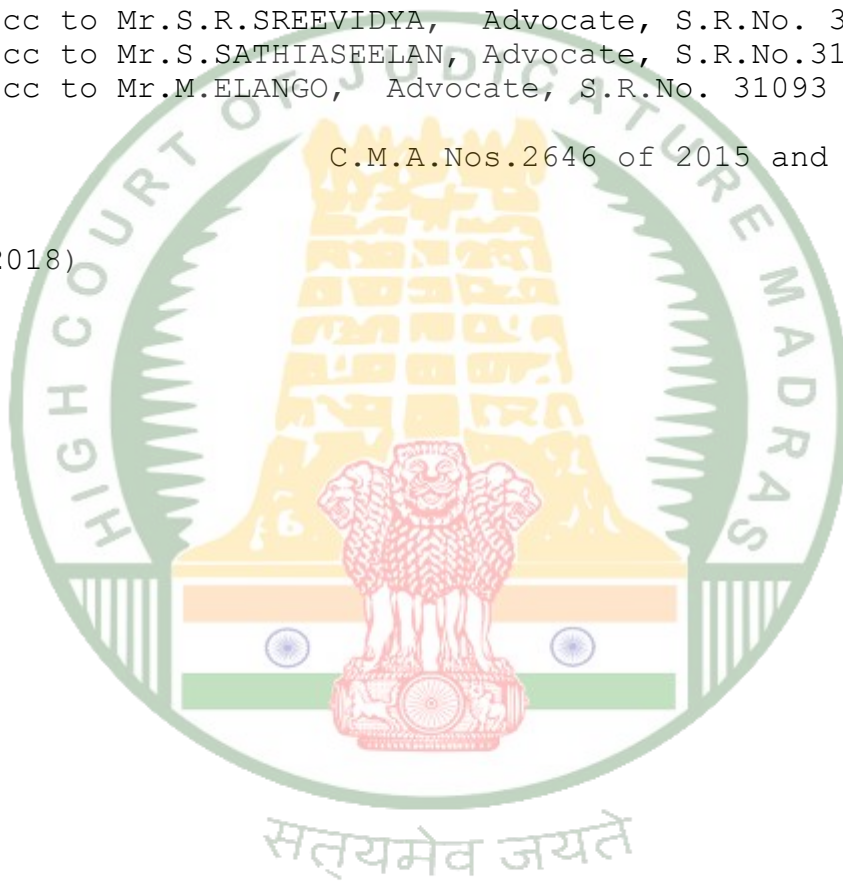
+1cc to Mr.S.R.SREEVIDYA, Advocate, S.R.No. 32364

+2cc to Mr.S.SATHIASEELAN, Advocate, S.R.No.31061 & 31092

+1cc to Mr.M.ELANGO, Advocate, S.R.No. 31093

C.M.A.Nos.2646 of 2015 and 145 of 2016

NM(CO)
TR(12/06/2018)



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