

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.694 of 2017

and

C.M.P.Nos.3858 and 9075 of 2017

Tata AIG General Insurance Company Ltd.,
having registered office at 15 Floor,
Tower A, Peninsula Business Park,
Ganapatrao Kadam, Marg, Lower Parel,
Mumbai -400 013. ...Appellant/3rd Respondent

Versus

1.C.Thannasi
2.G.Pazhanal
3.Minor.G.Kandhasamy
4.Minor.G.Kalkiya ... Respondents 1to4/Petitioners
[Minors respondents 3 and 4, rep.
By their mother and natural guardian,
G.Pazhanal]
5.B.Sathish Kumar ...5th respondent/1st Respondent
6.M/s.North South Logistics Services(owner)
Rep. By its Manager, having office at
Plot No.7, First Floor,
Rajiv Gandhi Nagar,
Opp.Payal Cinema, Old Delhi Road,
Gurgoan, Haryana -122 001. ...6th Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act, 1988, against the decree and
judgment dated 09.12.2016 made in M.C.O.P.No.275 of 2015 on
the file of the Motor Accident Claims Tribunal, IV Additional
District Court, Coimbatore.

For Appellant : Mr.S.Manohar
For Respondents : Mr.R.Aranganathan [for R1 to R4]
No Appearance [for R5]
Notice dispensed with [for R6]

J U D G M E N T

The Appellant/Insurance Company has filed this appeal
against the decree and judgment dated 09.12.2016 made in
M.C.O.P.No.275 of 22015 on the file of the Motor Accident
Claims Tribunal, IV Additional District Court, Coimbatore.

2. For the sake of convenience, the parties are referred
to hereunder according to their litigative status before the

Tribunal. The case of the petitioners/claimants is that on 01.03.2015 at about 21.30 hours, while the deceased Gopal was travelling as a pillion rider in the two wheeler bearing Registration No.TN-37-NK-7563 in East-West direction on Coimbatore, Pallakod Road, while going near Ettimadai, the lorry bearing Registration No.HR-55-K-5261 driven at high speed in a rash and negligent manner by the 1st respondent driver, came from behind and dashed on the two wheeler, causing fatal injuries to the deceased Gopal causing his death on the spot. The accident occurred due to negligence of the 1st respondent only. The deceased was aged 43 years and by working as sweeper in a College at Madukkarai was earning Rs.8,000/- per month. The deceased Gopal by working as a part time sweeper in yet another establishment, was earning Rs.5,000/- per month and as such, the deceased Gopal was earning a total income of Rs.13,000/- per month. The petitioners/claimants who are mother, wife and children of the deceased were depending on his income. Due to the sudden death, the petitioners/claimants have lost the breadwinner of the family, resulting in loss of income to them. Thus, the petitioners/claimants sought for a sum of Rs.20,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 3rd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/claimants. The claim of the petitioners/claimants about the age, avocation and income of the deceased is denied. The accident occurred only due to the negligence of the driver of the two wheeler and as such, the respondents are not liable to pay compensation. The owner and insurer of the two wheeler are necessary party and not impleading them is fatal to the claim petition. The amount sought for by the petitioners/claimants is highly excessive. Thus, the 3rd respondent/Insurance Company sought for dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.W's.1 to 3 and produced documents Exs.P.1 to P.12 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, after analysing the available evidence on record, found that the negligence of the 1st respondent alone had caused the accident passed an award for a sum of Rs.18,33,800/- payable by the respondents. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance Company has come forward with the present appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the 3rd respondent/Insurance Company contends that the Tribunal wrongly fixed the negligence on the 1st respondent. The Tribunal fixed the

monthly income of the deceased at Rs.6,200/- without any basis and erred in adding 50% of the amount towards future prospects. The Tribunal, ought to have provided only 30% of the income towards future prospects instead of 50%. The amount awarded under other heads is highly excessive. The award of 9% interest is unwarranted. Thus, the 3rd respondent/Insurance Company sought to set aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioners/claimants contends that the accident occurred due to negligence of the 1st respondent driver and as the vehicle belonging to the 2nd respondent is insured with the 3rd respondent, both the respondents are liable to pay compensation. The Tribunal, considering the available evidence on record, correctly fixed the monthly income of the deceased and passed an award providing a just and fair compensation. There is no need to interfere with the same. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. It is only a quantum appeal. Both side did not contend the issue of negligence. As such, the conclusion of the Tribunal, fixing negligence on the 1st respondent driver, based on the eye-witness account of the occurrence given by P.W.2 and driver of the vehicle in which the deceased travelled who deposed as P.W.3, is not disputed by either side. Further, the police registered Ex.P.3 - F.I.R against the 1st respondent-driver only. After completing investigation, police laid charge sheet as per Ex.P.7 against the 1st respondent-driver only. It is also clear from Ex.P.6 - Copy of rough sketch of the occurrence spot that the accident occurred only in the manner alleged by the petitioners/claimants. It is evident from Ex.P.5 - M.V.I Report that there is no mechanical defect in both the vehicles. As such, in the absence of any contra evidence let in by the respondents, the Tribunal has correctly concluded that the negligence of the 1st respondent driver only caused the accident. The same needs no interference.

9. The 2nd respondent who is the wife of the deceased have clearly stated about the age, avocation and income of the deceased. According to P.W.2, her husband was aged 43 years and by working as a sweeper was earning Rs.8,000/- from a private concern and also another sum of Rs.5,000/- by working as a part time sweeper in another establishment. The petitioners/claimants have not produced any documents to prove the age of the deceased. Hence, on the basis of Ex.P.4 - Post mortem certificate, the deceased age is fixed as 40 years.

10. The petitioners/claimants examined P.W.2, who was an employee of the Private College, wherein, the deceased was employed as sweeper and according to P.W.2, the deceased was earning a sum of Rs.6,124/- as net salary and the salary certificate issued by them is marked as Ex.P.11. It is therefore clear that the deceased was employed as sweeper in a

Private College. There is no proof for his part time employment. As such, on the basis of Ex.P.11, net salary after deducting the allowances is arrived at Rs.6,750/-. The deceased was aged 43 years and therefore, 30% of the income is to be added towards future prospects. Thus, the monthly earning will be,

$$\text{Rs.6750} + 30\% = \text{Rs.8,775/-}$$

As the number of dependants are 4, it will be appropriate if 1/4th of the income is deducted towards personal expenses. Thus, the loss of dependency is calculated as follows,

$$[\text{Rs.8,775} - (\text{Rs.8,775} \times \frac{1}{4}) \times 12 \times 14] = \text{Rs.11,05,650/-}$$

Thus, a sum of Rs.11,05,650/- is granted as compensation under the head "Loss of Dependency".

11. The Tribunal has awarded amounts under loss of consortium, funeral expenses and loss of estate at Rs.1,00,000/- and Rs.10,000/- and Rs.50,000/- respectively. In view of the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and thus, this court is inclined to modify a sum of Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards loss of estate respectively. Further, a sum of Rs.5,000/- is provided towards Transportation charges.

12. The learned counsel for the petitioners/claimants contended that due to sudden demise of their father the minor petitioners 3 and 4 as well as the 1st petitioner who is the mother of the deceased are suffering from loss of love and affection and they should be compensate for the same. In support of the same, the learned counsel for the Petitioners relied upon the Ruling of the Kerala High Court in the case of [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - [MACA.Nos.711 and 921 of 2010], as the 3rd and 4th petitioners/claimants are minor children of the deceased and the 1st petitioner is aged mother of the deceased, it will be appropriate to compensate them at Rs.35,000/- each. The Tribunal has awarded 9% towards interest and the same is not proper. Thus, the petitioners/claimants is entitled for 7.5% interest per annum. Accordingly, the award of the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Dependency	11,71,800.00	11,05,650.00
2	Funeral Expenses	10,000.00	15,000.00
3	Loss of Consortium	1,00,00.00	40,000.00
4	Loss of Estate	50,000.00	15,000.00

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
5	Loss of Love and Affection for the petitioners 1 st , 3 rd and 4 th	4,50,000.00	1,05,000.00
6	For mental shock and agony	50,000.00	-
7	Damages of Clothes and articles	2,000.00	-
8	Transportation	-	5,000.00
9	Total	18,33,800.00	12,85,650.00

12. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.12,85,650/- from Rs.18,33,800/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the Appellant/3rd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The Insurance Company is also at liberty to get the refund of the excess amount, if it had already deposited the entire amount awarded by the Trial Court.

(v) The apportionment of the modified enhanced award amount is as follows:-

Petitioners/claimants 2, 3 and 4 - 30% each
Petitioner/Claimant 1 - 10%.

(vi) On such deposit, the petitioners/claimants 1 and 2 are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vii) The share of the petitioners 3rd and 4th/minors are directed to be deposited in any one of the nationalised bank till they attain majority. The 2nd petitioner/guardian of the petitioners/claimants 3rd and 4th is permitted to withdraw the accrued amount once in three months.

Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional District Court,
Motor Accident Claims Tribunal,
Coimbatore.

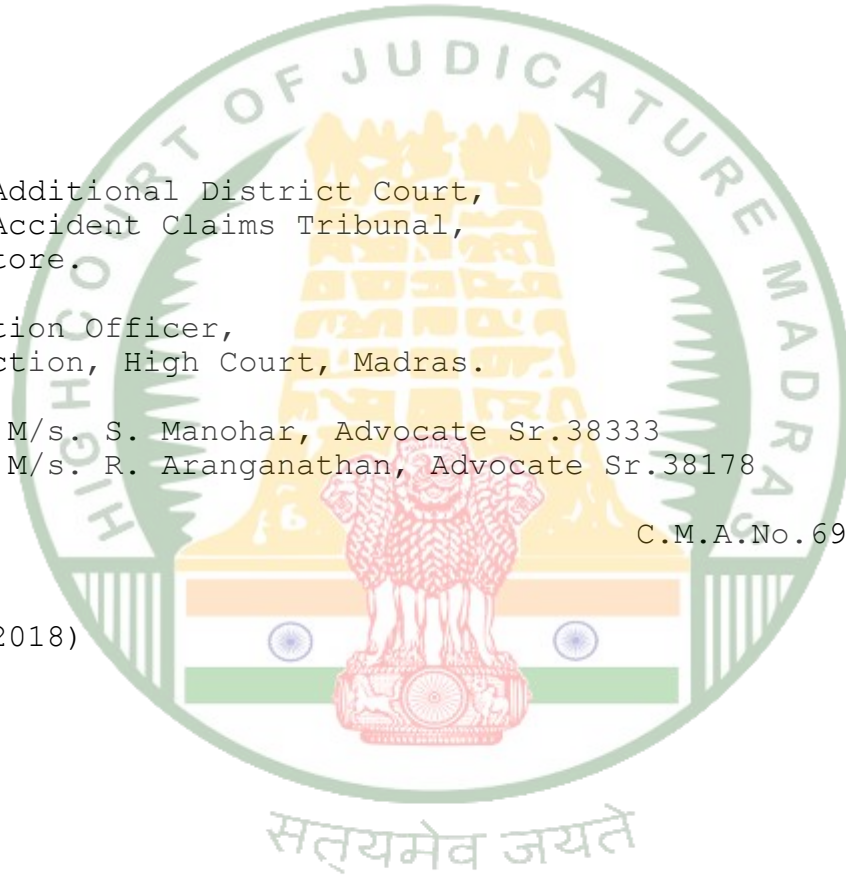
2.The Section Officer,
V.R.Section, High Court, Madras.

+ 1 cc to M/s. S. Manohar, Advocate Sr.38333

+ 1 cc to M/s. R. Aranganathan, Advocate Sr.38178

C.M.A.No.694 of 2017

SR(CO)
EU(20/09/2018)



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