IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
21.09.2022	4.11.2022

CORAM

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**
AND
THE HONOURABLE MRS.JUSTICE **N.MALA, J.**

C.M.A.No.1143 and 1144 of 2016

The Oriental Insurance Co. Ltd.,
Divisional Office, J.N.Road,
Tiruvallur. ... Appellant in both Appeals/
Respondent No.2

Vs.

1 Panneerselvam ... 1st Respondent in CMA.No.1143 of 2016/
Petitioner in MCOP No.460/2004

2 G.Mohandoss Gandhi alias
G.M.D.Gandhi ... 2nd Respondent in CMA.No.1143 of 2016/
6th Respondent in CMA.No.1144 of 2016/
Respondent No.1 in both MCOPs.

1 Kalpana
2 Minor Sharmila
3 Kovammal (died)
4 C.Samy Reddy
5 Minor Pavithra ... Respondents 1 to 5 in CMA.No.1144/2016/
Petitioners in MCOP No.744/2005

Prayer in C.M.A.No.1143 of 2016:

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 24.4.2015 made in M.C.O.P.No.460 of 2004 on the file of Motor Accidents Claims Tribunal (IV Additional District Court), Ponneri.

Prayer in C.M.A.No.1144 of 2016:

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 24.4.2015 made in M.C.O.P.No.744 of 2005 on the file of Motor Accidents Claims Tribunal (IV Additional District Court), Ponneri.

For Appellant in both Appeals	: Mr.Mr.K.Vinod for M/s.Elveera Ravindran
For Respondent No.1	: Notice not ready
For Respondent No.2 in CMA 1143/2016	: No appearance
For Respondent No.1,2 & 4 to 6 in CMA 1144/2016	: No appearance
For Respondent No.3	: Died

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COMMON JUDGMENT

(Delivered by **D.KRISHNAKUMAR, J.**)

Both the appeals are arising out of the common order passed in M.C.O.P.No.460 of 2004 and 744 of 2005, appellant in both appeals is The Oriental Insurance Company and hence, both the appeals are heard together and disposed of by common Judgment.

2. **Brief facts of the case is as follows:**

On 17.5.2004 at National Highways No.5, on account of widening of the National Highway-5 into 4 lanes was in progress, half of the road was closed for traffic, the entire traffic on both directions were being regulated in the remaining half portion of the G.N.T. Road. Around 10.30 p.m., the driver of the lorry with registration No.AP 16 E 4174 was proceeding from Chennai to Andhra Pradesh had parked the lorry on the black topped portion of the National Highways-5 opposite to R.M.K. Engineering College, Kaveraipettai without any statutory precaution and safety measures . While so, a motorcycle bearing registration No.TN 20 R 1674 was proceeding towards Gummidipoondi from Arani collided with the lorry parked therein which resulted in the accident. In the impact, rider of the motorcycle viz., S.Kumar sustained grievous bleeding head injuries and died instantaneously due to hemorrhage and shock. The Pillion rider viz., Panneerselvam sustained fracture and grievous injuries. A case has been registered in Cr.No.168 of 2004 under Section 279, 337 and 304(A) of I.P.C. by E9 Kavarapettai Police station. The dependants of the deceased S.Kumar/rider of the vehicle have filed M.C.O.P.No.744 of 2005 claiming sum of Rs.24,48,000/- towards compensation. The pillion rider Panneerselvam who sustained fracture and grievous injuries has filed M.C.O.P.No.460 of 2004 claiming compensation of Rs.6,80,500/- for the fracture and grievous injuries sustained by him.

3. The appellant/Insurance Company has filed a counter statement denied the averments made in the claim petition and disputed negligence as well as liability against the Insurance Company.

4. The owner of the lorry viz., second and 6th respondent in the present appeals remained exparte before the tribunal. The evidence was recorded in M.C.O.P.No.460 of 2004 and the same was adopted in M.C.O.P.No.744 of 2005. On the side of the claimants, 4 witnesses were examined and Ex.P1 to P22 were marked. On the side of the Insurance Company/appellant herein, no witness was examined or any document marked.

5. Tribunal, based on the oral and documentary evidence and upon hearing both sides, found that the accident occurred accident due to the negligent act of the lorry driver which resulted in the death of the rider and unjuries to the pillion rider of the two wheeler bearing registration No.TN 20 R 1674 and therefore, fixed the liability as against the owner of the vehicle and Insurance Company/Appellant herein and awarded a sum of Rs.14,88,040/- as compensation to the dependents of the deceased viz., S.Kumar who died in the accident on the spot/claimants in M.C.O.P.No.744 of 2005 and a sum of Rs.1,58,000/- as compensation to the injured person/ claimant in M.C.O.P.No. 460 of 2004 along with interest at the rate of 7.5% per annum from the date of claim petition till realization. The award passed by the tribunal under various heads are as follows:

M.C.O.P.No.460 of 2004 :

Heads	***Amount in Rs.***
Transport to hospital	3,000/-
Extra Nourishment	25,000/-
Pain & suffering	20,000/-
Disability 40%	80,000/-
Loss of earning	30,000/-
Total :	**1,58,000/-**

M.C.O.P.No.744 of 2005 :

Heads	***Amount in Rs.***
Loss of estate, earning and dependency *The income of the deceased family: Rs.6510/- p.m.* *Multiplier adopted 17 : 6510 x 12 x 17 = Rs.13,28,040/-*	13,28,040/-
Funeral expenses	15,000/-
Loss of love and affection	45,000/-
Loss of consortium	1,00,000/-
Total :	**14,88,040/-**

6. Aggrieved by the said award, the Insurance Company has filed the present appeals challenging the award passed by the tribunal fastening liability on the Insurance Company and also on the ground of quantum of compensation.

7. Heard the learned counsel appearing for the appellant/ Insurance Company and perused the materials available on record.

8. The tribunal while considering the oral and documentary evidence has held that there is negligence on the part of the respondent vehicle by parking the said lorry hapazardly without any indicator, hence, there is negligence on the part of the driver of the lorry. The injured was examined as P.W.1. The Doctor who assessed the disability sustained by the claimant in M.C.O.P.No.460 of 2004 was examined as P.W.3. According to P.W.3, the claimant in M.C.O.P.No.460 of 2004 was suffering from permanent disability of 50% and issued disability certificate Ex.P14 and X-ray was marked as Ex.P15. However, the tribunal has reduced the disability and fixed disability at 40% and determined the total compensation of Rs.1,58,000/- under various heads.

9. This Court has carefully gone through the evidence of P.W.1 and also the evidence of P.W.3 Doctor who assessed permanent disability of 50%. The tribunal based on the evidence of P.W.3, disability certificate Ex.P14 and X-ray Ex.P15 reduced the disability to 40%. No witness was examined nor any document marked on the side of the respondent/Insurance Company to disprove the claim of the claimants and also there is no oral or documentary evidence shown as against the award passed by the tribunal. Therefore, on

perusal of the record and the award, we are of the view that the tribunal has awarded just and fair compensation to the injured/claimant in M.C.O.P.No.460 of 2004 who sustained fracture in the accident and therefore, there is no warrant to interfere with the award passed by the tribunal in M.C.O.P.No.460 of 2004.

10. The legal heirs of the deceased S.Kumar, claimants in M.C. OP.No.744 of 2005 has claimed a compensation of Rs.24,48,000/-. Based on the evidence of P.W.4 Senior Officer of the Company where the deceased worked as unskilled operator from 1992 to 2004. Based on the Salary Certificate Ex.P19 and authorisation letter Ex.P16 issued by the company to P.W.4 to give evidence, the tribunal has determined the monthly Salary of the deceased S.Kumar as Rs.5,787.40 and added 50% of the existing salary towards future prospects and arrived a actual income of the deceased as Rs.8,680/- per month and following the Sarala Varma case, the tribunal deducted 1/4th towards personal expenditure of the deceased as the family members of the deceased are more than 4 and adopted 17 multiplier and determined a sum of Rs.13,28,040/- towards loss of estate, earning and dependency. Apart from this, Rs.15,000/- towards funeral expenses; Rs.45,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of consortium and awarded a sum of Rs.14,88,040/- as total compensation to the claimants in M.C.O.P.No.744 of 2005.

11. The learned counsel appearing for the appellant/Insurance company while disputing the negligence on the part of the insured vehicle, has submitted that complaint has been preferred against the driver of the vehicle who parked the lorry at the scene place, however, the appellant/Insurance company has not filed final report nor any document to disprove the claim that the lorry was parked in the middle of the road. Apart from this, it is specific case of the claimants that no precaution or safety measures were taken by the driver of the insured lorry and hence, the deceased who proceeded in two wheeler during night time at 10.30 p.m. could not see the lorry parked at middle of the road. In the absence of any other substantial material to disprove the negligence of the driver of the insured vehicle, this Court is unable to accept the contention of the learned counsel appearing for the appellant and the same is liable to be rejected. Therefore, negligence fixed by the tribunal as against the insured vehicle is perfectly valid in law.

12. Insofar as the quantum is concerned, the learned counsel appearing for the appellant disputed the monthly income of the deceased. According to the learned counsel, the tribunal erred in fixing the monthly income of the deceased at Rs.5,787.40/-, erred in adding 50% of the income towards future prospects, went wrong in fixing the total income at Rs.8,680/- per month and further went wrong in deducting one third (1/3 rd) towards

personal expenses. According to the counsel, multiplier adopted by the tribunal is erroneous and considering the age of the deceased who was 32 years of age at the time of the accident, appropriate multiplier would be 16 and not 17. The learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another*** reported in (***2009) 6 SCC 121*** in support of the said submission. On the issue of future enhancement of salary and the deduction towards personal expenses, the learned counsel relied on the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs.Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** and submitted that only 40% of the income of the deceased could be added towards future prospects and that, as the deceased has left behind 5 dependents, the deduction towards personal expenses would be one fourth (1/4 th) of the deceased's income. The tribunal has fixed the monthly income of the deceased on the basis of Ex.P.19 at Rs.5,787.40/-. If 40% increase in salary is taken towards future prospects as per the judgment in ***Pranay Sethi's*** case, then the total salary comes to Rs.8,102.36/-. As the number of dependents in the deceased's family is 5, one fourth (1/4 th) has to be deducted towards personal expenditure which would be Rs.2025.59/-, then the monthly contribution of the deceased to the family will be Rs.6076.77/- rounded off to Rs.6077/-. Now, the appropriate multiplier would be 16, considering that the age of the deceased was 32 years at the time of the accident. Therefore the loss of income to the deceased's family works out to Rs.6077/- x 12 x 16 = Rs.11,66,784/-. Therefore under the head of loss of income of the deceased family, a sum of Rs.11,66,784/- is awarded. Pending appeal, the third respondent died. Apart from this, for loss of love and affection, a sum of Rs.40,000/- each is awarded to the respondents 1, 2 and 5/claimants 1,2 and 5 and a sum of Rs.1,00,000/- is awarded to the wife of the deceased viz., respondent No.1/claimant No.1 towards loss of consortium; A sum of Rs.15,000/- is awarded towards funeral expenses. Considering the aforesaid discussion and the decision cited supra, the compensation awarded by the tribunal is modified as under:

Heads	*Compensation Awarded by the Tribunal* *Rs.*	*Compensation modified by this Court* *Rs.*
Loss of income to the deceased family : Rs.6077/- x 12 x 16	13,28,040/-	11,66,784/-
Funeral expenses	15,000/-	15,000/-
Loss of love and affection	45,000/-	1,20,000/-
Loss of consortium	1,00,000/-	1,00,000/-
Total :	14,88,040/-	14,01,784/-
Rounded of		**14,02,000/-**

The compensation awarded by the tribunal is modified as aforesaid. Except the above modification, the award passed by the tribunal is confirmed.

13. Accordingly, the respondents/claimants in M.C.O.P.No.744 of 2005 are entitled Rs.14,02,000/- (Rupees fourteen lakhs two thousand only) as fair and reasonable compensation along with interest at the rate of 7.5% p.a. from the date of petition till realization. The appellant/Insurance Company already deposited 50% of the award amount and therefore, the appellant/Insurance company is directed to deposit the modified award amount of Rs. 14,02,000/- (Rupees fourteen lakhs two thousand only) less the amount already deposited, within a period of six weeks from the date of receipt of copy of the judgment to the credit of M.C.O.P.No.744 of 2005 on the file of Motor Accidents Claims Tribunal (IV Additional District Court), Ponneri. On such deposit being made by the appellant/Insurance company, the respondents/claimants are permitted to withdraw the remaining award amount with accrued interest by filing appropriate application. The claimants shall approach the tribunal for apportionment. The award passed by the tribunal in M.C.O.P.No.744 of 2005 is modified to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

14. In fine, the C.M.A.No.1143 of 2016 stands dismissed. C.M.A.No.1144 of 2016 is partly allowed. No cost.

(D.K.K.J.) **(N.M.J.)**
4.11.2022

D.KRISHNAKUMAR, J.
AND
N.MALA, J.

vaan

Speaking/Non Speaking order
Index: Yes
vaan

Pre-Delivery Judgment in
C.M.A.No.1143 and 1144 of 2016

Dated: 4.11.2022

13. There is force in the contention of the learned counsel appearing for the appellant insofar as the loss of income of the deceased family. As per **Sarla Varma case** supra, the monthly income capitalised by the deceased and spent for his family members is fixed at Rs.4515.70 rounded of Rs.4516/-. By adding 40% towards future prospects to the actual salary drawn i.e. Rs.4516/- + Rs.1806/- (40%) = Rs.6,322/-. As per **Sarla Varma case,** one fourth (1/4th) of monthly income shall be deducted towards personal expenditure where the number of dependent family members is 4 to 6. Therefore, one fourth of monthly income deducted towards personal expenditure, i.e. Rs.6,322/- - Rs.1580/- = Rs.4,742/-. The deceased was aged 32 years at the time of accident. Therefore, as per **Sarla Varma case**, 16 multiplier has to be adopted to arrive loss of income to the deceased family. Accordingly, the income of the deceased contributed to his family members is Rs.4,742/- x 12 x 16 = Rs.9,10,464/-.