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C.M.A.No.2227 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A. No.2227 of 2022
and C.M.P.No.17229 of 2022

The Regional Manager,
M/s. Reliance General Insurance Co. Ltd.,
Rep. By its Duly Constituted Attorney(s)
Corporate Office, No.570, Naigaum Cross Road,
Next to Royal Industrial Estate,
Wadala, West Mumbai – 31.

.. Appellant

Vs.

- 1.Ruby
- 2.Minor Anishkumar
- 3.Minor Abeshkumar
(Minors 2 and 3 rep. By their mother
and next friend, Ruby)
- 4.Jaba Thangam (died)

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5.R.Venkatesan

.. Respondents

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(RR1 to 3 are the Lrs of the deceased R4 as per the memo dated 13.09.2022 vide court order dated 16.09.2022 made in C.M.P.No.1365 of 2021 in C.M.A.SR.No.25147/2020)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.08.2019, made in M.C.O.P. No.193 of 2014, on the file of the I Additional District and Sessions Court, (Motor Accident Claims Tribunal), Vellore.

For Appellant : Mr.S.Arunkumar

For RR1 to 3 : Mr.E.Kannadasan

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 30.08.2019, made in M.C.O.P. No.193 of 2014, on the file of the I Additional District and Sessions Court, (Motor Accident Claims Tribunal), Vellore.



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2.By consent of both the learned counsel appearing for the appellant as well as the respondents 1 to 3, this appeal is taken up for final hearing at the admission stage itself.

3.The appellant is the 2nd respondent in M.C.O.P. No.193 of 2014, on the file of the I Additional District and Sessions Court, (Motor Accident Claims Tribunal), Vellore. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.75,00,000/- as compensation for the death of one Rajan, who died in the accident that took place on 30.05.2013.

4.According to the respondents 1 to 4, on the date of accident, at about 9.45 p.m, when the deceased Rajan was riding his two wheeler bearing Registration No.TN-23-AV-5524 on the extreme left side of Arakkonam to Thiruttani road at slow speed, the driver of the Lorry bearing Registration No.TN-03-0499, owned by the 5th respondent, drove the same in a rash and



negligent manner and hit against the two wheeler and caused the accident. In the accident, the said Rajan was thrown out of the vehicle and he died on the spot. The accident occurred only due to rash and negligent driving by driver of the Lorry and hence, the respondents 1 to 4 filed claim petition against the 5th respondent and appellant-Insurance Company as owner and insurer of the Lorry respectively.

5.The 5th respondent, owner of the Lorry, remained exparte before the Tribunal.

6.The appellant, insurer of the Lorry, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant-Insurance Company, the accident occurred only due to the rash and negligent riding of two wheeler by the deceased Rajan who rode the vehicle without wearing helmet, hit against the Lorry and sustained fatal injuries. Hence, the appellant-Insurance Company is not liable to pay



compensation to the respondents 1 to 4. The respondents 1 to 4 have to prove that at the time of accident, the Lorry involved in the accident possessed valid particulars like Permit, RC and driving license for the driver. The 5th respondent/owner of the Lorry, colluding with the respondents 1 to 4, failed to contest the case and remained exparte before the Tribunal. The respondents 1 to 4 also have to prove the age, avocation and income of the deceased Rajan to claim compensation. In any event, the total compensation claimed by the respondents 1 to 4 is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined herself as P.W.1, one L.T.Manisha Yadav was examined as P.W.2 and one John Deva Arul was examined as P.W.3 and 6 documents were marked as Exs.P1 to P6. The appellant did not let in any oral and documentary evidence.



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8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Lorry, owned by the 5th respondent and fixed 75% negligence on the part of the driver of the Lorry and 25% on the part of the deceased Rajan for not possessing valid driving license and not wearing helmet at the time of accident. The Tribunal awarded a sum of Rs.33,85,676/- as compensation to the respondents 1 to 4 and directed the appellant as insurer of the said vehicle to pay a sum of Rs.25,39,257/-, being 75% of the award amount as compensation to the respondents 1 to 4.

9.Against the said award of the Tribunal dated 30.08.2019 made in M.C.O.P. No.193 of 2014, the appellant - Insurance Company has come out with the present appeal. Pending appeal, the 4th respondent who is the 4th claimant in the claim petition died and as per the memo dated 13.09.2022 vide court order dated 16.09.2022 made in C.M.P.No.1365 of 2021 in C.M.A.SR.No.25147/2020, the respondents 1 to 3 are his legal heirs.



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10. The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to the sole negligence of the deceased Rajan/rider of the two wheeler. The Tribunal erroneously fixed the negligence on the part of the driver of the Lorry. The Tribunal ought not to have taken the entire salary of the deceased as Rs.21,372/-, without deducting the allowance and variables which are personal in nature. The Tribunal failed to apply the correct multiplier and deduct income-tax after including the future prospects. The Tribunal, without following the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, erred in awarding a sum of Rs.75,000/- towards loss of love and affection. The total compensation awarded by the Tribunal is excessive and prayed for reducing the same.

11. Per contra, the learned counsel appearing for the respondents 1 to 3 contended that at the time of accident, the deceased Rajan was aged 48 years,



working as an Unskilled labour in INS Rajali, Arakkonam and was earning a sum of Rs.21,372/- per month. The Tribunal considering the evidence of P.W.3, who was examined to prove the avocation and income of the deceased, rightly fixed the salary of the deceased as Rs.21,372/- per month and granted compensation. The total compensation awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 3 and perused the entire materials available on record.

13.From the materials on record, it is seen that it is the case of the respondents 1 to 3 that on the date of accident, when the deceased Rajan was riding his two wheeler on the extreme left side of Arakkonam to Thiruttani road at slow speed, the driver of the Lorry owned by the 5th respondent drove the same in a rash and negligent manner and hit against the two wheeler and



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caused the accident. To substantiate their case, the 1st respondent examined herself as P.W.1, examined eye-witness to the accident as P.W.2 and marked the FIR as Ex.P1. Deposition of P.W.2 corroborated with the contents of FIR. On the other hand, it is the case of the appellant-Insurance Company that the accident occurred only due to the rash and negligent riding of two wheeler by the deceased Rajan who without wearing helmet, hit against the Lorry and sustained fatal injuries. To substantiate their case, they have not examined the driver of the Lorry or any other eye-witness to disprove the evidence of P.W.2. In the absence of any contra evidence to the evidences of 1st respondent as P.W.1 and P.W.2 – eye witness to the accident, the Tribunal considering the evidences of P.W.1 and P.W.2, Ex.P1 – FIR, held that the accident occurred only due to rash and negligent driving by driver of the Lorry owned by the 5th respondent. Having held so, the Tribunal fixed 25% negligence on the part of the deceased Rajan for not possessing valid driving license and not wearing helmet at the time of accident. In the absence of any proof with regard to possession of driving license by the deceased Rajan, the Tribunal fixed



negligence at 75:25 on the part of the driver of the Lorry and deceased Rajan.

There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as the quantum of compensation is concerned, the respondents 1 to 4 claimed that the deceased Rajan was aged 49 years, working as an Unskilled labour in INS Rajali, Arakkonam and was earning a sum of Rs.21,372/- per month. To substantiate the same, they have marked Ex.P5 – pay slip for the month of April 2013 and examined P.W.3 – Associate Civilian Payer and competent authority to disburse payment to the staff members. The Tribunal, considering the same, has rightly fixed the monthly income at Rs.21,372/-, granted 30% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC)** [*National Insurance Co. Ltd., Vs. Pranay Sethi and others*], but failed to deduct any amount towards Income Tax. Thus, the calculation for arriving annual income after deducting Income Tax is as follows :-



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Annual income of the deceased ...	Rs.2,56,464.00
30% enhancement towards future prospects	... Rs. 76,939.20

	Rs.3,33,403.20

Annual income rounded off to	... Rs.3,33,403.00

The accident has occurred on 30.05.2013.

Income Tax Slab for financial year 2013-2014 (AY 2014-2015)

Upto Rs.2,00,000/-	-	Nil
From Rs.2,00,001/- to Rs.5,00,000/- (10%) [Rs.1,33,403 x 10%]	-	Rs.13,340.30

	rounded off to	Rs.13,340.00

Annual income after deducting income tax (Rs.3,33,403/- – Rs.13,340/-)	-	Rs.3,20,063/-

Considering the age of the deceased Rajan as 49 years, the Tribunal rightly following the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]**, applied multiplier '13' and deducted 1/4th towards



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personal expenses of the deceased, as there were four dependents of the deceased at the time of accident. Hence, fixing the annual income of the deceased as Rs.3,20,063/-, applying multiplier '13' and deducting 1/4th towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified and reduced to Rs.31,20,614.25/- [Rs.3,20,063/- X 13 X ¾], which is rounded off to Rs.31,20,614/-. The Tribunal has awarded a meagre sum of Rs.25,000/- each towards loss of love and affection to the respondents 2 to 4 who are the children and mother of the deceased Rajan. The respondents 2 and 3 who are the minor children of the deceased Rajan are entitled to a sum of Rs.40,000/- each towards loss of parental consortium and the 4th respondent, mother of the deceased is entitled to a sum of Rs.40,000/- towards loss of filial consortium. Hence, the amount awarded by the Tribunal towards loss of love and affection is modified and a sum of Rs.80,000/- is granted towards loss of parental consortium to the respondents 2 and 3 and a sum of Rs.40,000/- is awarded towards loss of filial consortium to the 4th respondent. The Tribunal failed to award any amount



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towards loss of estate. A sum of Rs.15,000/- is awarded towards loss of estate to the respondents 1 to 4. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by 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 dependency	32,50,676/-	31,20,614/-	Reduced
2.	Loss of parental consortium to respondents 2 and 3	50,000/-	80,000/-	Enhanced
3.	Loss of filial consortium to 4 th respondent	25,000/-	40,000/-	Enhanced
4.	Loss of consortium to 1 st respondent	40,000/-	40,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total compensation	33,85,676/-	33,15,614/-	Reduced by Rs.52,546/- (25,39,257-24,86,711)
	Total	25,39,257/-	24,86,710.5/- rounded off to 24,86,711/-	

15.In the result, the appeal is partly allowed and the amount awarded by



the Tribunal at Rs.25,39,257/- is reduced to Rs.24,86,711/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court i.e., Rs.24,86,711/- along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.193 of 2014. Out of the said award amount, the 1st respondent is entitled to a sum of Rs.7,86,711/- and respondents 2 and 3 are each entitled to a sum of Rs.8,50,000/-. On such deposit being made by the appellant, the 1st respondent is permitted to withdraw her share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment now fixed by this Court, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued



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interest, once in three months for the welfare of the minor respondents 2 and 3.

The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.193 of 2014 on the file of the I Additional District and Sessions Court, (Motor Accident Claims Tribunal), Vellore, if the entire award amount determined by the Tribunal has already been deposited by them. It is made clear that if the respondents 1 to 3 have already withdrawn the entire award amount, the appellant/Insurance Company is not entitled to recover the same from the respondents 1 to 3. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)

14.10.2022

Index : Yes/No

Speaking Order : Yes/No

(gsa)

To

1.The I Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Vellore.

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



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**V.M.VELUMANI, J.
and
SUNDER MOHAN, J.**

(gsa)

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