



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) No.257 of 2015

and

M.P (MD) No.1 of 2015

WEB COPY

The Oriental Insurance Company Limited
Through its
Branch Manager,
No.16, K.J.R Complex,
North Veli Street,
Madurai 625 001.

:Appellant/2nd Respondent

Vs.

1.Chandra
2.M.Subburaj

:1st Respondents/1st Petitioner

:2nd Respondent/2nd Petitioner

3.M.Puvaneswari

:3rd Respondent/3rd Petitioner

*(R2 & R3 are declared as majors and
guardianship of their mother is discharged
vide Court order dated 26.10.2021 made in
C.M.P (MD) Nos.4728 & 4729 of 2021)*

4.Lakshmi Ammal
5.J.Srinivasan
6.J.Govindaraj

:4th Respondent/4th Petitioner

:5th Respondent/1st Respondent

:6th Respondent/3rd Respondent

7.The National Insurance Company Limited,
Through its
Branch Manager,
No.19, Officer's Line
Opposite to Lakshmi Theatre
Vellore.

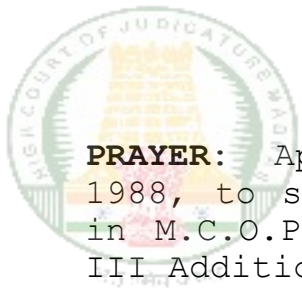
:7th Respondent/4th Respondent

8.R.Rajeswari

:8th Respondent/5th Respondent

9.The Oriental Insurance Company Limited,
Through its
Branch Manager,
No.F-4, Visitors Road,
Block-2,
Neyveli.

:9th Respondent/6th Respondent



PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 10.07.2013 passed in M.C.O.P.No.1114 of 2003 by the Motor Accident Claims Tribunal, III Additional District and Sessions Judge (PCR), Madurai.

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For Appellant	: Mr.C.Ramachandran
For R1 to R4	: Mr.Sankara Pandian
For R7	: Mr.J.S.Murali
For R5, R6, R8 & R9	: No appearance

JUDGMENT

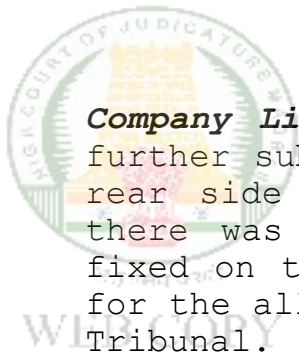
This appeal is filed by the appellant/Insurance Company to set aside the judgment and decree, dated 10.07.2013 passed in M.C.O.P.No.1114 of 2003 by the Motor Accident Claims Tribunal, III Additional District and Sessions Judge (PCR), Madurai.

2.The facts of the case is that the accident, which took place on 16.04.2002 at about 9.30 p.m., when the deceased was attending puncture work in a lorry belonging to the fifth respondent, a lorry belonging to the 6th respondent bearing Registration No.TAJ 5577 came from Trichy to Madras driven by its driver in a rash and negligent manner and dashed against the lorry in which the deceased was carrying out the puncture work. Due to which, the deceased was succumbed to injuries. The dependents of the deceased has filed a claim petition in M.C.O.P.No114 of 2003 before the Motor Accident Claims Tribunal [III Additional District and Sessions Judge (PCR)], Madurai, seeking compensation.

3.Before the Tribunal, on the side of the claimants two witnesses were examined as P.W.1 and P.W.2 and eight documents were marked as Exs.P.1 to P.8 and on the side of the respondent one witness was examined as R.W.1 and one document was marked as Ex.R.1.

4.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also on appreciating the evidences on record, held that the accident was occurred only due to the rash and negligent driving of the driver of the lorry and directed the second and fourth respondents therein to pay compensation in the ratio of 25% and 75% respectively. Aggrieved over the order of the Tribunal, the second respondent/Insurance Company has filed the present C.M.A.

5.The learned counsel appearing for the appellant/Insurance Company contended that the future prospects fixed by the Tribunal is on the higher side and the Tribunal ought to have fixed future prospects at the rate of 40% as per the judgment of the Hon'ble Apex Court in **2017 (2) TNMAC 609(SC) in the case of National Insurance**



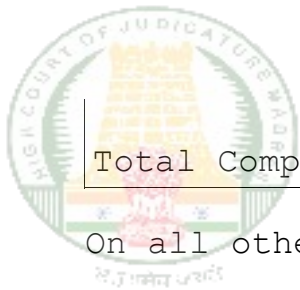
Company Limited Vs. Pranay Sethi and others. The learned counsel further submitted that there is no signal or reflector light on the rear side of the lorry belonging to the fifth respondent and as there was no pleadings in the claim application, 25% liability fixed on the driver of the lorry belonging to the fifth respondent for the alleged accident. Hence, he prays to modify the award of the Tribunal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed before this Court.

7. Even though there is no direct evidence on the side of the respondents/claimants to prove the income of the deceased, the deceased was earning Rs.5,000/- per month. The Tribunal, considering all these aspects and considering the age of the deceased, fixed monthly income of the deceased at Rs.3,000/- per month. Hence, there is no error in the reasoning arrived at by the Tribunal for fixing the notional income. Therefore, the Tribunal has awarded 50% of future prospects.

8. The learned counsel appearing for the appellant vehemently contended that as per the judgment of the Honourable Apex Court reported in **Pranay Sethi's** case, awarded 40% enhancement towards future prospects. Therefore, the award granted by the Tribunal is modified to the effect that the future prospects is reduced from 50% to 40% and the monthly income of the deceased at Rs.3,000/- + 40% = Rs.4,200/- and also considering the dependency of the deceased, the Tribunal deducted 1/4th and the net income of the deceased would be arrived at Rs.3,150/- per month and the loss of income is Rs.3,150/- x 12 x 16 = Rs.6,04,800/-. Therefore, the compensation awarded by the Tribunal stands revised from Rs.6,86,000/- to Rs.6,42,800/- in the manner stated below:

S.No.	Description	Amount awarded by		Awarded by this Court
		Tribunal	This Court	
1.	Loss of Income	Rs.6,48,000/-	Rs.6,04,800/-	(Modified)
2.	Loss of love and affection (each petitioner Rs.5,000)	Rs.20,000/-	Rs.20,000/-	(Confirmed)
3.	Funeral Expenses	Rs.2,000/-	Rs.2,000/-	(Confirmed)
4.	Transport Charge	Rs.1,000/-	Rs.1,000/-	(Confirmed)
5.	Loss of Consortium	Rs.10,000/-	Rs.10,000/-	(Confirmed)
6.	Loss of Estate	Rs.5,000/-	Rs.5,000/-	(Confirmed)



Total Compensation	Rs.6,86,000/-	Rs.6,42,800/-	(Reduced)
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On all other aspects, the award of the Tribunal remains unaltered.

9. In view of the above, the judgment and decree of the trial Court passed in M.C.O.P.No.1114 of 2003 are modified and the compensation is reduced from Rs.6,86,000/- to Rs.6,42,800/- and the Civil Miscellaneous Appeal is allowed in part. The Insurance Company is directed to deposit the modified amount of Rs.6,42,800/-, if already not deposited, within a period of six weeks from the date of receipt of a copy of this judgment, along with interest at the rate of 7.5% p.a. On such deposit, the respondents/claimants 1 to 4 are entitled to withdraw their shares with accrued interests, as apportioned by the Tribunal, by filing necessary application before the Tribunal. The excess amount, if any, shall be refunded to the appellant/Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Motor Accident Claims Tribunal,
III Additional District and
Sessions Judge (PCR), Madurai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(1 soft copy)

+1 CC to M/s.C. RAMACHANDRAN, Advocate (SR-36210[F] dated 26/11/2021)

+1 CC to M/s.J.S. MURALI, Advocate (SR-36099[F] dated 26/11/2021)

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