



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)Nos.360 of 2019 & 99 of 2020

and

C.M.P(MD)No.1692 of 2020 in C.M.A 99 of 2020

1.C.M.A(MD)No.360 of 2019:-

1.Sudha
2.Vikashini
3.Harshni
4.Muthukrishnan

... Appellants/claimants

Vs.

1.V.Bhagya Lakshmi

2.The Divisional Manager,
National Insurance Company Limited,
Having Office at I Floor,
Vijaya Complex,
Dharavari Garden,
Ward No.3,
Station Road,
Ongole,
Prakasam District,
Andhra Pradesh - 523 001.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 24.01.2019 made in M.C.O.P.No.1437 of 2017, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli.

For Appellants

: Mr.VR.Shanmuganathan

For R - 2

: Mr.D.Sivaraman

2.C.M.A(MD)No.99 of 2020:-

The Divisional Manager,
National Insurance Company Limited,
Having Office at I Floor,
Vijaya Complex,
Dharavari Garden,
Ward No.3,
Station Road,
Ongole,
Prakasam District,
Andhra Pradesh - 523 001.

... Appellant/2nd Respondent



Vs.

1.Sudha
2.Vikashini
3.Harshni
4.Muthukrishnan

... Respondents 1 to 4/claimants

5.V.Bhagya Lakshmi

... 5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 24.01.2019 made in M.C.O.P.No.1437 of 2017, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli.

For Appellant : Mr.D.Sivaraman
For RR 1 to 4 : Mr.VR.Shanmuganathan

COMMON JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

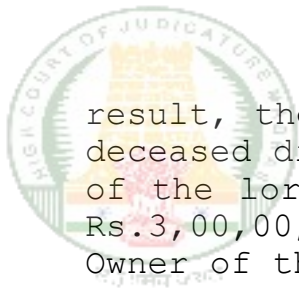
Heard Mr.D.Sivaraman, learned counsel appearing for the National Insurance Company Limited and Mr.VR.Shanmuganathan, learned counsel appearing for the claimants.

2.Both the Insurance Company and the claimants have filed the above Civil Miscellaneous Appeals before this Court challenging the judgment and decree, dated 24.01.2019 made in M.C.O.P.No.1437 of 2017, on the file of the Motor Accident Claims Tribunal (Principal District Court), Tirunelveli.

3.As both the appeals arise out of a common cause of action, they are taken up for disposal by a common judgment.

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

5.It was the averment of the claimants before the Tribunal that on 15.12.2014, when the deceased was travelling in an Innova Car bearing Registration No.TN-66-2828 driven by his brother Jeyaprakash Narayanan along with his wife and daughter, on the way to Tirunelveli to Madurai National Highways, near a bridge on the National Highways of Naltinputhur, they found one another car bearing Registration No.TN-58-AD-2435 was capsized due to the burst of the front right tyre. The deceased and his brother stopped the car and tried to fit the stepney wheel with the help of jack on the margin of the road with the help of the Highway Patrol police. At that time, a Eicher lorry bearing Registration No.AP-27-TU-2580 belonging to the first respondent, driven by its driver in a rash and negligent manner, dashed against the car TN-58-AD-2435. As a



result, the deceased and his brother had sustained injuries and the deceased died at the hospital. The claimants pleaded that the driver of the lorry was responsible for the accident and claimed a sum of Rs.3,00,00,000/- as compensation from the Insurance Company and the Owner of the lorry which had caused the accident.

WEB COPY

6.The Insurance Company resisted the claim petition before the Tribunal stating that there was no rashness or negligence on the part of the driver of the first respondent, as it was on its lane. The Car bearing Registration No.TN-58-AD-2435 was admittedly standing on the right side lane road. The accident had occurred between two vehicles, in which, the one vehicle was stationary on the road and the other one moving. The claimants have to claim compensation from the owner and Insurance Company of the Car bearing Registration No.TN-58-AD-243 and not from them and further stated that the driver of the Car had parked the same for repair on the wrong lane of the road and that was the root cause of the accident. Since the quantum claimed by the claimants is very high, the Insurance Company sought for dismissal of the claim petition.

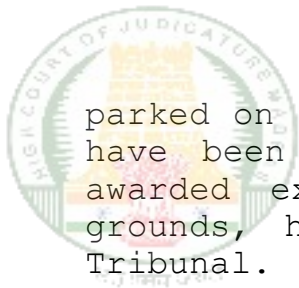
7.Before the Tribunal, on behalf of the claimants, two witnesses were examined and Exs.P1 to P15 were marked. The first claimant was examined as P.W.1 and Jeyaprakash Narayanan/brother of the deceased was examined as P.W.2. On the side of the Insurance Company, Ravichandran was examined as RW1 and Kannan was examined as R.W.2 and Exs.R.1 to R.5 were marked.

8.The Tribunal, on evaluation of pleadings and evidence, found that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, thereby held him responsible for the accident and awarded a sum of Rs.23,36,600/- as compensation with interest at the rate of 7.5% per annum.

9.Seeking enhancement of compensation, the claimants have approached this Court by way of C.M.A(MD)No.360 of 2019 and challenging the quantum of compensation, which is on the higher side, the Insurance Company is before this Court by way of C.M.A(MD) No.99 of 2020.

10.Mr.VR.Shanmuganthan, learned counsel appearing for the claimants would mainly contend that the Tribunal, without taking note of Exs.P.10, P.14 and P.15-Income Tax returns of the deceased, had fixed the income of the deceased. He would further contend that the compensation awarded under other heads, viz. Loss of love and affection and funeral expenses, is certainly on the lower side.

11.On the other hand, Mr.D.Sivaraman, learned counsel appearing for the Insurance Company would contend that the accident had occurred only due to the negligence of the driver of the Car bearing Registration No.TN-58-AD-2435, who parked the Car on the right side lane, which was the sole cause for the accident. Had the Car been



parked on the left side mud portion of the road, the accident could have been averted. He would also contend that the Tribunal had awarded excessive compensation under different heads. On these grounds, he would seek reduction of compensation awarded by the Tribunal.

12. We have given careful consideration to the submissions made by the learned counsel on either side and perused the material documents available on record.

13. On a perusal of the materials available on record, it is seen that the claimants have let in evidence and proved that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent. The appellant-Insurance Company has not let in evidence to disprove the said contention. The Tribunal, on appreciation of evidence, held that the driver of the first respondent alone is responsible for the accident and there is no error apparent in the said finding of the Tribunal.

14. With regard to quantum, the Tribunal had erred in fixing the annual income of the deceased at Rs.2,60,800/- and awarded a sum of Rs.21,51,600/- towards loss of income. As per Ex.P.10, which is an Income-Tax return, filed in the name of the deceased for the year 2014-2015, the net income derived from the catering business is shown as Rs.5,20,000/- per annum. The other income from the partnership firm are shown separately, as it was argued that the other income from the business is not altered, we are of the opinion that we can take Rs.5,20,000/- as annual income of the deceased, which means the monthly income arrives at Rs.43,000/-. Considering the age of the deceased, 10% has to be added for the future prospects, which will come to Rs.47,300/- (Rs.43,000 + Rs.4300), multiplying the same by '12' for the annual income and applying multiplier '11' multiplicand, the amount comes to Rs.62,43,600/- (Rs.47,300 X 12 X 11), deducting 10% for the Income Tax, the amount comes to Rs.56,19,240/-, in which, 1/4th of the amount has to be deducted for his personal expenses, which comes to Rs.42,14,430/- (Rs.56,19,240 - Rs.14,04,810). Hence, the loss of income is arrived at Rs.42,14,430/-.

15. Though the Tribunal had awarded a sum of Rs.15,000/- towards funeral expenses, which is on the lower side, a sum of Rs.25,000/- is awarded towards funeral expenses.

16. With regard to the other heads viz., Transport Expenditure and loss of love and affection to the claimants, the Tribunal has awarded a sum of Rs.10,000/- and Rs.1,60,000/- respectively, which needs no interference.

17. Since the Tribunal had not awarded any sum under the head of loss of estate, this Court awards a sum of Rs.15,000/- to the first claimant under the said head.



18. Accordingly, the Award of the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	Rs.21,51,600/-	Rs.42,14,430/-	enhanced
2.	Funeral expenses	15,000/-	25,000/-	enhanced
3.	Transport expenditure	10,000/-	10,000/-	confirmed
4.	Consortium (spouse and children)	1,60,000/-	1,60,000/-	confirmed
5.	Loss of Estate to the first claimant		15,000/-	Awarded
	Total	Rs.23,36,600/-	Rs.44,24,430/-	Enhanced by 20,97,830/-

19. In the result, **C.M.A(MD)No.360 of 2019 filed by the claimants is partly allowed and C.M.A(MD)No.99 of 2020 filed by the Insurance Company is dismissed.**

(i) The Award of the Tribunal is enhanced to Rs.44,24,430/- from Rs.23,36,600/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The Award amount is apportioned as per the ratio of apportionment made by the Tribunal.

(iv) The learned counsel appearing for the Insurance Company is directed to deposit the enhanced award amount together with accrued interest and costs to the credit of claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order.



(v) The claimants are permitted to withdraw their share in the award amount with proportionate accrued interest and costs.

No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal/
Principal District Court,
Tirunelveli.

2.The V.R Section (Records), (2C)
Madurai Bench of Madras High Court,
Madurai

+2 CC to M/s.D.SIVARAMAN, Advocate (SR-7671[F],7672 dated
26/02/2021)

C.M.A(MD)Nos.360 of 2019 & 99 of 2020
25.02.2021

SE (CO)

KB(20.04.2021) 6P 6C